

116TH CONGRESS
1ST SESSION

S. 497

To improve diversity and inclusion in the workforce of national security agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2019

Mr. CARDIN (for himself, Mr. BOOKER, Mr. COONS, Mr. SCHATZ, Mrs. SHAHEEN, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To improve diversity and inclusion in the workforce of national security agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Security Di-
5 versity and Inclusion Workforce Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The greatest national asset of the United
9 States in protecting the homeland and advancing the

1 interests of the United States abroad is the talent
2 and diversity of the national security workforce.

3 (2) The United States has made important
4 progress toward harnessing the extraordinary range
5 of backgrounds, cultures, perspectives, skills, and ex-
6 periences of the population of the United States to-
7 ward keeping the United States safe and strong.

8 (3) The 2015 National Security Strategy recog-
9 nized that the diversity of the national security
10 workforce of the United States is a strategic asset
11 that enhances the ability of the United States to
12 lead on the global stage.

13 (4) Secretary of State Mike Pompeo remarked
14 at his nomination hearing before the Committee on
15 Foreign Relations of the Senate in April 2018 that
16 he deeply believed the workforce of the Department
17 of State must be diverse “in every sense of the
18 word”.

19 (5) In March 2011, the Military Leadership Di-
20 versity Commission demonstrated that minorities
21 and women are still underrepresented among the top
22 leadership of the Armed Forces, as compared with
23 the members they lead.

24 (6) Although African Americans, Native Ameri-
25 cans (including Native Hawaiians), and Asians rep-

1 resent 21 percent of the workforce of the Depart-
2 ment of State, in 2018, only 8 percent and 7 percent
3 of the senior positions in the civil service and the
4 Foreign Service at the Department of State, respec-
5 tively, were occupied by members of these groups.

6 (7) Although Latinos or Hispanics, represent 7
7 percent of the workforce of the Department of State,
8 in 2018, only 5 percent of the senior positions in the
9 civil service and the Foreign Service at the Depart-
10 ment of State were occupied by members of these
11 groups.

12 (8) As of 2018, African Americans, Asians, and
13 other racial minorities (including Native Hawaiians
14 and other Pacific Islanders, American Indians, and
15 Alaska Natives) represented 33 percent of the active
16 duty enlisted members of the Armed Forces but only
17 23 percent of the officer corps of the Armed Forces,
18 while members of the Armed Forces of Hispanic ori-
19 gin represented 18 percent of the enlisted force but
20 only 8 percent of the officer corps.

21 (9) In the intelligence community, African
22 Americans, Latinos or Hispanics, Native Americans,
23 and Asians, along with other minority groups, rep-
24 resented 25 percent of the employees, but only 13
25 percent of the senior positions.

1 (10) The percentages of Latinos or Hispanics
2 as part of the overall Federal workforce and in sen-
3 ior positions in the Federal workforce are even
4 lower, at 8.6 percent and 4.6 percent, respectively,
5 as compared to the general population of the United
6 States, which is 17 percent Latino or Hispanic.

7 (11) With regard to gender diversity, of the in-
8 dividuals in senior positions in the civil service or the
9 Foreign Service at the Department of State 40 per-
10 cent and 32 percent are female, respectively. For the
11 Department of Defense, 24 percent of the individ-
12 uals in senior civilian positions are female, of the
13 senior grades of the Armed Forces, 8 percent of the
14 officers are female, and 12 percent of enlisted mem-
15 bers of the Armed Forces are females. Of the indi-
16 viduals in senior positions in the intelligence commu-
17 nity, 30 percent are female, compared to the overall
18 Federal workforce, which is 42 percent female.

