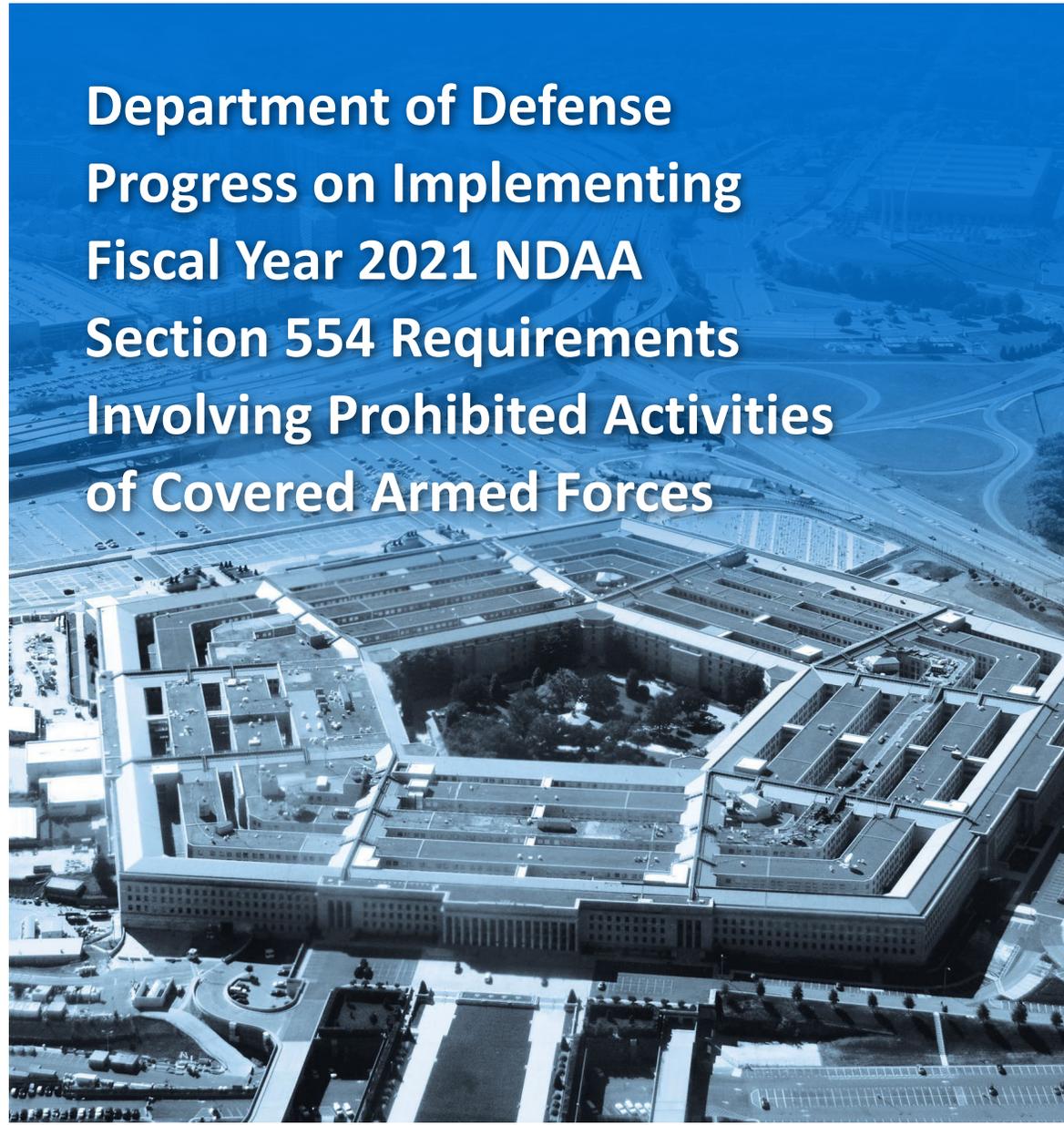




INSPECTOR GENERAL

U.S. Department of Defense

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Department of Defense Progress on Implementing Fiscal Year 2021 NDAA Section 554 Requirements Involving Prohibited Activities of Covered Armed Forces

