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Intelligence Community Diversity and Equal Opportunity

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SUMMARY

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Intelligence Community Diversity and Equal Opportunity

This report looks at the history of congressional and presidential concerns about a lack of diversity in the intelligence community (IC), offers some of the data available, and examines selected policies, practices, and programs that are intended to achieve greater diversity and equal opportunity in the intelligence community.

In the late 1980s, U.S. Representative Louis Stokes of Ohio, the only African American ever to serve as chairman of an intelligence committee, singled out diversity in the intelligence community as an issue of operational concern. Since Representative Stokes' initial efforts, the intelligence committees have addressed diversity in the intelligence community through hearings, legislation, and reporting requirements.

In 2002, Congress expressed its views on IC diversity by legislating a sense of Congress that the intelligence agencies should make the creation of a more diverse workforce a priority in hiring decisions and should increase their minority recruitment efforts through their undergraduate training programs.

In 2003, Congress found that the intelligence community "has a significantly lower percentage of women and minorities than the total workforce of the Federal government and the total civilian labor force." It also found that "women and minorities continue to be under-represented in senior grade levels, and in core mission areas, of the intelligence community."

The Intelligence Reform and Terrorism Prevention Act of 2004 requires the intelligence community to prescribe personnel policies and programs that ensure its personnel "are sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds."

The intelligence community has used varying definitions of diversity in recent years, but the most authoritative definition is now found in law. The FY2020 Intelligence Authorization Act defines this term for the community as "diversity of persons based on gender, race, ethnicity, disability status, veteran status, sexual orientation, gender identity, national origin, and other demographic categories."

With the publication of the unclassified annual intelligence community demographic reports since 2016, some IC diversity information is now available each year, but it provides only an amalgamation of demographic percentages. The unclassified reports do not include demographic data for each element or specific data on the number of people entering, remaining, or leaving an element. More detailed data and information would be required to identify the sex, race, and ethnicity composition of each intelligence community element's workforce and its longitudinal changes.

"Over its long history, the intelligence community has been challenged in its efforts to increase the representation of minorities, women, and persons with disabilities." This was the message from the Director of National Intelligence to the intelligence community in a memorandum included with the publication of the 2017 intelligence community barriers analysis report. Its goal was to determine why impediments to diversity and inclusion persist in the intelligence community.

Although the intelligence community has made progress since the period of the 1990s intelligence committee hearings on diversity in the community, its annual demographic data published from FY2015 to FY2018 suggest that its personnel policies, practices, and programs may require additional measures to achieve greater diversity and equal opportunity.

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Introduction

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) requires the intelligence community (IC) to prescribe personnel policies and programs that ensure its personnel "are sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds."[1] This report looks at the history of congressional and presidential concerns about a lack of diversity in the IC, offers some of the data available, and examines selected policies, practices, and programs that are intended to achieve greater diversity and equal opportunity in the IC.[2]

Congressional Action

In the late 1980s, U.S. Representative Louis Stokes of Ohio, the only African American ever to serve as chairman of an intelligence committee, singled out diversity in the IC as an issue of concern.[3] Since Representative Stokes' initial efforts, the intelligence committees have addressed diversity in the IC through hearings, legislation, and reporting requirements. In 2003, Congress found that the IC "has a significantly lower percentage of women and minorities than the total workforce of the Federal government and the total civilian labor force."[4] It also found that "women and minorities continue to be under-represented in senior grade levels, and in core mission areas, of the intelligence community."[5]

Presidential Action

In 2016, President Barack Obama drew specific attention to the diversity levels of federal workforces supporting national security missions being lower than those of federal agencies outside this group. In a memorandum to federal agencies, the President stated that "we must continue to invest in policies to recruit, train, and develop the best and brightest from all segments of our population."[6] The memorandum directed agencies with a national security mission to report detailed demographic and voluntary applicant workflow data publicly, but the memorandum made this requirement optional for the IC.[7] A provision in the Fiscal Year (FY) 2020 Intelligence Authorization Act (IAA) established a mandatory reporting requirement for the

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[1] P.L. 108-458, §1011. *Reorganization and Improvement of Management of Intelligence Community*. IRTP is also known as the *National Security Intelligence Reform Act of 2004*.

[2] All information relied on to produce this report is publicly available.

[3] Testimony of Hon. Louis Stokes, in U.S. Congress, House Permanent Select Committee on Intelligence, Hiring, Promotion, Retention and Overall Representation of Minorities, *Women and Disabled Persons within the Intelligence Community*, hearings, 103rd Congress, 2nd sess., September 20, 1994. H.Hrg. pp 7-10 (Washington, DC: GPO, 1995). "[while serving as the HPSCI Chairman from 1987 to 1989] ... I knew that the problems faced by the intelligence community, ... that is charges of racial and sex discrimination, underrepresentation of minorities and women, in the senior professional ranks-can be attributed to ancient customs and outmoded thinking, mind-sets which in all probability require years to change."

[4] P.L. 108-177, §319. *Improvement of Equality of Employment Opportunities in the Intelligence Community*.

[5] Ibid.

[6] Executive Office of the President, Presidential Documents, "Memorandum, Promoting Diversity and Inclusion in the National Security Workforce," 81 *Federal Register* 69993, October 7, 2016, p. 69993.

[7] Ibid, p. 69995.

IC that is similar to one applied to agencies with a national security mission in the President's memorandum.[8]

IC Action

The *Principles of Professional Ethics for the Intelligence Community* describe the expectations for proper conduct in the IC workforce. This IC publication is a one-page summary of seven professionalism and ethics provisions, including a diversity principle that states the IC must embrace "the diversity of our Nation, promote diversity and inclusion in our work force, and encourage diversity in our thinking."[9]

It is IC policy to promote diversity in the IC as a means of enhancing the intelligence mission.[10] Diversity policy in the IC considers it an imperative to "foster diversity in its workforce through the recruitment, development, and retention of minorities, women, persons with disabilities, and individuals of various backgrounds, cultures, generations, perspectives, and ideas" and to "have a dynamic and agile workforce that reflects diversity in its broadest context."[11]

Chronology for Intelligence Community Diversity and Equal Opportunity

1991	CIA Glass Ceiling Study (Unclassified Summary Released in 2006)
1993	HPSCI IC Diversity Hearing
1994	HPSCI IC Diversity Hearing
1995	HPSCI IC Diversity Hearing
1996	HPSCI IC Diversity Hearing
2002	Sense of Congress on Diversity in the Workforce of IC Agencies (P.L. 107-306, §323)
2003	HPSCI IC Diversity Hearing
2003	Improvement of Equality of Employment Opportunities in the IC (P.L. 108-177, §319)
2004	Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (P.L. 108-458)
2005	IC Centers for Academic Excellence (CAE) Program
2010	Intelligence Officer Training Program (P.L. 111-259, §313 (codified IC CAE))
2013	CIA Director's Advisory Group on Women in Leadership Report
2015	IC Equal Employment Opportunity and Diversity Enterprise Strategy
2016	Presidential Memorandum, Promoting Diversity and Inclusion in the National Security Workforce
2016	IC Annual Demographic Report for FY2015 (Publicly Available)
2017	Barrier Analysis Report – Diversity and Inclusion: Examining Workforce Concerns within the IC
2017	IC Annual Demographic Report for FY2016 (Publicly Available)
2018	IC Annual Demographic Report for FY2017 (Publicly Available)
2018	State of Black Promotions at the National-Geospatial Intelligence Agency Report

[8] P.L. 116-92, §5704. *Collection, analysis, and dissemination of workforce data*.