19 (12) In concert with the findings of the Military
20 Leadership Diversity Commission, the amendments
21 made by section 519 of the National Defense Au-
22 thorization Act for Fiscal Year 2013 (Public Law
23 112–239; 126 Stat. 1721) mandated that the Armed
24 Forces develop and implement a plan to accurately
25 measure the efforts of the Department of Defense

1 and Coast Guard to “achieve a dynamic, sustainable
2 level of members of the armed forces (including re-
3 serve components) that, among both commissioned
4 officers and senior enlisted personnel of each armed
5 force, will reflect the diverse population of the
6 United States eligible to serve in the armed forces,
7 including gender specific, racial, and ethnic popu-
8 lations.”.

9 (13) The amendments made by section 1011 of
10 the Intelligence Reform and Terrorism Prevention
11 Act of 2004 (Public Law 108–458; 118 Stat. 3643)
12 called on the intelligence community to prescribe
13 personnel policies and programs that ensure its per-
14 sonnel “are sufficiently diverse for purposes of the
15 collection and analysis of intelligence through the re-
16 cruitment and training of women, minorities, and in-
17 dividuals with diverse ethnic, cultural, and linguistic
18 backgrounds”.

19 (14) The Department of State Authorities Act,
20 Fiscal Year 2017 (Public Law 114–323), urges the
21 State Department to promote a diverse representa-
22 tion among mid- and senior-level career professionals
23 and section 101 of the Foreign Service Act of 1980
24 (22 U.S.C. 3901) urges the Department of State to
25 develop policies to encourage the entry into and ad-

1 vancement in the Foreign Service by persons from
2 all segments of American society.

3 **SEC. 3. STATEMENT OF POLICY.**

4 It is the policy of the United States that—

5 (1) in order to protect the homeland and ad-
6 vance the interests of the United States abroad, na-
7 tional security agencies of the Federal Government
8 must have a workforce that reflects the rich com-
9 position and talent of its citizenry;

10 (2) the skills, knowledge, perspectives, ideas,
11 and experiences of all of the members of the work-
12 force of national security agencies contribute to the
13 vitality and success of their national security mis-
14 sion;

15 (3) promoting diversity and inclusion within the
16 national security workforce must be a joint effort
17 and requires engagement by senior leadership, man-
18 agers, and the entire workforce, as well as effective
19 collaboration among those responsible for human re-
20 sources, equal employment opportunity, and diver-
21 sity and inclusion issues; and

22 (4) as the United States becomes more diverse
23 and the challenges it faces more complex, the United
24 States must continue to invest in policies to recruit,

1 retain, and develop the best and brightest from all
2 segments of the population of the United States.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

5 (1) **APPLICANT FLOW DATA.**—The term “appli-
6 cant flow data” means data that tracks the rate of
7 applications for job positions among demographic
8 categories.

9 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
10 **TEES.**—The term “appropriate congressional com-
11 mittees” means—

12 (A) the Committee on Foreign Relations,
13 the Committee on Armed Services, the Com-
14 mittee on Homeland Security and Govern-
15 mental Affairs, the Select Committee on Intel-
16 ligence, and the Committee on Appropriations
17 of the Senate; and

18 (B) the Committee on Foreign Affairs, the
19 Committee on Armed Services, the Committee
20 on Homeland Security, the Permanent Select
21 Committee on Intelligence, and the Committee
22 on Appropriations of the House of Representa-
23 tives.

24 (3) **DIVERSITY.**—The term “diversity” means
25 diversity of persons based on gender, race, ethnicity,

1 disability status, veteran status, sexual orientation,
2 gender identity, national origin, and other demo-
3 graphic categories.

4 (4) FOREIGN SERVICE.—The term “Foreign
5 Service” has the meaning given that term in section
6 102 of the Foreign Service Act of 1980 (22 U.S.C.
7 3902).

8 (5) INTELLIGENCE COMMUNITY.—The term
9 “intelligence community” has the meaning given
10 that term in section 3 of the National Security Act
11 of 1947 (50 U.S.C. 3003).