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





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Introductory Message

This report addresses the progress of the Department of Defense (DoD) toward implementing standardized policies and processes for reporting and tracking allegations of prohibited activities, as directed by Section 554 of the FY 2021 National Defense Authorization Act (NDAA).¹ Section 554(b) requires the Secretary of Defense (SecDef) to establish standard policies, processes, and mechanisms that ensure that all allegations and related information that a member of a covered Armed Force has engaged in prohibited activity are referred to the DoD Office of Inspector General (OIG).² It also requires the DoD to supply sufficient information to enable the DoD OIG to track the total number of investigations and inquiries conducted as a result of these allegations, the outcome of those investigations and inquiries, and any action taken.

Section 554(b) also requires the SecDef to submit an annual report to the appropriate congressional committees detailing the implementation of policies, processes, and mechanisms related to prohibited activities involving covered Armed Forces. Further, Section 554(b) states that the report should include all referrals made to the DoD OIG during the preceding fiscal year involving allegations and relevant information of a member of a covered Armed Force who engaged in prohibited activities. The SecDef delegated the responsibility for submitting the annual report that is due December 1, 2021, to the DoD IG. This report covers the period beginning January 1 through September 30, 2021.

The DoD OIG will continue its oversight through audits and evaluations of the DoD's efforts to prevent and respond to supremacist, extremist, and criminal gang activity by any member of the Armed Forces.

A handwritten signature in black ink that reads 'Theresa S. Hull'.

Theresa S. Hull
Deputy Inspector General for Diversity and
Inclusion and Extremism in the Military

¹ Section 554 defines prohibited activity as an activity (supremacist, extremist, and criminal gang activity) prohibited under DoD Instruction (DoDI) 1325.06, "Handling Dissident and Protest Activities Among Members of the Armed Forces," November 27, 2009, (Incorporating Change 1, February 22, 2012).

² Section 554 defines "covered Armed Force" as an Armed Force that is under the jurisdiction of the Secretary of a Military Department.



Background

On January 1, 2021, the “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021” became law. Section 554 of the NDAA, “Inspector General Oversight of Diversity and Inclusion in Department of Defense; Supremacist, Extremist, or Criminal Gang Activity in the Armed Forces,” established oversight requirements for programs that are essential to the effectiveness of the DoD, the safety of its military and civilian personnel, and the trust in which it is held by the American people.

Section 554(b) requires the Secretary of Defense (SecDef) to establish standard policies, processes, mechanisms, and reporting requirements for prohibited activities, and to submit an annual report to the appropriate congressional committees detailing the implementation of Section 554(b) requirements.

DoD Policies and Processes for Handling Prohibited Activity

Section 554 defines prohibited activity as an activity (supremacist, extremist, and criminal gang activity) prohibited under DoD Instruction 1325.06, “Handling Dissident and Protest Activities Among Members of the Armed Forces,” November 27, 2009.

This Instruction establishes DoD policy, assigns responsibilities, and provides procedures for handling prohibited activities among members of the Armed Forces. According to the Instruction, the SecDef assigns to the Under Secretary of Defense for Personnel and Readiness (USD[P&R]) responsibility for developing overall policy and guidelines for handling dissident and protest activities and approving policies and procedures that the Secretaries of the Military Departments develop to implement the Instruction. The Secretaries of the Military Departments are responsible for implementing the Instruction within their Departments and ensuring compliance with the described training requirements.

In April 2021, the SecDef directed several immediate actions to address extremism across the DoD. For example, the SecDef directed the establishment of the DoD Countering Extremism Working Group and tasked the USD(P&R) and General Counsel of the DoD to update DoD Instruction 1325.06 to revise the definition of prohibited extremist activities. The definition will be included in DoD Instruction 1325.06, which the USD(P&R) is currently in the process of updating.

