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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

**Fiscal Year 2021 Annual Report to Congress
on the Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002**

April 2022

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EXECUTIVE SUMMARY

To support the Federal Government's longstanding obligation to provide a work environment free of discrimination and retaliation, the *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002* (No FEAR Act), Public Law 107-174, as amended by the *Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020* (Cummings Act of 2020)¹, requires annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each federal agency. The Office of the Director of National Intelligence (ODNI) submits this annual report in compliance with Section 203 of the No FEAR Act, covering Fiscal Year (FY) 2021. The No FEAR Act Annual Report contains information relating to ODNI's Equal Employment Opportunity (EEO) complaints activity, including federal district court cases, as well as any resulting disciplinary actions and Judgment Fund reimbursements. The agency's reporting obligations, contained in Title 5 Code of Federal Regulations Part 724, have been incorporated into the ODNI No FEAR FY 2021 Year-End Data report (Appendix I).

As directed by Section 203, ODNI provides this report to the following individuals and committees: the Speaker of the House of Representatives; the President Pro Tempore of the Senate; the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; each committee of Congress with jurisdiction relating to ODNI; the Chair of the Equal Employment Opportunity Commission (EEOC); the Attorney General of the United States; and the Director of the Office of Personnel Management.

¹ This amendment of the No FEAR Act enacted 01 January 2021, which is part of the *National Defense Authorization Act for Fiscal Year 2021*, Public Law 116-283, requires additional reporting and accountability measures to ensure greater transparency and implementation of corrective actions as necessary.

INTRODUCTION

Following the tragic events of 11 September 2001, Congress saw the need for sweeping change in the Intelligence Community (IC), resulting in the passage of the *Intelligence Reform and Terrorism Prevention Act of 2004* (IRTPA), signed on 17 December 2004. The IRTPA created ODNI to lead and improve information sharing across the IC, to promote a strategic and unified direction, and to ensure integration across the IC. ODNI began operations on 22 April 2005. The Director of National Intelligence (DNI) serves as the head of the IC, acts as the principal advisor to the President and the National Security Council on intelligence matters related to national security, and oversees and directs the implementation of the National Intelligence Program. In addition to the IC-wide mission, the DNI also leads the ODNI workforce and organization.

In accordance with 29 C.F.R. § 1614.102(b)(4), the Chief of the Equal Employment Opportunity (EEO) Office reports directly to the DNI and serves as the principal advisor on issues related to EEO compliance. On 25 May 2021, ODNI submitted a congressional notification stating that the EEO and IC Diversity (ICD) Office, formerly known as IC Equal Employment Opportunity and Diversity (EEOOD), reorganized into separate offices — the EEO Office and the IC Diversity, Equity, and Inclusion Office (DEI). The Chief of IC DEI also reports directly to the DNI and serves as the principal advisor to the DNI on issues related to diversity, equity, inclusion, and accessibility for the IC. Additionally, ODNI established the Diversity and Inclusion Group (DIG), with a Chief that reports directly to the Chief Operating Officer. DIG is responsible for executing programming and initiatives that will reinforce and enhance a diverse and inclusive ODNI work environment.

By statute, ODNI does not fall under the whistleblower framework described in the No FEAR Act.² Congress amended the National Security Act of 1947 to include whistleblower protections for ODNI and other IC employees and contractors who properly disclose information that they reasonably believe evidences certain specified types of wrongdoing, including, for example, violations of a federal law, rule, or regulation.³ Those statutory provisions are the foundation of an IC whistleblower protection framework, which also includes Presidential Policy

² The No FEAR Act provides for Judgment Fund reimbursement of, and annual reporting related to, proceedings brought under (1) any provision of law prohibiting any form of discrimination under the laws interpreted by the EEOC, and (2) the whistleblower provisions of 5 U.S.C. § 2302(b)(8) and (9). See Section 201(a) and (c) of the No FEAR Act. Congress expressly exempted ODNI and other IC agencies from the coverage of 5 U.S.C. § 2302. Instead, ODNI employees are subject to other whistleblower protections consistent with the need to protect classified information. See Presidential Policy Directive 19 (October 10, 2012), *Protecting Whistleblowers with Access to Classified Information*; Intelligence Community Directive 120 (March 20, 2014), *Intelligence Community Whistleblower Protection*; 50 U.S.C. §§ 3234 and 3341(j).

³ See 50 U.S.C. § 3234, *Prohibited personnel practices in the intelligence community*; and 50 U.S.C. § 3341(j), *Retaliatory revocation of security clearances and access determinations*. Other types of wrongdoing covered by these statutes include mismanagement (if the whistleblower is an employee) or gross mismanagement (if the whistleblower is a contractor); gross waste of funds; abuse of authority; a substantial and specific danger to public health or safety; or matters of urgent concern. To obtain whistleblower protections, a whistleblower is required to make disclosures in a manner consistent with the need to protect classified information. See also Presidential Policy Directive 19 (October 10, 2012), *Protecting Whistleblowers with Access to Classified Information* and Intelligence Community Directive 120 (March 20, 2014), *Intelligence Community Whistleblower Protection*.

Directive 19, *Protecting Whistleblowers with Access to Classified Information* (October 2012), Intelligence Community Directive 120, *Intelligence Community Whistleblower Protection* (20 March 2014), and other policy guidance. Another statutory provision authorizes the Office of the Inspector General of the Intelligence Community (ICIG) to conduct independent reviews of claims of whistleblower retaliation submitted by ODNI and other IC personnel.⁴ The ICIG also has the statutory authority to receive complaints of information from IC whistleblowers who intend to report a matter of “urgent concern” to the congressional intelligence committees.⁵ Together, these statutory authorities and presidential and intelligence community directives provide IC employees with certain whistleblower protections similar to those found in the No FEAR Act.