12 (6) NATIONAL SECURITY AGENCY.—The term
13 “national security agency” means—

14 (A) the Department of State;

15 (B) the United States Agency for Inter-
16 national Development;

17 (C) the Department of Defense;

18 (D) the Armed Forces;

19 (E) each element of the intelligence com-
20 munity;

21 (F) the Office of International Affairs and
22 the Office of Critical Infrastructure Protection
23 of the Department of the Treasury;

1 (G) the National Security Division of the
2 Department of Justice and the Federal Bureau
3 of Investigation;

4 (H) the Department of Homeland Secu-
5 rity;

6 (I) the Foreign Agricultural Service of the
7 Department of Agriculture; and

8 (J) any other Federal agency that is pri-
9 marily engaged in diplomacy, development, de-
10 fense, intelligence, law enforcement, or home-
11 land security.

12 (7) MEMBER OF THE FOREIGN SERVICE.—The
13 term “member of the Foreign Service” means a
14 member of the Foreign Service described in section
15 103 of the Foreign Service Act of 1980 (22 U.S.C.
16 3903).

17 (8) WORKFORCE.—The term “workforce”
18 means an individual serving in a position—

19 (A) in the civil service (as defined in sec-
20 tion 2101 of title 5, United States Code);

21 (B) as a member of the Foreign Service; or

22 (C) as an officer or enlisted member of an
23 armed force.

1 **SEC. 5. COLLECTION, ANALYSIS, AND DISSEMINATION OF**
2 **WORKFORCE DATA.**

3 (a) INITIAL REPORTING.—

4 (1) IN GENERAL.—Not later than 180 days
5 after the date of enactment of this Act, and subject
6 to paragraph (3), the head of each national security
7 agency shall make available to the public, the appro-
8 priate congressional committees, and the workforce
9 of the national security agency a report which in-
10 cludes aggregate demographic data and other infor-
11 mation regarding the diversity and inclusion efforts
12 of the workforce of the national security agency.

13 (2) CONTENTS.—A report made available under
14 paragraph (1)—

15 (A) shall include unclassified reports and
16 barrier analyses relating to diversity and inclu-
17 sion efforts;

18 (B) shall include aggregate demographic
19 data—

20 (i) by segment of the workforce of the
21 national security agency and grade or
22 rank;

23 (ii) relating to attrition and promotion
24 rates;

25 (iii) that addresses the compliance of
26 the national security agency with validated

1 inclusion metrics, such as the New Inclu-
2 sion Quotient index score; and

3 (iv) that provides demographic com-
4 parisons to the relevant nongovernmental
5 labor force and the relevant civilian labor
6 force;

7 (C) shall include an analysis of applicant
8 flow data, including the percentage and level of
9 positions for which data are collected, and a
10 discussion of any resulting policy changes or
11 recommendations;

12 (D) shall include demographic data relat-
13 ing to participants in professional development
14 programs of the national security agency and
15 the rate of placement into senior positions for
16 participants in such programs;

17 (E) shall include any voluntarily collected
18 demographic data relating to the membership of
19 any external advisory committee or board to
20 which individuals in senior positions in the na-
21 tional security agency appoint members; and

22 (F) may include data in proportions or
23 percentages to account for concerns relating to
24 the protection of classified information.

1 (3) INTELLIGENCE COMMUNITY.—The elements
2 of the intelligence community may make available a
3 single report with respect to the diversity and inclu-
4 sion efforts of the workforce of the elements of the
5 intelligence community under this subsection.

6 (b) UPDATES.—After making available a report
7 under subsection (a), the head of each national security
8 agency shall annually provide a report (which may be pro-
9 vided as part of an annual report required under another
10 provision of law) to the workforce of the national security
11 agency (including senior leadership), the public, and the
12 appropriate congressional committees that includes—

13 (1) demographic data and information on the
14 status of diversity and inclusion efforts of the na-
15 tional security agency;

16 (2) an analysis of applicant flow data, including
17 the percentage and level of positions for which data
18 are collected, and a discussion of any resulting policy
19 changes or recommendations; and

20 (3) demographic data relating to participants in
21 professional development programs of the national
22 security agency and the rate of placement into sen-
23 ior positions for participants in such programs.