[9] Intelligence Community, *Principles of Professional Ethics for the Intelligence Community*, at https://www.dni.gov/files/documents/CLPO/Principles%20of%20Professional%20Ethics%20for%20the%20IC.pdf

[10] Intelligence Community, *Directive 110, Equal Employment Opportunity and Diversity*, July 1, 2009, p. 1.

[11] Ibid, p. 2.

2019 HPSCI IC Diversity Hearing

2019 IC Annual Demographic Report for FY2018 (Publicly Available)

IC Members

The IC originates from the National Security Act of 1947 (*1947 NSA*).[12] Over the years, Congress amended the *1947 NSA* to include the term "intelligence community" and the current 17 acknowledged IC elements listed in **Table 1**.[13] Besides the elements enumerated in the *1947 NSA*, intelligence activities that collect specialized national intelligence through reconnaissance programs are also IC elements.[14]

Table 1. U.S. Intelligence Community

Acknowledged IC Elements

	17 Elements
Independent Elements	• Central Intelligence Agency (CIA) • Office of the Director of National Intelligence (ODNI)
Defense Intelligence Elements	• U.S. Navy Intelligence • U.S. Army Intelligence • U.S. Air Force Intelligence • U.S. Marine Corps Intelligence • National Security Agency (NSA) • Defense Intelligence Agency (DIA) • National Reconnaissance Office (NRO) • National Geospatial-Intelligence Agency (NGA)
Executive Department Elements	• Bureau of Intelligence and Research – Department of State • Office of Intelligence and Analysis – Department of the Treasury • U.S. Coast Guard Intelligence – Department of Homeland Security • Office of Intelligence and Counterintelligence – Department of Energy • Office of Intelligence and Analysis – Department of Homeland Security
LE Elements	• Intelligence Branch – Federal Bureau of Investigation (FBI) • Office of National Security Intelligence – Drug Enforcement Administration (DEA)

Source: 50 U.S.C. §3003.

Note: "LE" denotes law enforcement.

[12] See CRS In Focus IF10527, *U.S. Intelligence Community Elements: Establishment Provisions*, by Michael E. DeVine.

[13] 50 U.S.C. §3003. *Definitions*.

[14] Ibid. Additionally, the IC may include "other elements of any department or agency designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community" (50 U.S.C. §3003(4)(L)).

Senior Officer

The term senior officer in the IC means senior civilian officers, which are all personnel in positions above the General Schedule grade of 15 or equivalent, or individuals of equivalent personal rank. This includes members of the senior national intelligence service, senior intelligence service, defense intelligence senior executive service and defense intelligence senior level, senior executive service (SES) appointed under 5 U.S.C. §3393, senior level (SL) appointed under 5 U.S.C. §3324, science and technology SL appointed under 5 U.S.C. §3325, FBI SES, and DEA SES (Intelligence Community, Directive, Competency Library for the Intelligence Community Workforce, April 17, 2005, §E.11).

Defense Intelligence

Eight of the seventeen IC elements are in the Department of Defense (DOD); it would be nine during any period in which the Coast Guard is placed under the operational control of the Navy. Of the six armed forces, the U.S. Space Force is the only one that does not have an IC element.[15]

In May 2019, the Deputy Under Secretary to the Under Secretary of Defense for Intelligence and Security (USD(I&S)) reported to Congress that the Defense Intelligence workforce is comprised of 187,000 military and civilian personnel.[16] Of this number, over 56,000 were reported to be civilian employees appointed in the Defense Civilian Intelligence Personnel System (DCIPS).[17]

The (USD(I&S)) exercises general direction and control over the IC elements in DOD.[18] The head of each IC element in DOD is either a civilian official or military officer.[19] In the Army, Navy, Air Force, and two of the DOD intelligence agencies, these military officers serve in *positions of importance and responsibility* and are appointed by the President with confirmation by the Senate.[20]

The USD(I&S) simultaneously serves as the Director of Defense Intelligence for the IC and reports to the DNI and the Secretary of Defense.[21] All heads of IC elements in the armed forces

[15] 50 U.S.C. §3003. *Definitions*. If it becomes law, section 337 of S. 3905 (proposed FY2021 IAA) would require the DNI and the USD(I&S), in coordination with the Secretary of the Air Force and the Chief of Space Operations, to submit a plan for establishing an element of the IC within the U.S. Space Force.

[16] Department of Defense, Kari A. Bingen, Deputy USD(I&S), *Statement for the Record*, "Current Status of Diversity across the Intelligence Community," House Permanent Select Committee on Intelligence, May 23, 2019.

[17] Ibid. See also Title 10 of the U.S. Code, Chapter 83 – Civilian Defense Intelligence Employees. See also CRS In Focus IF11510, *Defense Primer: Department of Defense Civilian Employees*, by Alan Ott.

[18] Department of Defense, *Directive 5143.01, Under Secretary of Defense for Intelligence and Security (USD(I&S))*, at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/514301p.pdf?ver=2019-07-01-092756-170.

[19] Executive Office of the President, Executive Order 12333, "United States Intelligence Activities," 46 *Federal Register* 59941, December 4, 1981, §1.3(d)(2). The SECDEF must provide recommendations and obtain the concurrence of the DNI for the appointment or recommendation to the President of an individual to serve as the director of NSA, DIA, NRO or NGA. In the armed forces, the SECDEF must consult with the DNI before the appointment or recommendation to the President of an individual to serve above the rank of Major General or Rear Admiral as the uniformed head of an intelligence element in the armed forces within DOD.

[20] 10 U.S.C. §601. *Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.* The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral and assign to any such position an officer by and with the advice and consent of the Senate.

[21] See also CRS In Focus IF10523, *Defense Primer: Under Secretary of Defense for Intelligence and Security*, by Michael E. DeVine.

report to the USD(I&S) and their service's chain of command, while all other heads of IC elements in DOD report to the USD(I&S).[22]

Intelligence Workforce

The IC workforce is not distributed evenly among the 17 IC elements. Six IC elements have the largest share of the IC workforce when compared to the remaining 11 elements. This group comprises the CIA, NSA, DIA, NRO, NGA, and FBI.[23] Although the FBI is a federal law enforcement agency with a criminal justice mission, after the 9/11 terrorist attacks on the United States, its intelligence and national security capacity expanded.[24] (**Table 1**).

Table 2. IC Workforce Distribution

IC Elements	Share of the IC Workforce
CIA, NSA, DIA, NRO, NGA, and FBI	81.4%
Remaining 11 IC elements	18.6%

Source: Office of the Director of National Intelligence, *Annual Demographic Report: Hiring and Retention of Minorities, Women, and Persons with disabilities in the United States Intelligence Community Fiscal Year 2018*, p. 8.

Notes: The data used by the ODNI to determine workforce distribution in the 2018 IC demographic report percentages are not publicly available.

IC Trends, Strategies, and Recruitment

"Over its long history, the IC has been challenged in its efforts to increase the representation of minorities, women, and persons with disabilities."[25] This was the DNI's message to the IC in a memorandum included with the publication of the 2017 IC barriers analysis report.[26] Its goal was to determine why impediments to diversity and inclusion persist in the IC, and to include the participants' perspectives on these issues. The report examined barriers to hiring, retention, and career development in the IC that affect women, minorities, and persons with disabilities. It found the following.

