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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Fiscal Year 2020 Annual Report to Congress
on the Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

April 2021

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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, 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) 2020. The No FEAR Act Annual Report contains information relating to the 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's No FEAR FY 2020 Year-End Data report (Appendix I), concerning EEO complaints.

As directed by Section 203, ODNI provides this report to 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 the ODNI, the Equal Employment Opportunity Commission (EEOC), the Attorney General, and the Director of the Office of Personnel Management.

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 the ODNI to lead the 18 member IC and improve information sharing, strategically promote a unified direction, and ensure integration across the IC. The 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 her 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 and IC Diversity Office (EEO-ICD) directs the agency's EEO program and reports directly to the DNI. The EEO-ICD Chief serves as the principal advisor to the DNI on issues related to EEO compliance, equity, and inclusion. EEO-ICD educates and trains ODNI managers, supervisors, and employees about their responsibility to maintain a workplace free of unlawful discrimination and harassment; processes informal and formal complaints of discrimination in accordance with EEOC guidelines and timeframes; and promotes the understanding of diversity and inclusion as mission-critical.

During Fiscal Year (FY) 2020, the ODNI and IC partners pioneered the 2020-2023 Joint Strategy to Advance Equal Employment Opportunity, Diversity, and Inclusion within the United States Intelligence Community (Joint Strategy). The Joint Strategy communicates a shared vision, mission, and plan to: improve the IC's ability to hire, retain, and promote a more diverse workforce, especially regarding underrepresented demographic groups; cultivate an inclusive workplace; and continue important compliance work with greater efficiency and impact. Goal Two of the Joint Strategy, *Strengthen Compliance with Laws and Eliminate Discriminatory Behavior*, seeks to promote workplace equality by ensuring the right resources and trained personnel are in place to eliminate barriers to equal access, and swiftly respond to allegations of employment discrimination and harassment, wherever it occurs. To this end, EEO-ICD established the IC EEO Compliance Support Group in FY 2020. This group serves as a resource for IC EEO professionals to gain training, share best practices and find solutions to challenges in EEO compliance case processing within the IC. Since its inception, the Support Group has worked with the EEOC Office of Federal Operations (OFO) to present case law updates tailored to the IC; compiled common concerns and challenges in the IC during the pandemic for consideration by OFO; and led other training efforts. EEO-ICD also continued the development of training resources, in topic areas such as anti-harassment and empathy, in efforts to implement the recommendations of the 2019 Sexual Harassment and Prevention Response Task Force.

By statute, the ODNI does not fall under the whistleblower framework described in the No FEAR Act.¹ 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.² These statutory provisions are the foundation of an IC whistleblower protection framework, which also includes the Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information* (October 2012), and Intelligence Community Directive 120, *Intelligence Community Whistleblower Protection* (20 March 2014). The Inspector General of the Intelligence Community (ICIG) also provides an independent review of whistleblower allegations for ODNI employees and contractors to determine whether or not a reprisal has occurred. The ICIG's statutory authority originates in the National Security Act of 1947, which also protects IC whistleblowers who intend to communicate "urgent concerns" to the congressional intelligence committees relating to the funding, administration, or operation of intelligence activities.³ Together, these statutory authorities, and presidential and intelligence community directives, provide IC employees with 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 IC employees via the EEO process. *Protecting Whistleblowers in the IC* 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. The ODNI is committed to preventing discrimination and retaliation in the ODNI and in the IC.

¹ 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 protection 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 the 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).

² 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*.

³ 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).

REPORTING OBLIGATIONS

During FY 2020, the ODNI had one case pending review in the Fourth Circuit Court of Appeals in which the plaintiff petitioned for certiorari to the United States Supreme Court. The case alleged violations of the Rehabilitation Act of 1973. The United States Supreme Court denied certiorari, which affirmed the Fourth Circuit's dismissal of the plaintiff's Rehabilitation Act claims. The case was remanded by the Fourth Circuit to the United States District Court for the Eastern District of Virginia for resolution of a single remaining claim, which does not arise under the scope of 5 C.F.R. Section 734.602(a)(1).

ODNI has made no reimbursements to the Judgment Fund for payments as defined in 5 C.F.R. §724.102.

During FY 2020, there were no disciplinary actions taken against ODNI employees pursuant to 5 C.F.R. §724.302(a)(3).

The ODNI is committed to providing a workplace that promotes productivity and professionalism and an inclusive environment that protects the dignity of the entire workforce. ODNI Instructions 20.04 and 120.02, *Whistleblower Protections and Review of Allegations of Reprisal Against Whistleblowers* and *ODNI Equal Employment Opportunity Discrimination Complaint System*, respectively, describe and outline protections offered to employees, as well as disciplinary actions for conduct that constitutes prohibited personnel practices.