No FEAR Act web-based training, required for all ODNI employees, addresses the rights and remedies available to employees via the EEO process. IC Whistleblowing training, mandatory for all ODNI employees and contractors, addresses the rights and remedies available to those who may disclose information through the appropriate channels, as set forth in the Presidential Policy Directive 19 and Intelligence Community Directive 120. ODNI is committed to preventing discrimination and retaliation within ODNI and across the IC.

REPORTING OBLIGATIONS

During FY 2021, ODNI had one case in federal court arising under federal anti-discrimination laws.

ODNI has made no reimbursements to the Judgment Fund for payments, as defined in 5 C.F.R. §724.103.

During FY 2021, there were no disciplinary actions taken against ODNI employees, pursuant to 5 C.F.R. §724.302(a)(3).

ODNI is committed to providing a workplace that promotes productivity and professionalism, as well as an inclusive environment that protects the dignity of the entire workforce. The DNI annually issues a policy statement that promotes anti-harassment, equal opportunity, and diversity, while declaring that ODNI prohibits and will not tolerate discrimination, harassment, or retaliation. The DNI Statement on EEO (Appendix II) advises that employees will be subject to appropriate corrective action if they are found to have engaged in discriminatory or harassing behavior.

⁴ See 50 U.S.C. § 3236.

⁵ See 50 U.S.C. § 3033(k)(5)(A). For purposes of this statute, an “urgent concern” is a serious or flagrant problem, abuse, violation of law or Executive Order, or deficiency relating to the funding, administration, or operation of an intelligence activity under the DNI’s jurisdiction; or a false statement or willfully omitted material information to Congress, relating to the funding, administration, or operation of an intelligence activity within the DNI’s jurisdiction; or an actual or threatened reprisal action for having previously reported an urgent concern. See § 3033(k)(5)(G).

On 05 June 2021, the DNI signed Intelligence Community Policy Guidance (ICPG) 110.2, *Preventing and Responding to Workplace Harassment*. The EEO Office provided support and expertise to the DNI to establish this guidance for ODNI and IC elements. The ICPG provides guidance to ensure effective programs and policies exist to detect and prevent workplace harassment, to encourage reporting and prompt remediation of concerns involving harassment, and to emphasize the existence of protections against retaliation for individuals who participate in equal employment opportunity matters regarding harassment or otherwise oppose discriminatory harassing conduct.

Any concerns relating to an employee's conduct for continued ODNI employment are carefully considered and resolved in accordance with ODNI Instruction 30.01 – *Conduct, Accountability, and Discipline* (Instruction 30.01, Appendix III). Instruction 30.01 designates an Executive Review Board (ERB) as the primary mechanism for reviewing and advising actions necessary for employee performance, conduct, and suitability cases. The ERB consists of the Chief Operating Officer, advisory members from a range of varied components for agency oversight, and other management officials to review cases arising from varied sources and investigations regarding an employee's performance, conduct, and suitability. Instruction 30.01 outlines the types of disciplinary measures and related actions.

ODNI continues to offer an EEO briefing during new employee orientation, which complies with the No FEAR Act requirements. Additionally, the agency learning management system hosts an online No FEAR Act training module that tracks and notifies employees of the biannual training requirement of the Act. Throughout the year, the EEO Office leverages ad-hoc opportunities to educate ODNI managers and employees on a range of matters, such as: preventing and mitigating EEO violations; the importance of confidentiality in the EEO process; identifying actions that constitute unlawful retaliation; disability rights; and other EEO compliance issues. Further, ODNI provides mandatory Unconscious Bias training for all senior managers and supervisors who participate in the ODNI's Career Advisory Boards (career development and promotion boards).

No FEAR FY 2016 – FY 2021, Year-End Data Report

Appendix I contains ODNI's year-end FY 2021 EEO complaint data, and the data from preceding fiscal years, in accordance with 5 C.F.R. § 724.302(a)(4) and 29 C.F.R. § 1614.705.

Analysis of EEO Complaint Trends and Causality

EEO Complaint Activity and Causality

For the last five years, the baseline number of complaints has continued to remain small, as is reflected in Appendix I. Following attempts at resolution during EEO counseling, aggrieved individuals filed nine formal complaints in FY 2021. The number of complaints increased from seven formal complaints filed in FY 2020, and four in FY 2019. The slight increase in complaints from FY 2019 may have been due to operational changes and challenges from the COVID-19 pandemic. Given the small number of complaints, there are no obvious underlying causes for the increase in complaint activity. Potential drivers of complaint activity that may have impacted the number of complaints filed in FY 2021 could be: deficiencies in supervisory training and

knowledge; performance management challenges; poor communication; and challenges with managing contractors in the workplace.

Bases of Discrimination in EEO Complaints

During FY 2021, ODNI's most frequently alleged basis of discrimination in formal EEO complaints was disability, followed by sex. These bases remain consistent with the most frequently alleged bases in FY 2020. There are no obvious trends in the data for complaint activity.

Issues in EEO Complaints

The most frequently raised issues in discrimination complaints during FY 2021 were: appointment/hire; non-sexual harassment; and termination. While there are no notable trends in the issues raised given the small number of complaints, the overall number of issues raised in FY 2021 was eight, which is a decrease from ten in the previous year.