- Minority representation in leadership positions is lacking.
- Supervisors offer little support for work-family conflicts.
- Lack of inclusiveness in the IC leads to less diverse *senior officers*.
- Minority groups think the promotion and advancement process is unfair.
- Middle management often fails at promoting diversity and inclusiveness.

[22] Ibid, DOD, *Directive 5143.01*.

[23] Office of the Director of National Intelligence, *Annual Demographic Report: Fiscal Year 2018, Hiring and Retention of Minorities, Women, and Persons with Disabilities in the United States Intelligence Community*, 2019, p. 8.

[24] P.L. 108-458, §2001. *Improvement of intelligence capabilities of the Federal Bureau of Investigation*.

[25] Office of the Director of National Intelligence, *Memorandum ES 2017-00070*, "The Next Steps for Promoting Diversity and Inclusion within the U.S. Intelligence Community," January 18, 2017.

[26] IC Equal Employment Opportunity and Diversity (EEOD) Office, Report, *Diversity and Inclusion: Examining Workforce Concerns within the Intelligence Community*, January 2017; *EEOC, Management Directive, Barrier Analysis: Questions to Guide the Process*, January 18, 2017, p. 14.

- Persons with disabilities think IC reasonable accommodations are insufficient.[27]

In 2019, the DNI and every other head of an IC element signed *A Pledge to our People*. This document cites discussions with the IC workforce about workplace harassment and other forms of discrimination.[28] The IC leaders who signed the pledge expressed their intention to implement stronger measures in the IC to address inclusion and discrimination.

Analytical and Exclusion Bias

The IC is uniquely positioned to address concerns about the existence of bias in its personnel programs. The intelligence analysis field has long struggled with analytical or exclusion bias when producing intelligence products. It is generally accepted within the IC that analytical judgments are susceptible to one's own bias. One indicator of this acceptance is the extensive body of literature addressing it and the training programs designed to eliminate it.[29] Like the intelligence analysis field, the personnel management field includes analytical functions that rely on personal judgment and information evaluation. To improve intelligence analysis objectivity, Congress included an analytical integrity framework in IRTPA for an analytic standards program to be overseen by an individual or entity selected by the DNI. The program includes an Analytic Ombuds and it requires the DNI to provide an annual report of its activities to the intelligence committees.[30] The Ombuds oversees the analytic standards program and responds to concerns raised directly and independently by intelligence analysts across the IC.[31] Under the IC analytic standards guide, all IC analytic products are to be consistent with specific standards that include being independent of political consideration; based on all available sources of information; and objective by employing reasoning that reveals and mitigates bias.[32]

National Intelligence Strategy

The DNI is responsible for issuing a National Intelligence Strategy (NIS). Its purpose is to provide the IC with strategic direction. The NIS is meant to support the national security priorities outlined in the National Security Strategy as well as other national strategies. Among the strategy's enterprise objectives, diversity is addressed through a specific human capital enterprise objective that calls for forging and retaining a diverse and inclusive expert workforce to enable mission success.[33]

Among other matters, one of the steps taken by the DNI that was meant to improve diversity was to make *senior officers* in the IC accountable for achieving diversity through performance plan objectives that would require a detailed description of how each officer is creating a more inclusive organization.[34] The DNI directed these officers to "advance our mission, leveraging the most diverse and inclusive workforce possible.... because the security of our nation depends on

[27] Ibid, pp. 7-8.

[28] Intelligence Community, *A Pledge to our People*, 2019, at https://www.dni.gov/files/documents/EEOD/A_Pledge_to_Our_People_Signed_-_Feb_19.pdf

[29] David T. Moore, "Critical Thinking and Intelligence Analysis," *National Defense Intelligence College: Occasional Paper Number Fourteen*, March 2007, pp. 48-49. The author posits that analyst bias avoids critical thinking about the best questions and all their possible answers. And further notes, bias has undermined analytical efforts for over a century and led to frequent intelligence failures, such as Pearl Harbor and the Iraqi weapons of mass destruction. The author seeks to illustrate how all intelligence has latent bias that can lead to flawed intelligence and how analytical problems can derive from bias, such as distortion, limitation, incompletion, and prejudice.

[30] P.L. 108-458, §1019.

[31] Intelligence Community, *Directive 203, Analytic Standards*, January 2, 2015, pp. 1-2, 5.

[32] Ibid, 2.

[33] Intelligence Community, *National Intelligence Strategy of the United States of America*, 2019, p. 20.

[34] Ibid, ODNI, *Memorandum ES 2017-00070*.

it."[35] The DNI later made the *senior officer* diversity mandate a core performance element for the entire IC workforce.[36]

Equal Employment Opportunity and Diversity Strategy

The IC Equal Employment Opportunity and Diversity (EEOD) Council consists of diversity principals from all IC elements. In 2015, it prepared the IC EEOD Enterprise Strategy (2015-2020) for the DNI.[37] The enterprise strategy incorporates President Barack Obama's 2011 executive order that required a coordinated initiative across government to promote diversity and other matters.[38] The strategy included the following goals.

- Leadership and accountability.
- Recruitment, hiring, and retention.
- Career development and advancement.
- Equal employment opportunity and inclusion.
- Workforce development and succession planning.

The enterprise strategy was intended to create a duty for leaders, managers, and diversity principals to work collaboratively "to ensure equal employment opportunity, diversity, and cross-cultural understanding are appropriately incorporated into the policies, practices, strategies and principles of the United States Intelligence Community and embraced by every member of the Intelligence Community Workforce."[39]

Centers for Academic Excellence

In 2003, Congress established a pilot project that was intended to promote equality of employment opportunities for women and minorities throughout the IC through the use of innovative methodologies.[40] The DNI assumed responsibility for the pilot project in 2004 and implemented the *IC Centers for Academic Excellence* program (IC CAE) in 2005.[41] Congress codified IC CAE as the *Intelligence Officer Training Program* in 2010, although in practice, it retains the IC CAE designation.[42]

From 2005 to 2011, ODNI managed IC CAE, but it relied on NGA and its legal authorities to award the program's grants to academic institutions.[43] After the specific statutory establishment

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[35] Ibid.

[36] Intelligence Community, *Directive 651, Performance Management for the Intelligence Community Civilian Workforce*, September 29, 2019.

[37] Intelligence Community, *Intelligence Community Equal Employment Opportunity and Diversity Enterprise Strategy (2015-2020)*, pp. 2-3, at https://www.dni.gov/files/documents/Newsroom/Press%20Releases/2016EnterpriseStrategy.pdf

[38] Executive Office of the President, Executive Order 13583, "Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce," 76 Federal Register 52847.

[39] Ibid, IC EEOD *Enterprise Strategy (2015-2020)*, p.5.

[40] P.L. 108-177, §319. *Improvement of Equality of Employment Opportunities in the Intelligence Community*.

[41] P.L. 108-458, §1071. *Conforming Amendments Relating to Roles of Director of National Intelligence and Director of the Central Intelligence Agency.* See IC CAE website at https://www.dni.gov/index.php/iccae.

[42] 50 USC §3224. *Intelligence officer training program*. See IC CAE website at https://www.dni.gov/index.php/iccae.