The Secretary of Defense Has Not Established Standard Policies for the Military Departments and Services to Track and Report Prohibited Activities

Section 554 directs the SecDef to establish policies, processes, and mechanisms, standard across the Armed Forces, that ensure that all allegations and related information that a Service member has engaged in a prohibited activity are referred to the DoD IG. However, the SecDef has not yet established or implemented standard policies to report and track prohibited activities, including supremacist and extremist activity, as required by law.

In August and September 2021, we asked officials from the USD(P&R) office and the Military Departments to describe and provide documentation of their efforts to establish and implement Section 554 requirements during the period January 1 through September 30, 2021. In November 2021, officials from the USD(P&R) office submitted a draft policy memorandum to the Secretaries of the Military Departments, the Under Secretary of Defense for Intelligence and Security, and the DoD OIG, for coordination. That policy memorandum provides guidance regarding the reporting requirements of Section 554(b) and instructs the Secretaries of the Military Departments to draft and submit their own policies to the USD(P&R) office for review, within 120 days.

The Military Departments and the Services Are Revising or Developing Their Processes for Collecting and Reporting Data Related to Prohibited Activity

We found that data collection across the Military Departments is inconsistent. For example, the Navy did not track disciplinary action for participation in extremist organizations and activities. In addition, the Department of the Navy (DON) and the Department of the Air Force (DAF) stated that they would update their policies once they have reviewed the relevant Office of the Secretary of Defense–level policies. For example, DAF officials stated that their Department would review any Office of the Secretary of Defense–level policies upon issuance and determine what, if any, policy changes are necessary at the Department level for implementation. Additionally, DON officials stated that they would update DON policies to comply with recommended updates to DoD Instruction 1325.06.

However, officials from the Military Departments described the following current or planned actions established at the Military Department or Service level to report and track prohibited activity, including extremist activity:

Table 1. Summary of Military Department Initiatives

Military Department Initiatives to Report and Track Prohibited Activity	
Department of the Army	<ul style="list-style-type: none"> The Army Criminal Investigation Division (CID) tracks all reported allegations of prohibited activities. Army policy requires the reporting of extremist activity to CID.
Department of the Navy	<ul style="list-style-type: none"> The Navy is developing a court-martial tracking system to further the goal of tracking court-martial cases where participation in extremist organizations and activities is charged. The Under Secretary of the Navy established a “Domestic Extremism Tiger Team” in March 2021 to determine what improvements could be implemented to combat domestic extremism. The Under Secretary of the Navy directed implementation of the team’s recommendations to bolster existing DON policies and current capabilities, to include closing gaps in reporting and tracking. The Marine Corps revised and issued Marine Corps Order 5354.1F, “Prohibited Activities and Conduct Prevention and Response,” in April 2021. The revised order describes options for reporting prohibited activities, including to the chain of command, the unit Equal Opportunity representative, the Inspector General, and the Naval Criminal Investigative Service.
Department of the Air Force	<ul style="list-style-type: none"> The Air Force Inspector General, Complaints Resolution Directorate, established procedures to track complaints made to the Inspector General regarding Prohibited Activities in February 2021. The Air Force Inspector General’s Automated Case Tracking System was updated to include a special interest category of “extremism.” The Air Force Judge Advocate General is working to standardize processes throughout the Air Force Judge Advocate General Corps with the use of a special identifier in the Air Force’s case management system to better collect and collate cases related to extremist activity. The Air Force Office of Special Investigations and Air Force Judge Advocate General are increasing communication to ensure appropriate tracking and management of all cases involving prohibited activities.

Source: Military Department responses to DoD OIG Request for Information, September 20, 2021.