Practical Knowledge Gained Through Experience

In FY 2021, the EEO Office experienced changes in leadership and organizational restructure that impacted strategic goals and efforts. In the face of these challenges, including a significant depletion of staff and related resources, the team was able to timely process the largest number of complaints in agency history. During FY 2021, the ODNI workforce remained in a COVID-19 posture, which impacted the EEO Office's efforts to finalize a new web-based anti-harassment training resource. However, ODNI's Employee Management Relations Office (EMRO) leveraged contract resources to create a Bystander Intervention training for implementation in the subsequent fiscal year.

Based on knowledge gained from previous reports on workplace barriers, the EEO Office administered a two-day experiential learning opportunity that demonstrates the importance of network "expansion" as a leadership competency among mid-level supervisors. Select media and written materials were introduced to engage participants in thought-provoking discussions on topics such as: the language of exclusion (bias, micro-aggression, gaslighting, systemic racism, power, and authority); the strategic importance of building and sustaining diverse and expansive networks; and social identity. The competencies gained from this course align with many of ODNI's performance elements, including: accountability for results; communication; engagement and collaboration; and personal leadership and integrity.

In response to concerns about limited equal employment opportunities due to the operational challenges presented during the pandemic, the EEO Office worked in partnership with the IC Deaf and Hard of Hearing Affinity Network to create a resource guide for the IC to ensure accessibility and build an inclusive workforce. The EEO Office finalized a virtual meeting guide, *Small Steps to Building an Inclusive Workplace*, to increase education and awareness about hosting accessible meetings in unclassified and secure virtual environments. The guide includes a checklist for meeting preparation, a multi-faceted catalog of links to best practices, and information useful to learn about building an inclusive and accessible work environment for employees with a range of disabilities. The guide encourages leaders to identify other barriers to accessibility and to examine

the need to ensure all employees can fairly participate in and fully contribute to the intelligence mission.

In furtherance of the goals outlined in the *2020-2023 Joint Strategy to Advance Equal Employment Opportunity, Diversity, and Inclusion within the United States Intelligence Community* (Joint Strategy), ODNI continued its collaborative efforts across the IC to promote workplace equality by ensuring the right resources and trained personnel were in place to eliminate barriers to equal access, and by swiftly responding to allegations of employment discrimination and harassment. The EEO Office hosted IC-wide virtual trainings regarding case law and processing, and for newly issued Executive Orders and Presidential Memorandums. These offerings represent the EEO Office's continued efforts to advance goal two of the Joint Strategy, *Strengthen Compliance with Laws and Eliminate Discriminatory Behavior*. To this end, the EEO Office continued to sponsor the IC EEO Compliance Support Group in FY 2021. This group serves as a resource for IC EEO professionals to gain training, share best practices, and find solutions to challenges in case processing within the IC. These exchanges also helped the EEO Office identify opportunities for improvement in case management and tracking for ODNI. Since its inception, the Support Group has: worked with the EEOC Office of Federal Operations to present case law updates tailored to the IC; gathered and communicated common concerns and challenges; and led other training efforts. In FY 2021, the EEO Office hosted and sponsored a multi-day training courses presented by the EEOC and former EEOC Administrative Judges.

Improvements in the Complaint Program

During the pandemic, the EEO Office continued to process all EEO complaints in accordance with EEOC timelines. Also during FY 2021, ODNI's investigations of formal complaints were conducted within the time provided by EEOC's regulations (see Appendix I, Table 11). The EEO Office continues to increase efficiencies and ensure thorough and timely issuance of Reports of Investigations and Final Agency Decisions. In FY 2021, the EEO Office initiated the procurement of a technical solution for tracking and monitoring case data to improve case management and reporting options, in accordance with the Cummings Act of 2020.

The EEO Office educates and trains managers, supervisors, and employees about: their responsibility to maintain a workplace free of unlawful discrimination and harassment; how to process informal and formal complaints of discrimination, in accordance with EEOC guidelines and timeframes; and engagements with management and employee groups on the alignment of current and proposed ODNI policies and guidance, with EEO law and compliance guidelines.

Additionally, the EEO Office continued its established working relationship with EMRO, which is responsible for executing ODNI's anti-harassment program. In practice, the offices maintained regular and frequent communication, as appropriate, to identify and address harassment and bullying occurring in the workplace. The EEO Office collaborated with EMRO in efforts to strengthen its program administration by reviewing and updating agency policies and practices. Throughout FY 2021, the offices partnered to identify common trends in complaints and grievances, as well as the corresponding training needs. This enabled the delivery of targeted educational opportunities to ODNI offices with a demonstrated need for: a better understanding of policies and practices for addressing harassment in the workplace; and for identifying and addressing ordinary workplace friction, conflict, and disputes. These efforts ensure federal

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employees in ODNI facilities remain aware of their EEO rights and timelines, as well as ODNI resources and policies to prevent harassment.

As consultants, the EEO Office provided insight to employees on federal EEO laws and protections, including a review of the complaints process. These facilitated briefs highlighted important topics for participants, including avenues and resources available for redress. The discussions also included: expectations for civil treatment; defining uncivil behavior/bullying; techniques for speaking up and seeking assistance; and the resources available for addressing management topics, including conflict resolution, performance management, performance conduct, and the Employee Assistance Program.