[43] 10 U.S.C. §2358. *Research and development projects*; Department of Defense Inspector General, *Report No. DODIG-2014-004, Audit of the Intelligence Community Centers of Academic Excellence Programs Use of Grant*

of IC CAE in 2010, the DNI transferred responsibility for the program's operation and administration under this new authority to DIA in 2011.[44]

ODNI reacquired overall responsibility for IC CAE in 2019.[45] Its IC CAE recruiting website states that the program's intent is to "increase the pool of competitive, diverse, applicants, and to increase awareness of the IC mission and culture throughout ethnically and geographically diverse communities."[46]

A 2019 a GAO study found that the total amount of IC CAE grant funding obligated from FY2005 through FY2021 is approximately sixty-nine million dollars.[47] The GAO's report includes IC CAE matriculation data reported by ODNI showing that over a seven-year period from 2004 to 2011:

- 73,339 students participated in IC CAE classes,
- 1,904 students were accepted into an IC CAE program as IC CAE Scholars, and
- 61 of 79 IC CAE Scholars accepted offers of employment in the IC.[48]

The report included seven GAO recommendations. Among them was a recommendation to establish and document strategies for IC CAE to achieve results-oriented goals.[49]

IC Diversity

In 2002, Congress expressed its views on IC diversity by legislating a sense of Congress that the intelligence agencies should make the creation of a more diverse workforce a priority in hiring decisions and should increase their minority recruitment efforts through their undergraduate training programs.[50] The IC has used varying definitions of diversity in recent years, but the most authoritative definition is now found in law.[51] The FY2020 IAA defines this term for the community as "diversity of persons based on gender, race, ethnicity, disability status, veteran status, sexual orientation, gender identity, national origin, and other demographic categories."[52]

Until fairly recently, there was little data available to the public to assess the extent to which diversity efforts in the IC were effective. With the publication of the unclassified annual IC

Funds, October 22, 2013, p. 3. When it assumed responsibility for the pilot project, ODNI did not have the authority to award and administer research program grants.

[44] Department of Defense Inspector General, *Report No. DODIG-2014-004, Audit of the Intelligence Community Centers of Academic Excellence Programs Use of Grant Funds*, October 22, 2013, p. 4.

[45] IC CAE website at https://www.dni.gov/index.php/iccae.

[46] IC CAE website at https://www.dni.gov/index.php/iccae.

[47] General Accounting Office, *Report, GAO-19-529, Actions Needed to Improve Planning and Oversight of the Centers for Academic Excellence Program*, August 2019, p. 43. The precise amount is $69,053,618, but this figure does not include a $250,000 contract in September 2004 to initiate a pilot IC CAE program at Trinity Washington University.

[48] Ibid, p. 42.

[49] Ibid, pp. 37-38.

[50] P.L. 107-306, §323. *Sense of Congress on Diversity in the Workforce of Intelligence Community Agencies*. See also, Robert Callum, *The Case for Cultural Diversity in the Intelligence Community*, International Journal of Intelligence and Counterintelligence, 14:1, 25-48 (2001); William Y. Chin, *Diversity in the Age of Terror: How Racial and Ethnic Diversity in the U.S. Intelligence Community Enhances National Security*, 6 Fla. A&M U. L. Rev. 6:1 (2010): 49-88.

[51] P.L. 116-92, §5704. *Collection, analysis, and dissemination of workforce data*. See also, Intelligence Community, *National Intelligence Strategy of the United States of America*, 2019, p. 20; Central Intelligence Agency, *CIA Diversity and Inclusion Strategy*, 2016-2019, p. 7.

[52] P.L. 116-92, §5704. *Collection, analysis, and dissemination of workforce data*.

demographic reports since 2016, some IC-wide diversity information is now available each year, but it provides only an amalgamation of demographic percentages.[53] The unclassified IC demographic report does not include demographic data for each element or specific data on the number of people entering, remaining, and leaving an element. More detailed data and information would be required to identify the sex, race, and ethnicity composition of each IC element's workforce and its longitudinal changes.

Congressional Oversight

Specific congressional committee oversight of the IC began with the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI), established in 1976 and 1977, respectively.[54] Sixteen years after its establishment, the HPSCI held IC diversity hearings annually from 1993 to 1996.[55] The data in **Table 3** were presented in this series of hearings by the participating IC elements that chose to provide unclassified demographic information to the committee. A *Baltimore Sun* article criticizing the NSA for its low number of minority employees when compared to the rest of the federal government was the impetus for the 1993 HPSCI hearing.[56] This hearing and all subsequent HPSCI hearings on IC diversity also examined the number and roles of women in the IC.

After the four IC diversity hearings in the 1990s, the next one occurred in 2003.[57] This hearing was distinguishable however, because it focused on diversity broadly, and the committee members were particularly interested in knowing the status of the IC's efforts to recruit, retain, and promote employees who speak the language and share the ethnic background of the individuals they focus on in their analytical or operational work. Another distinguishing feature were the witnesses. The hearing was subdivided into two panels. The first panel comprised IC representatives who provided an update on the actions taken to address the matters of concern to HPSCI. The second panel was a group of private sector professionals who provided information on how their organizations had addressed similar issues in the business environment.

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[53] Office of the Director of National Intelligence, *Annual Demographic Report: Hiring and Retention of Minorities, Women, and Persons with Disabilities in the United States Intelligence Community*, Fiscal Years 2015, 2016, 2017, 2018.

[54] S Res, 400, May 19, 1976; H Res 658, July 14, 1977. These committees resulted from the reports issued in 1976 by the *Church Committee* in the Senate and *Pike Committee* in the House of Representatives. See also CRS Report R45421, *Congressional Oversight of Intelligence: Background and Selected Options for Further Reform*, by Michael E. DeVine.

[55] U.S. Congress, House Permanent Select Committee on Intelligence: *Central Intelligence Agency, Defense Intelligence Agency and National Security Agency: Minority Hire, Retentions and Promotions*, 103rd Cong., 1st sess, October 28, 1993; *Hiring, Promotion, Retention and Overall Representation of Minorities, Women and Disabled Persons within the Intelligence Community*, 103rd Cong., 2nd sess, September 20, 1994; *Diversity and Minority Hiring in Intelligence Agencies*, 104th Cong., 1st sess, November 29, 1995; and *Human Resource and Diversity*, 104th Cong., 2nd sess, September 20, 1996.

[56] Hiring, Promotion, Retention and Overall Representation of Minorities, Women and Disabled Persons within the Intelligence Community, 103rd Cong., 2nd sess, September 20, 1994, p. 3. "Last year [1993], the committee [HPSCI] had a hearing in which the National Security Agency was singled out for its poor record on diversity hiring. ... This hearing reflects our commitment to review the Intelligence Communities [sic] [diversity] and more specifically NSA performance in the last year." Tom Bowman, "NSA has poor record on hiring Minorities claim discrimination," *The Baltimore Sun*, August 17, 1993.

[57] U.S. Congress, House Permanent Select Committee on Intelligence, *Building Capabilities: the Intelligence Community's National Security Requirements for Diversity of Language, Skills, and Ethnic and Cultural Understanding*, 108th Cong., 1st sess., November 5, 2003.