Prohibited Activity in the Armed Forces

To collect data for this report, we asked the Military Departments to provide us with data regarding allegations, investigations, inquiries, and actions taken involving members of the Armed Forces who engaged in prohibited activities for the period January 1 through September 30, 2021. The Military Departments reported a total of 294 allegations, 281 investigations and inquiries, 92 instances where action was taken, zero instances where no action was taken, and 83 referrals to civilian law enforcement agencies. The Military Departments generally reported their data using the standardized terminology that the Federal Bureau of Investigation and the U.S. Department of Homeland Security use to describe acts of domestic terrorism. These terms include

Racially Motivated Violent Extremist, Anti-Government/Anti-Authority Extremism, Animal Rights and Environmental Extremism, and Abortion Extremism.³ The Military Departments also reported incidents of criminal gang activity involving military members.

The Military Departments reported issues with compiling and validating their data and, in some cases, the reported numbers were conflicting. For example, a DON official stated that data received from the Marine Corps and the Naval Criminal Investigative Service did not always align or agree with DON data. Each Military Department used its own reporting systems to retrieve information about the allegations of prohibited activities. We did not independently verify the reliability of the data from each Department.

As detailed in Table 2 below, the Department of the Army reported a total of 81 allegations, 81 investigations and inquiries, 18 instances where action was taken, zero instances where no action was taken, and 60 referrals to civilian law enforcement agencies involving military members who engaged in prohibited activities. The DAF reported a total of 137 allegations, 137 investigations and inquiries, 37 instances where action was taken, zero instances where no action was taken, and 22 referrals to civilian law enforcement agencies involving military members who engaged in prohibited activities. The DON reported a total of 76 allegations, 63 investigations and inquiries, 37 instances where action was taken, zero instances where no action was taken, and one referral to civilian law enforcement agencies involving military members who engaged in prohibited activities.

³ In the FY 2020 NDAA, the Department of Homeland Security and the Federal Bureau of Investigation were directed to consult with the Director of National Intelligence to develop standard terminology related to domestic terrorism. In November 2020, the Department of Homeland Security and the Federal Bureau of Investigation published a document that included the standard terminology and definitions listed below. Department of Homeland Security and Department of Justice, Federal Bureau of Investigation report, “Domestic Terrorism: Definitions, Terminology, and Methodology,” November 2020.

Racially Motivated Violent Extremist – potentially unlawful use or threat of force or violence to further ideological agendas derived from bias, often related to race or ethnicity, held by the actor against others or a given population group.

Anti-Government/Anti-Authority Extremism – potentially unlawful use or threat of force or violence to further ideological agendas, derived from anti-government or anti-authority sentiment, including opposition to perceived economic, social, or racial hierarchies, or perceived government overreach, negligence, or illegitimacy.

Animal Rights and Environmental Extremism – potentially unlawful use or threat of force or violence to further ideological agendas by those seeking to end or mitigate perceived cruelty, harm, or exploitation of animals or the perceived exploitation or destruction of natural resources and the environment.

Abortion Extremism – potentially unlawful use or threat of force or violence to further ideological agendas relating to abortion, including individuals who advocate for violence in support of either pro-life or pro-choice beliefs.

Table 2. Summary of DoD-Prohibited Activity Information

Reported Category	Dept of the Army	Dept of the Air Force	Dept of the Navy			DoD Totals
			Navy	Marine Corps	DoN Total	
Allegations						
Racially Motivated Violent Extremist	33		30	7	37	70
Anti-Government/ Anti-Authority Extremism	34		14	25	39	73
Domestic Violence Extremism Participation		102				102
Violating service standards, political involvement, disobeying an order, reprisal, and restriction		13				13
Criminal Gang Activity/Affiliation	14	10	0	0	0	24
Trespassing at the U.S. Capitol		10				10
Contempt Toward Public Figure		2				2
Total Allegations	81	137	44	32	76	294
Investigations/Inquiries						
Racially Motivated Violent Extremist	33		16	7	23	56
Anti-Government/Anti-Authority Extremism	34		15	25	40	74
Domestic Violence Extremism Participation		102				102
Violating service standards, political involvement, disobeying an order, reprisal, and restriction		13				13
Criminal Gang Activity/Affiliation	14	10	0	0	0	24
Trespassing at the U.S. Capitol		10				10
Contempt Toward Public Figure		2				2
Total Investigations/Inquiries	81	137	31	32	63	281
Subjected to Action						
Punishment/Corrective Actions (unspecified)	18					18
Non-Judicial Punishment		8	1	1	2	10
Courts Martial/Criminal/Civil Prosecution		1				1
Administrative Actions		28	2	1	3	31
Referred to Command for Appropriate Action			24	8	32	32
Total Subjected to Action	18	37	27	10	37	92