No FEAR FY 2016 – FY 2020, Year-End Data Report

Appendix I contains the ODNI's year-end FY 2020 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 seven formal complaints during FY 2020. The number of complaints increased from four formal complaints filed in FY 2019, and five in FY 2018. Factors such as the agency's adjustment to a new organizational structure and operational changes due to the COVID-19 pandemic may have contributed to the increase in the number of complaints filed in FY 2020 as compared with FY 2019.

Bases of Discrimination in EEO Complaints

During FY 2020, the ODNI's most-frequently alleged basis of discrimination in formal EEO complaints was sex, followed by disability.

Issues in EEO Complaints

The most-frequently raised issues in discrimination complaints during FY 2020 concerned terms and conditions of employment. While there are no notable trends in the issues raised given the small number of complaints, the number of issues raised in FY 2020 increased from two to ten. This increase reveals the agency processed more intricate and complex cases of discrimination during the reporting period.

Practical Knowledge Gained Through Experience

During FY 2020, EEO-ICD and the Employee Management Relations Officer (EMRO), responsible for executing the ODNI's anti-harassment program, maintained regular and frequent communication, as appropriate to identify and address harassment and bullying occurring in the workplace. EEO-ICD provided essential support to the EMRO in efforts to strengthen its program administration by reviewing and updating agency policies and practices. IC employees assigned to ODNI workspaces demonstrated a training need to better understand policies and practices to address harassment in the workplace. Based on this need, EEO-ICD and EMRO partnered to deliver quarterly training to identify and address ordinary workplace friction, conflict, and disputes. This effort ensures that federal employees in ODNI facilities remain aware of their EEO rights and timelines as well as ODNI resources and policies to prevent harassment. This resulted in increased employee education and the proper routing and prompt resolution of issues raised by employees.

EEO-ICD also increased training opportunities for the workforce, to include a Brown Bag Series and virtual No FEAR training offerings. The Brown Bag Series offered small group information sessions, some tailored to specific topics, such as disability and religious accommodations, as well as retaliation. To meet the needs of the ODNI workforce during the agency's COVID-19 posture, EEO-ICD ensured compliance with No FEAR training requirements by developing and offering No FEAR training virtually for those employees who were on Weather Safety Leave or working remotely.

Improvements in the Complaint Program

The ODNI's training office ensures that all ODNI employees receive reminders of the No FEAR Act mandatory training requirement and complete the training biennially. New employees are required to take the No FEAR Act training within 90 days of entering on duty, and all employees must take the training biennially. Completion of biennial No FEAR training and annual *Protecting Whistleblowers in the IC* training are required for employees and detailees.

The ODNI continues to offer an EEO briefing during new employee orientation. Throughout the year, EEO-ICD educates 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. In addition, 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). In meeting the commitment outlined in A Pledge to Our People, signed by the heads of each IC element in 2019, EEO-ICD created and directed the production of substantive media content related to a forthcoming web-based training for the ODNI and the IC

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regarding Anti-Harassment. The studio-produced training will be available online and will train employees to recognize, respond, report, and resolve instances of harassment before they cause irreparable harm to the work environment.

During FY 2020, while the agency was in a COVID-19 posture, ODNI continued to process all EEO complaints in accordance with EEOC timelines. Additionally, all investigations of formal complaints were timely conducted in accordance with EEOC's regulations. See Appendix I, Table 11. By implementing innovative approaches to investigations, such as employing the use of court reporters and stenographers to conduct virtual live interviews in processing EEO complaints, EEO-ICD was able to increase efficiencies and ensure thorough and timely Reports of Investigations. During FY 2020, EEO-ICD also established and piloted a Mediator Corps collaboration with the Federal Bureau of Investigation, leading to case resolution and increased employee satisfaction with the complaints process.

APPENDIX

- **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

**ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the
Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR)
Pub. L. 107-174**

	Fiscal Year				
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	2016	2017	2018	2019	2020
Number of Complaints, See 29 C.F.R. § 1614.704(a)-(c)					
Number of Complaints					
Filed during the FY	6	8	5	4	7
Number of Complainants					
Who filed a complaint during the FY	6	8	5	4	7
Who filed two or more complaints during the FY	0	0	0	0	0

	2016	2017	2018	2019	2020
Number of Complaints by Basis, See 29 C.F.R. § 1614.704(d)					
Race	0	4	4	1	2
Color	0	0	2	0	0
Religion	1	0	0	0	0
Retaliation	3	6	4	1	2
Sex	1	4	3	1	4
Pregnancy	0	0	0	0	0
National Origin	1	0	0	0	0
Equal Pay	0	2	0	0	1
Age	3	2	2	0	2
Disability	3	2	1	1	3
Genetic Information Non-Disclosure	1	0	0	0	0
Non-EEO	1	0	0	0	2