The next IC diversity hearing took place in May 2019.[58] At this hearing, the committee focused on how the IC operationalizes the advantages of a diverse workforce for its national security functions.[59] Unlike at the HPSCI hearings in the 1990s, the IC witnesses at the 2019 hearing were not agency heads or their deputies.[60]

The statement for the record introduced by the Deputy USD(I&S) at the 2019 HPSCI hearing identified some defense intelligence civilian personnel trends that "require additional focus," for example:

- Female representation decreased between 2010 and 2018 in all military department intelligence elements:
  - Army decreasing from 33.6% to 27.6%,
  - Navy and Marine Corps decreasing from 35.6% to 32.4%, and
  - Air Force decreasing from 31.0% to 26.2%;
- The attrition of women, minorities, and people with disabilities occurred at higher rates in FY2018 than DOD's ability to recruit these groups; and
- Minorities, women, and people with disabilities continued to be less represented at the GS/GG-13 to *senior officer* levels when compared to the federal workforce.[61]

There was also committee interest in knowing which minority group was the least represented in the IC workforce. The IC Chief of Equal Employment Opportunity and Diversity (EEOD) (IC diversity chief) testified that it is Hispanics.[62]

Table 3. HPSCI Diversity Hearings in the 1990s

IC Diversity Data Presented

Women	CIA	NSA	DIA	FBI	FW
1993	42.1%	36.0%	37.4%	ND	43.6%
1994	ND	ND	37.8%	12.3%	43.8%
1995	ND	ND	37.7%	13%	44.1%
1996	ND	ND	37%	14.2%	44.0%
Minorities	**CIA**	**NSA**	**DIA**	**FBI**	**FW**
1993	14.1%	11.4%	19.3%	ND	28.3%
1994	14.5%	11.4%	19.2%	13.5%	28.5%
1995	ND	ND	19.8%	14.2%	29.0%
1996	ND	12.2%	ND	14.6%	29.1%

Source: Congressional Research Service, using data for the CIA, NSA, and DIA from the following hearings held by the U.S. Congress, House Permanent Select Committee on Intelligence: *Central Intelligence Agency, Defense*

[58] U.S. Congress, House Permanent Select Committee on Intelligence, *Mission Imperative: Diversity and Inclusion in the Intelligence Community*, 116th Cong., 2nd sess., May 23, 2019.

[59] Ibid, p. 2.

[60] The three witnesses at the May 2019 hearing were the IC Chief of Equal Employment Opportunity and Diversity, Deputy USD(I&S), and NSA Executive Director.

[61] Department of Defense, Kari A. Bingen, Deputy USD(I&S), *Statement for the Record*, "Current Status of Diversity across the Intelligence Community," House Permanent Select Committee on Intelligence, May 23, 2019.

[62] Ibid, HPSCI, *Mission Imperative*, p. 19.

Intelligence Agency and National Security Agency: Minority Hire, Retentions and Promotions, 103rd Cong., 1st sess, October 28, 1993; *Hiring, Promotion, Retention and Overall Representation of Minorities, Women and Disabled Persons within the Intelligence Community*, 103rd Cong., 2nd sess, September 20, 1994; *Diversity and Minority Hiring in Intelligence Agencies,* 104th Cong., 1st sess, November 29, 1995; and *Human Resource and Diversity*, 104th Cong., 2nd sess, September 20, 1996. Federal government (FW) workforce data obtained from the U.S. Office of Personal Management (OPM) Central Personnel Data File (CPDF).

Notes: ND denotes no data identified. FW denotes the Federal government workforce. Data for the CIA, NSA, and DIA were submitted as part of witness testimony from representatives of the respective federal agencies during a congressional hearing. CRS cannot confirm the accuracy of that data. CRS obtained federal government workforce data directly from OPM, which was prepared by OPM's Office of Strategy and Innovation/Data Analysis/KP. Data include Federal civilian employees as of September of that year, in active pay status. Federal government workforce data exclude several major components of the Executive Branch (most notably the Postal Service and intelligence agencies) and include some parts or components of the legislative branch, including the Government Publishing Office (GPO). More information about OPM's data sources can be found at http://www.opm.gov/feddata/guidance.asp.

Definitions: *Hispanic or Latino* - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race; *White* (Not Hispanic or Latino) - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa; *Black or African American* (Not Hispanic or Latino) - A person having origins in any of the Black racial groups of Africa; *Native Hawaiian or Pacific Islander* (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands; *Asian* (Not Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; *Native American or Alaska Native* (Not Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment; and, *Two or More Races* (Not Hispanic or Latino) - All persons who identify with more than one of the above five races (EEO Report 1; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et. seq., as amended).

Annual Demographic Report

The FY2003 IAA requires an annual IC demographic report.[63] Presumably, the DNI issued these reports as classified or undisclosed documents until it issued the first public report in 2016, the FY2015 report. The DNI issued public reports each year thereafter until 2019 for a total of four fiscal year reports.[64] However, the DNI has not issued a public report in 2020 for FY2019. The four publicly released reports do not publish demographic data for each IC element. Instead, these reports amalgamate each IC element's demographic data into a single set of data for the IC. An FY2020 IAA amendment to the IC demographic report statutory provision now requires published demographic reporting for each IC element.[65] The scope of each IC demographic report includes five fiscal years, the fiscal year of issuance and the previous four. The reports summarize data on the population of women, minorities, and persons with disabilities across the IC.[66] Selected data from the four unclassified reports is consolidated in **Table 4**, in which it is compared to the federal workforce and the military population.

[63] P.L. 107-306, §324. *Annual Report on Hiring and Retention of Minority Employees in the Intelligence Community*. "The *Director of Central Intelligence* shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year ..." (Amended in 2004 to replace *Director of Central Intelligence* with *Director of National Intelligence* (P.L. 108-458, §1071)).

[64] Office of the Director of National Intelligence, *Annual Demographic Report: Hiring and Retention of Minorities, Women, and Persons with Disabilities in the United States Intelligence Community*, Fiscal Years 2015, 2016, 2017, 2018.

[65] P.L. 116-92, §5704. *Collection, analysis, and dissemination of workforce data*.

[66] Ibid, *Annual Demographic Report*, Fiscal Years 2015, 2016, 2017, 2018.

The data collection for the IC demographic reports consists of each IC element querying its relevant databases based on the IC diversity chief's request.[67] The elements then submit this data in either an automated or a manual form to the IC diversity chief, who analyzes and publishes it in the IC demographic report.

Table 4. IC Annual Demographic Reports

FY2015 to FY2018

Women	IC	FW	MIL
2015	38.5%	42.5%	15.5%
2016	38.5%	42.5%	15.8%
2017	38.5%	42.6%	16.2%
2018	38.8%	43.5%	16.5%
Minorities	**IC**	**FW**	**MIL**
2015	24.6%	35.9%	26.7%
2016	25.0%	36.5%	26.8%
2017	25.5%	37.2%	26.7%
2018	26.2%	37.3%	26.5%
PWD	**IC**	**FW**	**MIL**
2015	7.9%	9.5%	N/A
2016	8.4%	9.5%	N/A
2017	9.3%	9.1%	N/A
2018	10.5%	9.2%	N/A

Source: Congressional Research Service, using IC data from the ODNI, *Annual Demographic Report: Hiring and Retention of Minorities, Women, and Persons with Disabilities in the United States Intelligence Community* for fiscal years 2015, 2016, 2017, and 2018; Federal workforce (FW) data for fiscal years 2015, 2016, and 2017 is from U.S. Office of Personal Management (OPM), *Common Characteristics of the Government, Federal Employment* Reports for the fourth quarter of 2015, 2016, and 2017. Data for Persons with Disabilities (PWD) for FY2015 is from OPM's *Employment of People with Disabilities in the Federal Executive Branch*, FY2015. PWD data for fiscal years 2016, 2017, and 2018 and Federal workforce (FW) data for FY2018 is obtained from OPM's Enterprise Human Resources Integration Statistical Data Mart (EHRI-SDM). Military data (MIL) obtained from the U.S. Department of Defense, Defense Manpower Data Center (DMDC) Reporting System.