24 (c) EXPAND THE COLLECTION AND ANALYSIS OF
25 VOLUNTARY APPLICANT FLOW DATA.—

1 (1) IN GENERAL.—The head of each national
 2 security agency shall develop a system to collect and
 3 analyze applicant flow data for as many positions
 4 within the national security agency as practicable, in
 5 order to identify areas for improvement in attracting
 6 diverse talent, with particular attention to senior
 7 and management positions.

8 (2) PHASED IMPLEMENTATION.—The collection
 9 of applicant flow data may be implemented by the
 10 head of a national security agency in a phased ap-
 11 proach commensurate with the resources available to
 12 the national security agency.

13 (d) IDENTIFY ADDITIONAL CATEGORIES FOR VOL-
 14 UNTARY DATA COLLECTION OF CURRENT EMPLOYEES.—

15 (1) IN GENERAL.—The head of each national
 16 security agency may submit to the Office of Manage-
 17 ment and Budget and to the appropriate congres-
 18 sional committees the recommendation of the head
 19 regarding whether the national security agency
 20 should voluntarily collect more detailed data on de-
 21 mographic categories in addition to the race and eth-
 22 nicity categories specified in the statistical policy di-
 23 rective issued by the Office of Management and
 24 Budget entitled “Standards for Maintaining, Col-

lecting, and Presenting Federal Data on Race and Ethnicity”.

(2) PROCESS.—In making a recommendation under paragraph (1), the head of a national security agency shall—

(A) engage in close consultation with internal stakeholders, such as employee resource or affinity groups;

(B) ensure that there is clear communication with the workforce of the national security agency—

(i) to explain the purpose of the potential collection of such data; and

(ii) regarding legal protections relating to any anticipated use of such data; and

(C) ensure adherence to relevant standards and guidance issued by the Federal Government.

SEC. 6. PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND TOOLS.

(a) CONDUCT STAY AND EXIT INTERVIEWS OR SURVEYS.—

(1) RETAINED MEMBERS.—Each national security agency shall conduct periodic interviews with a

1 representative cross-section of the members of the
2 workforce of the national security agency to—

3 (A) understand the reasons of the mem-
4 bers for remaining in a position in the national
5 security agency; and

6 (B) receive feedback on workplace policies,
7 professional development opportunities, and
8 other issues affecting the decision of the mem-
9 bers to remain.

10 (2) DEPARTING MEMBERS.—Each national se-
11 curity agency shall provide an opportunity for an
12 exit interview or survey to each member of the work-
13 force of the national security agency who separates
14 from service with the national security agency, to
15 understand better the reasons of the member for
16 leaving.

17 (3) USE OF ANALYSIS FROM INTERVIEWS AND
18 SURVEYS.—Each national security agency shall ana-
19 lyze and use information obtained through interviews
20 and surveys under paragraphs (1) and (2), including
21 to evaluate—

22 (A) if and how the results of the interviews
23 differ by gender, race, national origin, sexual
24 orientation, gender identity, disability status,
25 and other demographic categories; and

1 (B) whether to implement any policy
 2 changes or make any recommendations as part
 3 of a report required under section 5.

4 (b) EXPAND PROVISION OF PROFESSIONAL DEVEL-
 5 OPMENT AND CAREER ADVANCEMENT OPPORTUNITIES.—

6 (1) IN GENERAL.—Each national security agen-
 7 cy is authorized to expand professional development
 8 opportunities that support the mission needs of the
 9 national security agency, such as—

10 (A) academic programs;

11 (B) private-public exchanges; and

12 (C) detail assignments to relevant positions
 13 in—

14 (i) private or international organiza-
 15 tions;

16 (ii) State, local, and tribal govern-
 17 ments;

18 (iii) other branches of the Federal
 19 Government; or

20 (iv) professional schools of inter-
 21 national affairs.