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**APPENDIX I: ODNI EQUAL EMPLOYMENT OPPORTUNITY DATA
POSTED PURSUANT TO TITLE III OF THE NOTIFICATION AND
FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION
ACT OF 2002 (NO FEAR ACT) PUB. L. 107-174**

Table 1. Number of Complaints, (see 29 C.F.R. § 1614.704(a)-(c))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Number of Complaints						
Filed during the FY	6	8	5	4	7	9
Number of Complainants						
Who filed a complaint during the FY	6	8	5	4	7	9
Who filed two or more complaints during the FY	0	0	0	0	0	0

Table 2. Number of Complaints by Basis, (see 29 C.F.R. § 1614.704(d))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Race	0	4	4	1	2	1
Color	0	0	2	0	0	0
Religion	1	0	0	0	0	1
Retaliation	3	6	4	1	2	2
Sex	1	4	3	1	4	3
Pregnancy	0	0	0	0	0	0
National Origin	1	0	0	0	0	0
Equal Pay	0	2	0	0	1	0
Age	3	2	2	0	2	1
Disability	3	2	1	1	3	4
Genetic Information Non-Disclosure	1	0	0	0	0	0
Non-EEO	1	0	0	0	2	0

Table 3. Number of Complaints by Issue, (see 29 C.F.R. § 1614.704(e))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Appointment/Hire	1	0	0	0	1	2
Assignment of Duties	0	3	3	0	2	1
Awards	0	1	0	0	0	0
Conversion to Full-Time	0	0	0	0	0	0
Disciplinary Action						
1. Demotion	0	0	0	0	0	0
2. Reprimand	0	0	1	0	1	0
3. Suspension	0	0	0	0	0	0
4. Removal	0	0	0	0	0	0
5. Other	0	1	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation/Appraisal	1	3	3	0	2	1
Examination/Test	0	0	0	0	0	0
Harassment						
1. Non-Sexual	2	8	2	0	2	2
2. Sexual	0	0	0	0	0	0
Medical Examination	1	0	0	0	0	0
Pay/Overtime	0	1	1	0	1	1
Promotion/Non-Selection	2	1	1	0	2	0
Reassignment						
1. Denied	0	0	0	0	0	0
2. Directed	1	1	0	0	0	0
Reasonable Accommodation	0	0	0	0	1	1
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	1
Retirement	1	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0
Termination	1	1	4	1	0	2
Terms/Conditions of Employment	2	3	2	0	3	0
Time and Attendance	1	1	0	0	1	0
Training	0	1	1	0	0	0
Other	1	1	0	1	0	0

Table 4. Average Processing Time, (see 29 C.F.R. § 1614.704(f))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
1614.704(f)(1) All Pending	307	389	786	577	293	357
1614.704(f)(2) – No Hearing Requested	92	159	270	163	142	55
1614.704(f)(3) – Hearing Requested	356	1076	1475	1241	444	842

Table 5. Number of Complaints Dismissed Pursuant to 29 C.F.R. § 1614.107(a) and Average Length of Time Pending Prior to Dismissal, (see 29 C.F.R. §1614.704(g))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Number of Complaints Dismissed	1	3	4	0	1	2
Average Number of Days Pending Prior to Dismissal	150	73	44	0	59	57

Table 6. Number of Complaints Withdrawn, (see 29 C.F.R. § 1614.704(h))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Number of Complaints Withdrawn	2	0	2	0	1	0

Table 7. Number of Final Agency Actions, (see 29 C.F.R. § 1614.704(i))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
	# / %	# / %	# / %	# / %	# / %	# / %
1614.704(i)(1): Total Number of Findings of Discrimination	0	0	1	0	0	0
1614.704(i)(2): – Without a Hearing	0	0	0 / 0	0	0	0
1614.704(i)(2) – After a Hearing	0	0	1 / 100	0	0	0

Table 8. Number of Final Actions Involving a Finding of Discrimination by Basis, (see 29 C.F.R. § 1614.704(j))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
* Rendered without a hearing	#	#	#	#	#	#
** Rendered after a hearing	%	%	%	%	%	%
Total Number of Findings of Discrimination	0	0	1**	0	0	0
Race	0	0	1 100	0	0	0
1. American Indian/Alaskan Native	0	0	0 0	0	0	0
2. Asian/Pacific Islander	0	0	1 100	0	0	0
3. Black	0	0	0 0	0	0	0
4. White	0	0	0 0	0	0	0
5. Two or More Races	0	0	0 0	0	0	0
Color	0	0	0 0	0	0	0
Religion	0	0	0 0	0	0	0
Retaliation	0	0	1 100	0	0	0
Sex	0	0	0 0	0	0	0
1. Female	0	0	0 0	0	0	0
2. Male	0	0	0 0	0	0	0
National Origin	0	0	0 0	0	0	0
1. Hispanic	0	0	0 0	0	0	0
2. Other	0	0	0 0	0	0	0
Equal Pay Act	0	0	0 0	0	0	0

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Age	0	0	0 0	0	0	0
Disability	0	0	0 0	0	0	0
1. Physical	0	0	0 0	0	0	0
2. Mental	0	0	0 0	0	0	0
Non-EEO	0	0	0 0	0	0	0

Table 9. Number of Final Agency Actions Involving a Finding of Discrimination by Issue, (see 29 C.F.R. § 1614.704(k))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Total Number of Findings of Discrimination	0	0	1	0	0	0
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	0	0	1	0	0	0
Awards	0	0	0	0	0	0
Conversion to Full-Time	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0
1. Demotion	0	0	0	0	0	0
2. Reprimand	0	0	0	0	0	0
3. Suspension	0	0	0	0	0	0
4. Removal	0	0	0	0	0	0
5. Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation/Appraisal	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0
Harassment	0	0	0	0	0	0
1. Non-Sexual	0	0	0	0	0	0
2. Sexual	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay/Overtime	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0

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1. Denied	0	0	0	0	0	0
2. Directed	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Termination	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	1	0	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	1	0	0	0
Other	0	0	0	0	0	0