Notes: N/A denotes not applicable. FW signifies the federal workforce, and MIL is the military. Federal workforce (FW) data excludes a few major components of the Executive Branch (most notably the Postal Service and intelligence agencies) and includes some parts or components of both the Legislative and Judicial Branches. Federal workforce number and percentages for women and minorities is for non-seasonal full-time permanent employees (NSFTP). Persons with Disabilities (PWD) data is from September 2015, 2016, 2017, and 2018. Military (MIL) data includes percentages for all Active Duty pay grades (enlisted and officers), including Coast Guard. It does not include Guard and Reserve data. Military data is as of September 2015, 2016, 2017, and 2018. For more information on the Defense Manpower Data Center datasets, see https://dwp.dmdc.osd.mil/appj/dwp/index.jsp and https://dmdcrs.dmdc.osd.mil/dmdcrs/. The table does not include any data that were listed in a category labeled as unknown or unspecified (this includes the gender and ethnicity/race demographic tables for the federal workforce and military, or where the disability status is unknown).

Definitions: (See **Table 3**)

[67] Office of the Director of National Intelligence, *Annual Demographic Report: Fiscal Year 2015, Hiring and Retention of Minorities, Women, and Persons with Disabilities in the United States Intelligence Community*, 2016, pp. 11-12.

Diversity Reports

There appear to be only three publicly available IC element reports on workforce demographics, two issued by the CIA and one by the NGA. Only the 2012 CIA report on women in its workforce was published as a publicly releasable document. The other CIA report is a 1991 study on minorities and women in its workforce that was never publicly released; CIA did publicly release a summary of the report 15 years later. The 2018 NGA report on the promotion of Black employees is unclassified, but it was published as in internal document, and later publicly released subject to redaction.

Glass Ceiling Study

CIA's 1991 *Glass Ceiling Study* provides an early record of demographic information in an IC agency (although it is only a summary of the original report and this was not available until 2006).[68] The study found that in FY1991, all women were concentrated in lower grades than men. The distribution for women peaked at GS-12 with a gradual decline to GS-13 and a precipitous drop beyond that grade. Minorities were concentrated in lower grades than Whites and also peaked at GS-12. When combined, White men and White women peaked at GS-13. The study also found that minorities perceived barriers to advancement and did not believe they were represented in the *senior officer* ranks.[69]

Black Promotions

NGA's 2018 *State of Black Promotions* report provides demographic information related to the promotion of Blacks in the NGA civilian workforce.[70] This report used the term "Black" to refer to various employees of color. This was done to include employees who may not identify with the term "African-American" and to harmonize the study with the names of relevant agency activities, such as *Black Advisory Council* and *Blacks in Government*.

The inaugural NGA rank-in-person promotion board in 2014 advanced no eligible Black employees to *senior officer*. In response, the NGA director initiated a study to identify barriers or inequities that could impede promotions of Blacks or other affected groups. The study identified lower promotion rates generally for Black employees compared to other employees and detected a downward trend for the period examined.[71] The authors of the report made 10 recommendations designed to remedy this disparity in promotions.

Women in Leadership

CIA's 2013 *Women in Leadership* report provides specific demographic information related to women in the CIA workforce.[72] In 2012, the CIA director called upon Madeleine Albright, a nationally recognized leader who served as the first female Secretary of State from 1997 to 2001, to lead a director's advisory group (DAG) to examine why the number of women serving as a *senior officer* was so low and the percentage of women in the workforce sharply decreased

[68] Central Intelligence Agency, *Glass Ceiling Study Summary*, April 2006, p. 27. For this study, minorities were defined as Native, African, or Asian Pacific American and Hispanic employees.

[69] Ibid, pp. 8-17.

[70] National Geospatial-Intelligence Agency, *State of Black Promotions at the National-Geospatial Intelligence Agency, NGA Diversity and Inclusion Study*, 2018, pp. 3-6, cover note.

[71] Ibid, p. 14.

[72] Central Intelligence Agency, *Director's Advisory Group on Women in Leadership*, 2013, p. i.

beyond the GS-13 level. The DAG's task reveals a distribution of women in the CIA workforce that appeared unchanged since the *Glass Ceiling Study* conducted 21 years earlier discovered a similar distribution. Along with its 10 recommendations (**Table 5**), the DAG made two key findings. First, attributing the lower number of women in the senior ranks to life and career decisions unique to women lacked analytical rigor because it ignored obstacles to career advancement that men did not face or may have created. Second, the Agency's personnel management system was not dynamic enough to accommodate the increasing diversity of the workforce. CIA later announced that it implemented the study's recommendations through a five-year plan, and President Donald J. Trump appointed its first female director in 2018.[73] Further, in March 2020, its top five deputy positions were all filled by women simultaneously.[74]

Table 5. CIA Director's Advisory Group on Women in Leadership

Recommendations for Increasing the Number of Women in the Agency's Senior Ranks
Establish clear promotion criteria from GS-15 to senior officer
Expand the pool of nominees for promotion to senior officer
Provide relevant demographic data to panels
Establish equity assurance representative role on panels
Reduce and streamline career development tools
Create on-ramping program
Provide actionable and timely feedback to all employees
Develop future leaders
Unlock talent through workplace flexibility
Promote sponsorship

Source: Central Intelligence Agency, *Report, Director's Advisory Group on Women in Leadership*, 2013.

IC Civilian Equal Opportunity

Equal Employment Opportunity (EEO) is a statutory program that is implemented by the Equal Employment Opportunity Commission (EEOC), which derives its government-wide authority over discrimination complaints by public and private sector employees from two primary pieces of legislation: Title VII of the Civil Rights Act of 1964 (as amended) (Title VII) and the Rehabilitation Act of 1973 (as amended). Title VII did not cover federal employees initially, however Congress later extended its coverage to include them with the *Equal Employment Opportunity Act of 1972*, but this legislation does not include members of the military because they do not fall within the definition of an *employee* under federal law.[75]

[73] Central Intelligence Agency, "CIA Makes Progress on Women in Leadership; Five Year Study on CIA Women in Leadership Concludes as CIA welcomes its first female Director," press release, July 11, 2018.

[74] Central Intelligence Agency, "CIA Senior Leaders Discuss "Smart Women Smart Power", Blog, https://www.cia.gov/++theme++contextual.agencytheme/images/logo.png.

[75] P.L. 92-261; 42 U.S.C. §2000*e*-16. "All personnel actions affecting employees or applicants for employment ... in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 ..., shall be made free from any discrimination based on race, color, religion, sex, or national origin." When Congress specifically referenced section 102 of Title 5 in the 1972 amendment to Title VII, it extended Title VII protections only to federal civilian employees within the military departments, not members of the armed forces, which it considered to

The EEOC is responsible for enforcing Title VII and other antidiscrimination laws. It administers the EEO federal sector program through EEOC directives and regulations.[76] The federal sector EEO program is further implemented by agency directives, instructions, and regulations. However, EEOC's jurisdictional delegation from Congress is controlling over an agency's EEO program.[77] There is however an exception to the application of Title VII that is particularly relevant to the IC. The *national security exception* states that it is not an unlawful employment practice to deny employment opportunities to any individual who does not fulfill the national security requirements.[78] Among other matters, personnel security policies, practices, and decisions do not appear to fall under Title VII's coverage and the EEOC typically dismisses any discrimination complaint based on a security clearance denial or revocation.[79]

No FEAR Act

Congress passed the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act) to ensure federal employees have confidence in the EEO process.[80] In enacting the No FEAR Act Congress asserted that "federal agencies cannot be run effectively if they practice or tolerate discrimination" and that "notifying federal employees of their rights under discrimination and whistleblower laws should increase federal agency compliance" with their restrictions and prohibitions. The Act imposed additional duties and responsibilities on federal employers, such as making federal agencies liable from their operating budgets for payments made to complainants based on a settlement or substantiation of a discrimination complaint against the agency.[81] Among the requirements in the No FEAR Act, federal agencies must post online their EEO complaint data for each quarter of the fiscal year.[82]

EEO Unlawful Discrimination

Title VII prohibits employers from discriminating against their employees or applicants.[83] It also makes it unlawful to retaliate against a person for complaining about discrimination, filing a charge of discrimination, or participating in an employment discrimination investigation or legal

be outside the definition of employees in the federal civil service (*Jackson v. Modly* (D.C. Cir. Feb. 14, 2020)).