22 (2) TRAINING FOR SENIOR POSITIONS.—

23 (A) IN GENERAL.—Each national security
 24 agency shall offer, or sponsor members of the
 25 workforce of the national security agency to

1 participate in, a Senior Executive Service can-
2 didate development program or other program
3 that trains members of the workforce of the na-
4 tional security agency on the skills required for
5 appointment to senior positions in the national
6 security agency.

7 (B) REQUIREMENTS.—In determining
8 which members of the workforce of the national
9 security agency are granted professional devel-
10 opment or career advancement opportunities, a
11 national security agency shall—

12 (i) ensure any program offered or
13 sponsored by the national security agency
14 under subparagraph (A) comports with the
15 requirements of subpart C of part 412 of
16 title 5, Code of Federal Regulations, or
17 any successor thereto, including merit
18 staffing and assessment requirements;

19 (ii) consider the number of expected
20 vacancies in senior positions as a factor in
21 determining the number of candidates to
22 select for such programs;

23 (iii) understand how participation in
24 any program offered or sponsored by the
25 national security agency under subpara-

graph (A) differs by gender, race, national origin, sexual orientation, gender identity, disability status, and other demographic categories; and

(iv) actively encourage participation from a range of demographic categories, especially from categories with consistently low participation.

(3) TRACKING DATA.—Each national security agency shall—

(A) track demographic data relating to participants in professional development programs and the rate of placement into senior positions for participants in such programs; and

(B) evaluate such data on an annual basis to look for ways to improve outreach and recruitment for such programs consistent with merit system principles.

(c) ASSIGNMENT RESTRICTIONS.—

(1) IN GENERAL.—Each national security agency that places assignment restrictions on members of the workforce of the national security agency or otherwise prohibits certain geographic assignments due to a security determination shall ensure a review process exists for such a restriction or prohibition

1 that is consistent with part 147 of title 32, Code of
2 Federal Regulations (relating to adjudicative guide-
3 lines for determining eligibility for access to classi-
4 fied information), or any successor thereto, and any
5 applicable counterintelligence considerations.

6 (2) NOTICE.—Each national security agency
7 shall ensure that members of the workforce of the
8 national security agency affected by a restriction or
9 prohibition described in paragraph (1) are informed
10 of the right to seek review and the process for doing
11 so.

12 **SEC. 7. LEADERSHIP ENGAGEMENT AND ACCOUNTABILITY.**

13 (a) REWARD AND RECOGNIZE EFFORTS TO PRO-
14 MOTE DIVERSITY AND INCLUSION.—

15 (1) IN GENERAL.—Each national security agen-
16 cy shall implement performance and advancement
17 requirements that reward and recognize the efforts
18 of individuals in senior positions and supervisors in
19 the national security agency in fostering an inclusive
20 environment and cultivating talent consistent with
21 merit system principles, such as through participa-
22 tion in mentoring programs or sponsorship initia-
23 tives, recruitment events, and other similar opportu-
24 nities.

1 (2) OUTREACH EVENTS.—Each national secu-
 2 rity agency shall create opportunities for individuals
 3 in senior positions and supervisors in the national
 4 security agency to participate in outreach events and
 5 to discuss issues relating to diversity and inclusion
 6 with the workforce on a regular basis, including with
 7 employee resource groups.

8 (b) COLLECT AND DISSEMINATE VOLUNTARY DEMO-
 9 GRAPHIC DATA OF EXTERNAL ADVISORY COMMITTEES
 10 AND BOARDS.—Each national security agency that has an
 11 external advisory committee or board to which individuals
 12 in senior positions in the national security agency appoint
 13 members is strongly encouraged by Congress to—

14 (1) collect voluntary demographic data from the
 15 members of committee or board; and

16 (2) ensure the external advisory committee or
 17 board is developed, reviewed, and carried out by
 18 teams that represent the diversity of the organiza-
 19 tion.