Table 10. Number of Complaints Pending at Any Time during the Fiscal Year, (see 29 C.F.R. § 1614.704(l))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Total Number of Complaints Pending for any length of time during the FY	14	16	15	11	9	15
29 C.F.R. § 1614.704(l)(1) – Number Filed before 10/1	8	16	12	7	4	5
29 C.F.R. § 1614.704(l)(2)(i) – Number of Complainants	12	13	12	5	4	5
29 C.F.R. § 1614.704(l)(2)(ii) – Number Pending Investigation	10	10	4	0	0	0
– Number Pending Hearing	6	6	6	2	4	5
– Number Pending Final Agency Action	0	1	0	0	0	0
– Number Pending Appeal	0	3	2	0	0	1

Table 11. Number of Complaints Pending at Any Time during the Fiscal Year that Exceeded the Authorized Investigation Timeframe, (see 29 C.F.R. § 1614.704(m))

	Fiscal Year					
	2016	2017	2018	2019	2020	2021
Number of Pending Complaints that Exceeded the Investigation Time Authorized by 29 C.F.R. §1614.106(e)(2), including extensions	0	0	0	0	0	0
Number of Pending Complaints that Exceeded the Investigation Time Authorized by 29 C.F.R. §1614.108(e)	0	0	0	0	0	0

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APPENDIX II: ODNI DIRECTOR'S STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY, 18 MARCH 2021

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DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

Director's Statement on Equal Employment Opportunity

As Intelligence Community (IC) professionals, we are charged with providing unbiased situational awareness of global threats and support our nation's leaders in preventing emergent threats to our nation's security. In doing so, we have taken an oath to support and defend the Constitution of the United States, and we must work tirelessly to defend the laws that strengthen our democratic foundation, especially those that promote equal employment opportunity (EEO). To lead a stronger IC, we must also work together to identify policies and practices that disadvantage underserved communities, and we must ensure equity considerations are applied. As the leader of the Office of the Director of National Intelligence (ODNI) workforce, I am charging you to adhere to EEO laws and policies and to contribute to a workplace culture of inclusion, equity, and civility.

Federal laws, regulations, and policies prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 and over), mental or physical disability, and genetic information. Executive Orders safeguard against harassment and discrimination based on parental status. Federal laws and ODNI policies prohibit retaliation for participating in the EEO process, reporting harassment, providing information related to such complaints, and other protected activities opposing employment discrimination.

Personnel who experience or witness discrimination, harassment, bullying, or other adverse personal treatment should report such behavior to a manager or supervisor, the Employee Management Relations Officer (EMRO), Office of General Counsel (OGC), or the ODNI Equal Employment Opportunity and Intelligence Community Diversity (EEO-ICD) Office. To seek redress, aggrieved individuals are required to report potential violations of these laws and policies to EEO-ICD within 45 calendar days of experiencing conduct believed to be discriminatory.

I expect to observe people-centric leadership at all levels, from senior leaders to first line managers and supervisors. As DNI, I will model professionalism, empathy, and a relentless pursuit of excellence in all that ODNI undertakes. In every way, we must hold ourselves accountable for results. Management officials must take immediate action if they learn of harassing or inappropriate behavior. This includes intervening to stop inappropriate behavior and referring concerned individuals to the appropriate redress office. Management officials may consult with OGC for legal advice. EEO-ICD should be informed before any corrective action is taken in response to an allegation of either discrimination or unlawful harassment.

Diversity, inclusion, equity, and equal employment opportunity are mission imperatives within the IC. We see these imperatives quickly emerging as one of the top national security issues of our time. To meet this challenge, we must invest in ourselves, the greater IC, and our strategic partners to advance equality of opportunity.

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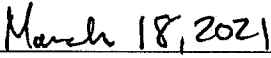
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SUBJECT: Director's Statement on Equal Employment Opportunity

I look forward to working with you to guide organizational behavior, values, and ethos while following data-driven approaches. We are working towards improving the accountability, equality of opportunity, and inclusion in all corners of the ODNI workplace and across the IC.



Avril D. Haines



Date

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**APPENDIX III: ODNI INSTRUCTION 30.01 – CONDUCT,
ACCOUNTABILITY, AND DISCIPLINE, REVISION 2, 05 MARCH 2014**

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**OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
INSTRUCTION 30.01
Category 30 – Conduct, Accountability, and Discipline
Office of Primary Responsibility: Mission Support Division/Human Resources
Revision 2**

**SUBJECT: REVIEW OF EMPLOYEE PERFORMANCE, CONDUCT, AND
SUITABILITY**

1. AUTHORITIES: The National Security Act of 1947, as amended; and other applicable provisions of law. Specifically, pursuant to 50 U.S.C. § 3024(m), the Director of National Intelligence (DNI) may exercise with respect to the personnel of the Office of the Director of National Intelligence (ODNI) any authority of the Director of the Central Intelligence Agency (CIA) with respect to the personnel of the CIA under the CIA Act of 1949.

2. REFERENCES: CIA Special Issues Handbook and CIA Regulation (AR) 4-16, *Termination of Employment*.

3. PURPOSE: This Instruction designates the Executive Review Board (ERB) as the primary mechanism for reviewing and advising upon employee performance, conduct, and suitability cases that may result in serious disciplinary actions. This Instruction does not create any property or other interest or privilege in ODNI employment, nor does this Instruction entitle any ODNI employee to any due process rights or in any way limit or detract from the authority of the DNI to discipline an employee or terminate an individual's ODNI employment, with or without the procedures set forth in this Instruction. This Instruction replaces ODNI Instruction 30.01, dated March 21, 2013.

4. APPLICABILITY:

A. This Instruction applies to permanent and staff reserve (i.e., time-limited) cadre employees. The ERB will have purview over trial-period employees and employees who have been certified out of trial period.