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

Number of Complaints by Issue, See 29 C.F.R. § 1614.704(e)	2016	2017	2018	2019	2020
Appointment/Hire	1	0	0	0	1
Assignment of Duties	0	3	3	0	2
Awards	0	1	0	0	0
Conversion to Full-Time	0	0	0	0	0
Disciplinary Action					
1. Demotion	0	0	0	0	0
2. Reprimand	0	0	1	0	1
3. Suspension	0	0	0	0	0
4. Removal	0	0	0	0	0
5. Other	0	1	0	0	0
Duty Hours	0	0	0	0	0
Evaluation/Appraisal	1	3	3	0	2
Examination/Test	0	0	0	0	0
Harassment					
1. Non-Sexual	2	8	2	0	2
2. Sexual	0	0	0	0	0
Medical Examination	1	0	0	0	0
Pay/Overtime	0	1	1	0	1
Promotion/Non-Selection	2	1	1	0	2
Reassignment					
1. Denied	0	0	0	0	0
2. Directed	1	1	0	0	0
Reasonable Accommodation	0	0	0	0	1
Reinstatement	0	0	0	0	0
Religious Accommodation	0	0	0	0	0
Retirement	1	0	0	0	0
Sex-Stereotyping	0	0	0	0	0
Termination	1	1	4	1	0
Terms/Conditions of Employment	2	3	2	0	3

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

Time and Attendance	1	1	0	0	1
Training	0	1	1	0	0
Other	1	1	0	1	0

Average Processing Time, See 29 C.F.R. § 1614.704(f)	2016	2017	2018	2019	2020
1614.704(f)(1) All Pending	307	389	786	577	293
1614.704(f)(2) - No Hearing Requested	92	159	270	163	142
1614.704(f)(3) - Hearing Requested	356	1076	1475	1241	444

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)	2016	2017	2018	2019	2020
Number of Complaints Dismissed	1	3	4	0	1
Average Number of Days Pending Prior to Dismissal	150	73	44	0	59

Number of Complaints Withdrawn, See 29 C.F.R. § 1614.704(h)	2016	2017	2018	2019	2020
Number of Complaints Withdrawn	2	0	2	0	1

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

Number of Final Agency Actions, See 29 C.F.R. § 1614.704(i)	2016		2017		2018		2019		2020	
	#	%	#	%	#	%	#	%	#	%
1614.704(i)(1): Total Number of Findings of Discrimination	0		0		1		0		0	
1614.704(i)(2): - Without a Hearing	0		0		0		0		0	
1614.704(i)(2) - After a Hearing	0		0		1	100	0		0	

Number of Final Actions Involving a Finding of Discrimination by Basis, Reported Pursuant to 29 C.F.R. § 1614.704(j)	2016		2017		2018		2019		2020	
	#	%	#	%	#	%	#	%	#	%
* Rendered without a hearing	0		0		1**		0		0	
** Rendered after a hearing	0		0		1	100	0		0	
Total Number of Findings of Discrimination	0		0		0		0		0	
Race										
1. American Indian/Alaskan Native	0		0		0		0		0	
2. Asian/Pacific Islander	0		0		1	100	0		0	
3. Black	0		0		0		0		0	
4. White	0		0		0		0		0	
5. Two or More Races	0		0		0		0		0	

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

Color	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0
Retaliation	0	0	1	0	0	100	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
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

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

Number of Final Agency Actions Involving a Finding of Discrimination by Issue, Reported Pursuant to 29 C.F.R. § 1614.704(k)	2016	2017	2018	2019	2020
Total Number of Findings of Discrimination	0	0	1	0	0
Appointment/Hire	0	0	0	0	0
Assignment of Duties	0	0	1	0	0
Awards	0	0	0	0	0
Conversion to Full-Time	0	0	0	0	0
Disciplinary Action	0	0	0	0	0
1. Demotion	0	0	0	0	0
2. Reprimand	0	0	0	0	0
3. Suspension	0	0	0	0	0
4. Removal	0	0	0	0	0
5. Other	0	0	0	0	0
Duty Hours	0	0	0	0	0
Evaluation/Appraisal	0	0	0	0	0
Examination/Test	0	0	0	0	0
Harassment	0	0	0	0	0
1. Non-Sexual	0	0	0	0	0
2. Sexual	0	0	0	0	0
Medical Examination	0	0	0	0	0
Pay/Overtime	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0
Reassignment	0	0	0	0	0
1. Denied	0	0	0	0	0
2. Directed	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0
Reinstatement	0	0	0	0	0
Retirement	0	0	0	0	0

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

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

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

ODNI's Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) for FY 2020

Number of Complaints Pending at Any Time During the Fiscal Year that Exceeded the Authorized Investigation Timeframe, Reported Pursuant to 29 C.F.R. § 1614.704(m)	2016	2017	2018	2019	2020
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
Number of Pending Complaints that Exceeded the Investigation Time Authorized by 29 C.F.R. § 1614.108(e)	0	0	0	0	0