Table 2. Summary of DoD-Prohibited Activity Information (cont'd)

Reported Category	Dept of the Army	Dept of the Air Force	Dept of the Navy			DoD Totals
			Navy	Marine Corps	DoN Total	
Not Subjected to Action						
Remain Under/Pending Investigation ¹	51	35				86
Cleared of Allegations/Not Substantiated Investigations	10	65				75
Separated	2					2
Total Not Subjected to Action²	0	0	0	0	0	0
Referrals to CLEA						
Referred to FBI (extremist activity)	55					55
Joint Investigation w/Local Police (criminal gang activity)	5					5
Total Referrals to CLEA³	60	22	1	0	1	83

¹ Military members under investigation are not subject to action while an investigation is pending resolution.

² This category reflects zero for each of the Military Departments because the Military Departments did not report any instances where a member was found to have engaged in a prohibited activity but was not subject to action.

³ Totals include referrals to civilian law enforcement agencies (CLEA) not specified as FBI or joint investigations with local police.

Source: Army Criminal Investigation Division; Naval Inspector General; Inspector General Marine Corps; and Air Force Inspector General.

Conclusion

Although the DoD has not yet issued standard, DoD-wide policy, the DoD has taken the initial steps to fulfill Section 554 requirements. The DoD is in the process of defining extremist activity and updating DoD Instruction 1325.06, which will provide guidance for handling prohibited activities by members of the Armed Forces. A clear definition of extremism reflected in the updated DoD Instruction will enable the Military Departments to identify, track, and report allegations of prohibited activities as required by Section 554.

The Military Departments have also taken action to improve tracking and reporting. The Army already tracks allegations of prohibited activity and requires reporting of extremist behavior to its Criminal Investigation Division. The DON established a tiger team to identify potential improvements to its reporting and tracking systems to combat domestic extremism, and it is developing a tracking system for court martials in cases where extremism is alleged. The Marine Corps issued revised Marine Corps Order 5354.1F, “Prohibited Activities and Conduct Prevention and Response,” April 2021, to provide options for reporting prohibited activities. The Air Force Inspector General established procedures to track complaints made to the DoD IG regarding prohibited activities, and it modified its case tracking system to include a special interest category of “extremism.”

Our office currently has two ongoing projects and two planned projects related to prohibited activities. Specifically, our audit on the Defense Insider Threat Management and Analysis Center will determine whether the Defense Insider Threat Management and Analysis Center is consolidating component-level reporting and providing an enterprise level capability to identify and prevent insider threats. An ongoing evaluation will determine the extent to which the DoD and the Military Services have implemented policy and procedures that prohibit active advocacy and active participation related to prohibited activities as required by DoD Instruction 1325.06. In FY 2022, we anticipate announcing projects examining additional aspects of DoD policies and processes that address prohibited activities.

Until the DoD establishes DoD-wide policy for tracking and reporting allegations of prohibited activities, the DoD will continue to have inconsistent tracking of disciplinary actions for participation in extremist organizations and activities; problems identifying and collecting data from multiple, decentralized systems; and difficulty validating the accuracy of the data. We also reported these concerns in our June 2021 report, “The Department of Defense Office of Inspector General’s Report to Congress Pursuant to Section 554 of the Fiscal Year 2021 National Defense Authorization Act.”



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