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B. The ERB will not consider disciplinary actions against civilian detailees, military detailees, Intergovernmental Personnel Act (IPA) detailees, assignees, and contractors; however, these individuals may be returned to their parent organizations prior to expiration of the period of detail or assignment.

C. This policy does not apply to cases involving fitness-for-duty evaluations or reasonable accommodations.

5. POLICY:

A. The national security missions, functions, and activities of the ODNI are of such importance and sensitivity that any concerns pertaining to an employee's performance, conduct, and/or suitability for continued ODNI employment must be considered carefully and resolved fully whenever they arise. The ODNI seeks to resolve such issues in a manner that is both helpful and supportive to employees, while at the same time protective of the ODNI's equities, which are paramount. As the advisory board, the ERB serves as the central point of review of pertinent information to achieve these ends. The ERB also ensures that security, human resources, medical, legal, counterintelligence, and management considerations are taken into account.

B. The ERB will review cases in which information that surfaced in security, Intelligence Community Inspector General (IC IG), or other investigations; or that otherwise came to the attention of ODNI management, causes concern regarding an employee's performance, conduct, or suitability. The ERB will provide recommendations to management for disciplinary actions, and, upon request, assist management in determining an employee's certification out of trial period. The ERB will also serve on request as an advisory council in the areas of employee discipline, suitability, performance, standards of conduct, and the handling and administration of problem or difficult employees.

C. The Chief Management Officer (CMO) will chair the ERB when it convenes to consider issues of employee performance, conduct, and suitability. If the ERB has a member from the employee's component, that member will be present solely to provide a statement and to answer questions relative to the subject of the inquiry and will not be permitted to vote. The following individuals or their designees will serve as advisors to the ERB: the General Counsel (GC), the IC IG, the Director/Human Resources (D/HR), the Director/Security, the Director/IC Equal Employment Opportunity and Diversity, and the Employee Relations Officer (ERO). The chair also may invite other officials to serve as advisory members on medical, counterintelligence, civil liberties and privacy, or other issues as appropriate.

D. Requests to Convene the ERB:

(1) Any manager who discovers information that raises doubts about any ODNI employee's suitability for continued employment because of significant security concerns, suitability issues, or serious performance or conduct deficiencies should submit

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a written request to convene the ERB through the appropriate Component Director to the D/HR. The referring official must provide a detailed statement supporting the basis for the request. The referring official also must indicate whether he or she believes that the employee should be removed from the workplace pending the CMO's decision and provide a justification for that recommendation.

(2) Any employee who has reason to question the performance or conduct of another employee should consult with the component manager or supervisor, the ERO, or other appropriate ODNI officials for advice or assistance in addressing the issue.

(3) The D/HR, in coordination with the employee's Component Director and other relevant ODNI offices, will secure a decision from the CMO on whether to convene an ERB or to take other less serious action.

(4) If the CMO determines that the matter requires an ERB, the ERO will prepare a statement of the issues to be discussed based on the information contained in the request to convene the ERB. Unless security, counterintelligence, or other concerns preclude notification to the employee, the statement of issues will be presented to the employee at least **ten business days** prior to the scheduled meeting of the ERB. The statement also will include notification to the employee of the appeal process. The employee may respond in writing to the ERO's statement of the issues; the response must be submitted within **five business days** of receiving the ERO's statement.

(5) The CMO also may convene an ERB to consider cases referred by the Director/Security, ODNI managers, the IC IG, or other relevant senior officials, following investigations that raise suitability issues or other matters.

(6) In selected cases (e.g., workplace violence, employee arrests), the CMO may determine whether to convene an ERB or to render independent decisions regarding the imposition of appropriate disciplinary actions as outlined below. The DNI, Principal Deputy DNI (PDDNI), and the CMO may make independent decisions in consultation with the D/HR, the ERO, the GC, and/or any other entities deemed appropriate.

E. Decisions on Disciplinary Actions:

(1) The CMO will convene the ERB within 15 business days of receipt of the statement of issues.

(2) The employee may make a personal appearance before the ERB to present an oral statement and answer questions. The Component Director will also make a presentation before the board. The ERB will analyze and evaluate the statement of issues, the employee's response, if any, and any other relevant information, and make recommendations to the CMO. The ERB may consider other issues that arise during the discussions that may not have been included in the statement of issues presented to the employee. The ERB can recommend the full range of disciplinary actions described in Appendix A, as well as other corrective measures such as reassigning the employee to another position.

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(3) In each case, the ERB must assess any disciplinary actions it proposes in terms of both the possible risk to national security and the employee's past contributions and potential future value to the ODNI. As appropriate, the ERB will recommend risk management plans to minimize the risk to classified information and to ODNI personnel and programs that may arise from any disciplinary action.

(4) The ERB will render a recommendation to the CMO as soon as practicable.

(5) The CMO will review the ERB's recommendation, obtain legal advice from OGC as necessary, and render a decision.

(6) Following the CMO's decision, the ERO will prepare a memorandum, for the D/HR's signature, that summarizes the CMO's decision for the employee, including appeal guidance. This memorandum will include a summary of the deadlines for the appeals process.

F. Appeals:

(1) The D/HR will provide the CMO's decision memorandum to the employee within five business days of the decision.

(2) Following notification of the CMO's decision, if the employee has a right to appeal in accordance with Appendix B, the employee will have ten business days to forward a written appeal through the ERO to the PDDNI. Employees who do not wish to appeal should inform the CMO, through the ERO, of that decision in writing by a letter, facsimile, or electronic mail within ten business days of notification.

(3) If the employee appeals the CMO's decision, implementation of the decision will be stayed during the appeal. The employee's status during the appeal will remain unchanged from his or her status pending the CMO's decision. If the employee does not appeal, the CMO's decision will take effect immediately.