[76] EEOC, *Management Directive For 29 C.F.R. Part 1614 (EEO-MD-110),* As Revised, August 5, 2015, p. iii.

[77] 42 U.S.C. 2000*e*-5(a). The EEOC is empowered to prevent any *person* from engaging in any unlawful employment practice. The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers. For DOD, see generally, DOD, *Directive 1020.02E*.

[78] 42 U.S.C. §2000e-2(g); 29 C.F.R. §1606.3. *The national security exception*.

[79] See *Policy Guidance on the use of the national security exception contained in sec. 703(g) of Title VII of the Civil Rights Act of 1964* issued by EEOC Chairman Clarence Thomas on May 1, 1989, at: https://www.eeoc.gov/laws/guidance/policy-guidance-use-national-security-exception-contained-sec-703g-title-vii-civil.

[80] P.L. 107-174; U.S. Congress, House Committee on the Judiciary, *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001*, report to accompany H.R. 169, 107th Cong. 1st sess., H.Rept. 107-101, part 1 (Washington, DC: GPO, 2001), pp. 7-9; U.S. Congress, Senate Committee on Governmental Affairs, *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001*, report to accompany H.R. 169, 107th Cong. 2nd sess., S.Rept. 107-143 (Washington, DC: GPO, 2002), p. 2.

[81] P.L. 107-174, §201. Before the No Fear Act became law in 2002, federal agencies could use the Department of Treasury Judgment Fund to pay EEO claims. However, after the No Fear Act became law, an agency must reimburse the Judgment Fund for the payment of EEO claims.

[82] P.L. 107-174, §301.

[83] 42 U.S.C. §2000*e*-4.

action.[84] In addition to any Title VII prohibitions, retaliation against another by a servicemember is a serious offense under of the Uniform Code of Military Justice (UCMJ) subject to a court-martial and a possible maximum punishment of three years confinement, a dishonorable or bad conduct discharge, and total forfeiture of pay and allowances during parole or confinement.[85]

EEO Complaints

The EEO unlawful discrimination complaint process integrates three separate forums that are available to resolve an employee's complaint. The first is the employing agency that receives and investigates the complaint; the other possible forums are the EEOC or the federal judiciary. An employee who does not obtain relief at the employing agency may pursue an administrative complaint through a hearing at the EEOC or a judicial complaint through a civil trial at a U.S. District Court.[86] In either of these possible second forums, the employee may conduct discovery against the agency and depose agency witnesses.[87] If an employee pursued a complaint through an EEOC hearing and was dissatisfied with that outcome, a U.S. District Court then becomes a possible third forum.[88]

In analyzing EEO employee complaint activity for the six IC elements identified in **Table 6**, **Table 7**, and **Table 8**, it is not possible to make an empirical inference or draw an evidence-based conclusion about unlawful discrimination in these elements. However, to provide a general perspective on EEO complaint activity across the IC, CRS relied on four fiscal years of selected publicly available EEOC data for the same period covered by the four unclassified IC annual demographic reports.[89] The selected IC elements represent a significant majority of the IC workforce.

The data in **Table 6** show the number of EEO complaints filed at the selected elements during each fiscal year indicated.

Table 6. EEO Complaints Filed During the Fiscal Year

FY2015, FY2016, FY2017, and FY2018

FY	CIA	NSA	NRO	DIA	NGA	ODNI	TOTAL
FY2015	27	27	1	15	31	3	104
FY2016	43	42	1	42	28	6	162
FY2017	26	26	6	58	36	8	160
FY2018	39	25	3	45	46	3	182

Source: EEOC FY2015, FY2016, FY2017, and FY2018 Form 462 Complaints Table, Table B-1, *Total Work Force, Counseling's, and Complaints.*

[84] 42 U.S.C. §§2000e-2, 2000e-3.

[85] 10 U.S.C. §932 (Article 132).

[86] 29 C.F.R. §1614.109 (Hearings); 28 U.S.C. §1331 (Federal question jurisdiction).

[87] EEOC, *Management Directive For 29 C.F.R. Part 1614 (EEO-MD-110),* As Revised, pp. 7-19 to 7-22, Aug. 5, 2015; United States Courts, *Rules of Civil Procedure, Title V, Disclosures and Discovery*, Dec. 1, 2019.

[88] 28 U.S.C. §1331 (Federal question jurisdiction).

[89] The EEOC Office of Federal Operations (OFO) produces an annual report on the federal workforce that includes, among other data, information on federal EEO complaints. This data is collected from each agency in the annual federal EEO statistical report of discrimination complaints (EEOC Form 462). For more information, see https://www.eeoc.gov/federal-sector/462-data-collection-resources.

The data in **Table 7** show the number of EEO meritorious complaints closed at the selected elements during each fiscal year indicated.

Table 7. Meritorious EEO Complaints Closed During the Fiscal Year

FY2015, FY2016, FY2017, and FY2018

FY	CIA	NSA	NRO	DIA	NGA	ODNI	TOTAL
FY2015	12	7	0	17	7	0	43
FY2016	10	14	0	22	3	2	51
FY2017	5	20	0	23	3	1	52
FY2018	15	6	0	20	10	5	56

Source: EEOC FY2015, FY2016, FY2017, and FY2018 Form 462 Complaints Table, Table B-15, *Complaints Closed with Findings of Discrimination.*

The data in **Table 8** show the number of EEO complaints pending and unresolved at the selected elements at the end of each fiscal year indicated. This number may include complaints filed in previous fiscal years.

Table 8. EEO Complaints Pending at End of Fiscal Year

FY2015, FY2016, FY2017, and FY2018

FY	CIA	NSA	NRO	DIA	NGA	ODNI	TOTAL
FY2015	51	63	1	95	46	6	262
FY2016	69	77	1	90	63	8	308
FY2017	64	45	8	103	87	13	320
FY2018	70	41	8	108	96	7	330

Source: EEOC FY2015, FY2016, FY2017, and FY2018 Form 462 Complaints Table, Table B-23, *Summary of Pending Complaints by Category*.

IC Military Equal Opportunity

As discussed in a previous section, eight of the seventeen IC elements are in DOD. This number could rise to nine of eighteen if the U.S. Space Force establishes an IC element. When the USD(I&S) Deputy Under Secretary testified before HPSCI in May 2019, much of the discussion regarding diversity addressed recruitment and retention among the 56,000 DCIPS civilian employees in DOD. She also noted that Defense Intelligence includes approximately 131,000 members of the armed forces, which does not include servicemembers from the Coast Guard IC workforce. Given the DOD-centric distribution of the IC workforce, it is likely that over half of all members of the IC are uniformed members of the military.