20 (c) EXPAND TRAINING ON BIAS, INCLUSION, AND
 21 FLEXIBLE WORK POLICIES.—

22 (1) IN GENERAL.—Each national security agen-
 23 cy shall—

24 (A) expand the provision of training on
 25 bias, including implicit or unconscious bias,

1 micro-inequities, inclusion, and flexible work
2 policies to the workforce of the national security
3 agency; and

4 (B) make micro-inequities and bias train-
5 ing, including on implicit or unconscious bias,
6 mandatory for—

7 (i) individuals in senior positions in
8 the national security agency;

9 (ii) other individuals holding manage-
10 ment positions in the national security
11 agency; and

12 (iii) individuals in positions at the na-
13 tional security agency having responsibil-
14 ities relating to outreach, recruitment, hir-
15 ing, career development, promotion, or se-
16 curity clearance adjudication.

17 (2) PHASED IMPLEMENTATION.—The provision
18 of training required under paragraph (1) may be im-
19 plemented in a phased approach commensurate with
20 the resources of the national security agency.

21 (3) LOW INCLUSION SCORES.—Each national
22 security agency shall make available training on im-
23 plicit or unconscious bias for members of the work-
24 force of a bureau, directorate, division, office, or
25 other component of the national security agency the

1 inclusion scores of which, such as those measured by
2 the New Inclusion Quotient index score, rank below
3 the average for the national security agency for a
4 period of 3 years or longer.

5 (4) BEST PRACTICES.—Each national security
6 agency shall give special attention to ensuring the
7 continuous incorporation of research-based best
8 practices in training provided under this subsection,
9 including best practices relating to addressing the
10 intersection between certain demographics and job
11 positions.

12 **SEC. 8. RECRUITMENT.**

13 (a) IN GENERAL.—Each national security agency
14 should—

15 (1) continue to seek a diverse and talented pool
16 of applicants;

17 (2) have diversity recruitment as a goal of the
18 human resources department or equivalent entity,
19 with outreach at appropriate colleges, universities,
20 and diversity organizations and professional associa-
21 tions; and

22 (3) intensify, identify, and build relationships
23 with qualified potential minority candidates.

24 (b) SCOPE.—The diversity recruitment initiatives de-
25 scribed in subsection (a) should include—

1 (1) recruiting at historically black colleges and
2 universities, Hispanic-serving institutions, women’s
3 colleges, and colleges that typically serve majority
4 minority populations;

5 (2) sponsoring and recruiting at job fairs in
6 urban communities;

7 (3) placing job advertisements in newspapers,
8 magazines, and job sites oriented toward diverse
9 groups;

10 (4) providing opportunities through highly re-
11 spected, international leadership programs, that
12 focus on diversity recruitment and retention; and

13 (5) cultivating partnerships with organizations
14 dedicated to the advancement of the profession of
15 international affairs and national security to advance
16 shared diversity goals.

17 **SEC. 9. GENERAL PROVISIONS.**

18 (a) **RULE OF CONSTRUCTION.**—Nothing in this Act
19 shall be construed to impair or otherwise affect—

20 (1) the authority granted by law to an executive
21 department, agency, or the head thereof, or the sta-
22 tus of that executive department or agency within
23 the Federal Government; or

1 (2) the functions of the Director of the Office
2 of Management and Budget relating to budgetary,
3 administrative, or legislative proposals.

4 (b) IMPLEMENTATION.—This Act shall be imple-
5 mented consistent with applicable law.

6 (c) NO PRIVATE RIGHT OF ACTION.—This Act is not
7 intended to, and does not, create any right or benefit, sub-
8 stantive or procedural, enforceable at law or in equity by
9 any party against the United States, its departments,
10 agencies, or entities, its officers, employees, or agents, or
11 any other person.

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