(4) The PDDNI will review the appeal documentation, including the underlying documentation considered by the ERB, the CMO's decision, and the employee's written appeal, and make a final determination as soon as practicable. The D/HR will notify the employee in writing of the decision made by the PDDNI on the appeal.

(5) Decisions made on appeal are final and not subject to further appeal.

6. RESPONSIBILITIES:

A. The Chief Management Officer will:

(1) Provide policy oversight.

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(2) Determine whether the ERB should be convened.

(3) Decide cases discussed by the ERB pursuant to this Instruction after receiving the recommendations of the ERB.

B. Mission Support Division/Human Resources will be responsible for implementation of this Instruction.

C. The Director/Human Resources or designee will:

(1) Maintain records of all personnel disciplinary actions, with the exception of oral admonitions and letters of warning from component managers and supervisors. Records of oral admonitions and letters of warning will be maintained by component managers and supervisors.

(2) On behalf of the ERB, prepare a written record of the ERB's recommendations on cases to the CMO.

D. Component Human Resources Officers and component managers will ensure that original documents of disciplinary actions (excluding oral admonitions and letters of warning) are promptly forwarded to the D/HR.

E. The Employee Relations Officer will:

(1) Provide information to the ERB, as appropriate, regarding relevant precedent-setting cases in order to inform the ERB deliberations.

(2) Prepare a statement of the issues to be discussed based on the information contained in the request to convene the ERB.

F. The Principal Deputy Director of National Intelligence will decide any appeals of the CMO's decisions.

7. **EFFECTIVE DATE:** This Instruction is effective upon signature.


Mark W. Ewing
Chief Management Officer

5 March 2014
Date

Appendix A: Types of Disciplinary Measures and Related Actions

Appendix B: Imposing Disciplinary Measures and Related Actions: Requirements Regarding Notice to Employees

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APPENDIX A

TYPES OF DISCIPLINARY MEASURES AND RELATED ACTIONS

This Appendix should be read in conjunction with Appendix B and the Central Intelligence Agency Special Issues Handbook, or any subsequent superseding issuances adopted by the Office of the Director of National Intelligence (ODNI).

I. LESSER DISCIPLINARY MEASURES

Oral Admonition. An oral admonition is an oral warning given to employees to point out deficiencies in conduct, performance, or security practices. An oral admonition may be issued by an employee's first-line supervisor or higher management. No advance written notice to the employee or coordination with Mission Support Division/Human Resources (MSD/HR) or the Employee Relations Officer (ERO) is required before the decision to issue an oral admonition. Written record of an Oral Admonition should be made and kept by the component supervisor.

Letter of Warning. A letter of warning is a written memorandum that documents concerns regarding the employee's performance, conduct, or security practices and that sets forth corrective measures to be taken. A letter of warning is more serious than an oral admonition and may be issued by the employee's first-line supervisor or higher management. The letter of warning will include a statement that it will be placed in the employee's component file for a specified period of time allowed to correct the problem and should be acknowledged by the employee's signature. No advance notice to the employee or coordination with MSD/HR or the ERO is required before the decision to issue a letter of warning.

Letter of Reprimand. A letter of reprimand is a formal written reprimand by a manager to a subordinate. A letter of reprimand may be issued by the Component Director or designee or higher authority in response to concerns regarding conduct, performance, or security practices. Each letter of reprimand will describe the specific reason for which the reprimand is being issued and state any corrective measures to be taken, and should be acknowledged by the employee's signature. The letter will also state the duration of the period of reprimand and the time designated to correct any deficiencies. The letter will state whether it is being issued with or without caveats, for example, whether the employee will be precluded from receiving monetary performance awards, non-monetary performance awards, and retirement mementos during the active period of reprimand. Monetary performance awards include promotions, bonuses, within-grade step increases, and exceptional performance awards. Prior to the decision to issue a letter of reprimand, managers will consult with the ERO and give the employee advance notice of the relevant issues and an opportunity to respond, as defined in Appendix B.

Suspension for Not More than Five Days. Suspension is a temporary enforced absence from duty in a nonpay status. It is a disciplinary action imposed by the Chief Management Officer (CMO) or higher authority in response to suitability concerns, conduct or performance, or for security reasons. Prior to the decision to suspend an

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employee, managers will consult with the ERO and give the employee advance notice of the relevant issues and an opportunity to respond, as defined in Appendix B.

Disciplinary Probation. Disciplinary probation is a fixed period of time, normally three to six months, during which time an employee's performance, conduct, or security practices will be monitored and evaluated in order to decide whether continued employment is advisable. The appropriate Component Director or higher authority may impose disciplinary probation. The manager imposing disciplinary probation will document in writing the decision to impose disciplinary probation. The memorandum will specify the duration of the period of probation and describe the specific deficiencies in performance to be corrected, and must be acknowledged in writing by the employee. Prior to the decision to place an employee on disciplinary probation, managers will consult with the ERO and give the employee advance notice of the relevant issues and an opportunity to respond, as defined in Appendix B.

II. SERIOUS DISCIPLINARY MEASURES

Suspension for More than Five Days. Suspension is a temporary enforced absence from duty in a nonpay status. It is a disciplinary action imposed by the CMO, in coordination with the Director/HR (D/HR) and upon the recommendation of the Executive Review Board (ERB), for serious misconduct, repeated infractions, or for security reasons. Suspension for more than five days may only be imposed by the CMO upon recommendation of the ERB after consultation with the ERO and with advance notice as outlined in Appendix B.