A possible servicemember population of such size would mean that over half of the IC does not have Title VII protections against discrimination. They would instead be covered by DOD's administratively established Military Equal Opportunity (MEO) program.[90] This program offers some Title VII types and categories of civil rights protection to servicemembers (**Table 9**). MEO

[90] Department of Defense, *Directive 1350.02, DOD Military Equal Opportunity Program*, Sept. 4, 2020.

is implemented through DOD and Military Department directives, instructions, or regulations.[91] Although the MEO and EEO programs overlap in purpose, they are administered separately, each with its own authorities and policies.[92] The Coast Guard has a similar program for its servicemembers. Its program is implemented by service directives or instructions that are consolidated in the Coast Guard Civil Rights Manual.[93]

Having separate programs for servicemembers and civilian employees to address unlawful discrimination means the status of the complainant—military or civilian—determines which program applies to the allegation, rather than the status of the individual accused of unlawful discrimination. If the allegation of unlawful discrimination is made by a servicemember against a servicemember or civilian employee, MEO governs the complaint. If made by a civilian employee against a servicemember or civilian employee, EEO governs the complaint.

MEO Unlawful Discrimination

DOD's MEO policy asserts that servicemembers have a right to serve, advance, and be evaluated based only on individual merit, fitness, capability, and performance in an environment free from unlawful discrimination.[94] It is DOD policy to prevent unlawful discrimination and harassment in all DOD programs and activities.[95] MEO policy posits that unlawful discrimination in a military organization degrades combat readiness, weakens good order and discipline, and undermines mission accomplishment.[96]

MEO Complaints

The MEO unlawful discrimination complaint uses a single mechanism to resolve a servicemember's complaint—the servicemember's immediate chain of command.[97] This process is further restricted to the relative level of command: the lower the rank of the complainant, the lower the rank of the initial decision maker in the chain of command, in most instances.[98] There is no option for an administrative hearing or filing a complaint in the federal judicial system within

[91] Ibid; Army, Regulation 600-20, Army Command Policy, July 24, 2020, Ch. 6; OPNAV, *Instruction 5354.1G, Navy Equal Opportunity Manual*, July 24, 2017, Ch. 4; *Marine Corps, Order 5354.1E, Marine Corps Prohibited Activities and Conduct Prevention and Response Policy*, Mar. 26, 2018, Ch. 4-6; Air Force, *Instruction 36-2706, Equal Opportunity Program Military and Civilian*, Oct. 5, 2010, Ch. 3.

[92] Department of Defense, *Directive 1020.02, Diversity Management and Equal Opportunity in the DOD*, June 1, 2018; *Directive 1440.01, The DOD Civilian Equal Employment Opportunity (EEO) Program*, Nov. 21, 2003; *Instruction 1020.03, Harassment Prevention and Response in the Armed Forces*, Feb. 8, 2018; *Instruction 1020.04, Harassment Prevention and Response for DOD Civilian Employees*, June 30, 2020; *Instruction 1020.05, Diversity and Inclusion Management Program*, Sept. 9, 2020; *Instruction 1350.02, DOD Military Equal Opportunity Program*, Sept. 4, 2020.

[93] Coast Guard Commandant, *Instruction M5350.4E, Civil Rights Manual*, Oct. 21, 2020.

[94] Department of Defense, *Directive 1350.02, Department of Defense Military Equal Opportunity (MEO) Program*, June 8, 2015, p. 16.

[95] Ibid, DOD, *Directive 1020.02E*, p. 2.

[96] Ibid, DOD, *Directive 1020.02E*, p. 2.

[97] Army, Regulation 600-20, Army Command Policy, July 24, 2020, Ch. 6; OPNAV, *Instruction 5354.1G, Navy Equal Opportunity Manual*, July 24, 2017, Ch. 4; *Marine Corps, Order 5354.1E, Marine Corps Prohibited Activities and Conduct Prevention and Response Policy*, Mar. 26, 2018, Ch. 4-6; Air Force, *Instruction 36-2706, Equal Opportunity Program Military and Civilian*, Oct. 5, 2010, Ch. 3.

[98] Ibid. Disposition of complaints and grievances in the military is analogous to the disposition of misconduct reports in the military justice system. The immediate commander has discretion to dispose of judicial, or act on administrative, matters related to members of that command (Department of Defense, *Manual for Counts-Martial, Rules for Courts–Martial, Rule 306*, 2019).

the MEO program, but a servicemember may make a claim to a Military Department's board for the correction of military records (BCMR).[99] The BCMR is a general process for administrative decisions that is not unique to the MEO program. Its standard of review applies a presumption of administrative regularity to all decisions and the servicemember has the burden of proving an error or injustice by a preponderance of the evidence.[100]

Table 9. Prohibitions Applicable to Servicemembers and Civilian Employees

Unlawful Discrimination by Protected Category and Type

Category and Type	DOD MEO – Military	EEOC EEO – Civilian
Protected Category	Race	Race
	Color	Color
	Religion	Religion
	National Origin	National Origin
	Sex	Sex
	Sexual Orientation	Sexual Orientation
	Gender Identity	Gender Identity
	—	Disability
	—	Age
	—	Pregnancy
	—	Genetic Information
Type of Discrimination	Retaliation	Retaliation
	Sexual Harassment	Sexual Harassment
	Harassment	Harassment
	—	Equal Pay/Compensation

Source: Department of Defense, *Directive 1020.02E, Diversity Management and Equal Opportunity in the DoD*, June 1, 2018; EEOC, see *Discrimination by Type* at https://www.eeoc.gov/discrimination-type.

Notes: Retaliation or reprisal violations under MEO and EEO policy by servicemembers are a punitive offense under Article 132 of the Uniform Code of Military Justice (10 U.S.C. §932 (Retaliation)). As used in DOD EEO policy, the term *reprisal* has the same meaning as the term *retaliation* used in MEO and EEOC policy.

Legislative Considerations

Although it has made progress since the period of the 1990s HPSCI hearings on IC diversity, the annual IC demographic data published from FY2015 to FY2018 could suggest that IC personnel policies, practices, and programs may require additional measures to achieve greater diversity and equal opportunity. The following are questions that Congress may wish to consider.

- Has the IC completed the demographic reporting requirements established by the FY2020 IAA that are found in 50 U.S.C. §3050, as amended?

[99] Department of Defense, *Directive 1332.41, Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs)*, April 23, 2007.

[100] 10 U.S.C. §1552 (BCMR); 32 C.F.R. §581.3 (Army BCMR); 32 C.F.R. Pt. 723 (Naval BCNR); 32 C.F.R. Pt. 865, Sub-Pt. A (Air Force BCMR); 33 C.F.R. Pt. 52 (Coast Guard BCMR).

- Has the IC completed the demographic reporting requirements established by the FY2020 IAA that are found in 50 U.S.C. §3334b?
- Are there evidence-based methods for considering or developing future IC diversity-focused recruiting and outreach or retention and advancement programs?
- Is the IC considering or developing any diversity-focused recruiting and outreach or retention and advancement programs?
- Are there evidence-based methods for determining if current IC diversity-focused recruiting and outreach or retention and advancement programs are meeting their stated objectives?
- Is the success of any current IC diversity-focused recruiting and outreach or retention and advancement programs evaluated using evidence-based methods?
- Are there any current IC diversity-focused recruiting and outreach or retention and advancement programs that are not meeting their stated objectives?
- Has the IC adequately remediated the findings of its 2017 barriers analysis?

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