Reduction in Grade. Reduction in grade of GS-15 and below employees may be imposed by the CMO, in coordination with the D/HR and upon the recommendation of the ERB, as a disciplinary action for prolonged or more serious misconduct or unsatisfactory job performance. Reduction in grade of GS-15 and below employees may only be imposed by the CMO upon recommendation of the ERB after consultation with the ERO and with advance notice as outlined in Appendix B.

Reduction in grade of Senior National Intelligence Service (SNIS) Tier 1 through Tier 3 employees may be imposed only by the Principal Deputy Director of National Intelligence (PDDNI), upon recommendation of the ERB, as a disciplinary action for misconduct or unsatisfactory job performance.

Termination of Employment. Upon recommendation from the ERB, the DNI or designee (CMO or PDDNI, depending on grade of the employee) may terminate any employee for violation of ODNI regulations, continued poor performance, serious misconduct, or any of the other circumstances set forth in CIA regulation AR 4-16, upon recommendation of the ERB and in consultation with the ERO. The CMO is delegated authority to terminate GS-15 and below employees. The PDDNI is delegated authority to terminate SNIS Tier 1 through Tier 3 employees. If the DNI deems it necessary or advisable in the interest of the United States, the DNI may terminate the employment of any employee without regard to the procedures set forth in this Instruction.

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III. OTHER DISCIPLINE-RELATED ADMINISTRATIVE ACTIONS

Enforced Administrative Leave. Enforced administrative leave is a temporary absence from duty in a pay status. Upon written request from the Component Director or on his own authority, the CMO may place an employee on enforced administrative leave when it is necessary to remove an employee immediately from ODNI premises to protect classified information or for other compelling security reasons, during misconduct investigations, or where such action may otherwise be desirable. Such action may be taken prior to the imposition of formal disciplinary measures.

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APPENDIX B

IMPOSING DISCIPLINARY MEASURES AND RELATED ACTIONS:

REQUIREMENTS REGARDING NOTICE TO EMPLOYEES

Type of Discipline (in ascending order of severity)	Minimum Authority	Reason for Discipline	Minimum Type of Notice to Employee Before Final Decision to Impose Sanction	Prior Consultation with Employee Officer	Final Notice to Employee Regarding Discipline	Appeal Procedures
Lesser Disciplinary Actions						
Oral Admonition	First-line Supervisor	Concerns with security or suitability, for example, deficiency in conduct or performance	None, contemporaneous with admonition	No	Oral	None
Letter of Warning (LOW)	First-line Supervisor	Concerns with security or suitability, for example, deficiency in conduct or performance	None, contemporaneous with LOW	No	Written, LOW itself serves as written notification	None
Letter of Reprimand (LOR) (with or without caveats)	Component Director or designee or higher authority	Concerns with security or suitability, for example, deficiency in conduct or performance	Oral, employee response can be contemporaneous with the notice	Yes	Written, LOR itself serves as written notification	None
Suspension For Not More Than Five Days	Chief Management Officer (CMO) or higher authority	Concerns with security or suitability, for example, deficiency in conduct or performance	Written, employee has five business days to respond	Yes	Written	None

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Type of Discipline (in ascending order of severity)	Minimum Authority	Reason for Discipline	Minimum Type of Notice to Employee Before Final Decision to Impose Sanction	Prior Consultation with Employee Relations Officer	Final Notice to Employee Regarding Discipline	Appeal Procedures
Disciplinary Probation	Component Director or higher authority	Concerns with security or suitability, e.g., deficiency in conduct or performance	Written, employee has five business days to respond	Yes	Written	None
Serious Disciplinary Actions						
Suspension For More Than Five Days	CMO	Serious misconduct, repeated infractions, or security issues	Written, employee has ten business days to respond	Yes	Written	May appeal to the Principal Deputy Director of National Intelligence (PDDNI)
Reduction in Grade						
GS-15 and below	CMO	Misconduct or unsatisfactory performance	Written, employee has ten business days to respond	Yes	Written	May appeal to PDDNI
SNIS Tier 1-3	PDDNI	Misconduct or unsatisfactory performance	Written, employee has ten business days to respond	Yes	Written	May appeal to DNI

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Type of Discipline (in ascending order of severity)	Minimum Authority	Reason for Discipline	Minimum Type of Notice to Employee Before Final Decision to Impose Sanction	Prior Consultation with Employee Relations Officer	Final Notice to Employee Regarding Discipline	Appeal Procedures
<u>Termination of Employment</u>						
GS-15 and below	CMO	Violation of Agency regulations, continued poor performance, serious misconduct, or any other circumstances set forth in CIA regulation AR 4-16	Written, employee has ten business days to respond	Yes	Written	May appeal to PDDNI
	SNIS Tier 1-3 PDDNI	Same as above	Written, employee has ten business days to respond	Yes	Written	May appeal to DNI
Termination of employment without regard to procedures outlined in Instruction 30.01	If the DNI deems it necessary or advisable in the interest of the United States, the DNI may terminate the employment of any employee without regard to the procedures set forth in this Instruction.					

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Type of Discipline (in ascending order of severity)	Minimum Authority	Reason for Discipline	Minimum Type of Notice to Employee Before Final Decision to Impose Sanction	Prior Consultation with Employee Relations Officer	Final Notice to Employee Regarding Discipline	Appeal Procedures
Suspension for Security Reasons	CMO, in consultation with Director/ security	For compelling security reasons, pending outcome of alleged misconduct investigations, or where such action may otherwise be desirable	None, when the decision is based on security concerns	Yes	Written	None
Enforced Administrative Leave	CMO	For compelling security reasons, pending outcome of alleged misconduct investigations, or where such action is otherwise desirable	None	Yes	Written	None

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