

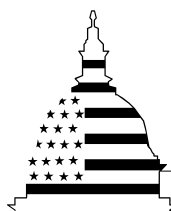
GAO

Report to the Honorable Eddie Bernice
Johnson, House of Representatives

June 2003

EQUAL EMPLOYMENT OPPORTUNITY

Hiring, Promotion, and Discipline Processes at DEA



G A O

Accountability ★ Integrity ★ Reliability



GAO
Accountability • Integrity • Reliability

Highlights

Highlights of [GAO-03-413](#), a report to the Honorable Eddie Bernice Johnson, House of Representatives

Why GAO Did This Study

A 1981 U.S. District Court decision found that the Drug Enforcement Administration (DEA) had discriminated against African American special agents in a number of personnel practices. Over the years, the plaintiffs and DEA had agreed to remedies in many of these areas. However, minority representatives continued to raise issues in three areas—hiring, promotion, and discipline. GAO was asked to examine DEA's current processes for hiring, promoting, and disciplining special agents, and provide information about racial, ethnicity, and gender differences in these three areas.

What GAO Recommends

GAO recommendations to DEA include

- initiating a process to monitor hiring results to identify differences in selection rates among groups, determine why they occur, and what, if anything, can be done to reduce the differences while maintaining high standards and
- expanding the study of disciplinary actions taken against African American versus white special agents to determine whether discipline is administered fairly to all racial, ethnic, and gender groups of special agents.

In commenting on this report, the Acting Administrator of DEA agreed with our recommendations and listed a number of actions being taken to implement them.

www.gao.gov/cgi-bin/getrpt?GAO-03-413.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Victor S. Rezendes at (202) 512-6808.

EQUAL EMPLOYMENT OPPORTUNITY

Hiring, Promotion, and Discipline Processes at DEA

What GAO Found

During the October 1997 through March 2002 period, African American, Hispanic, and white applicants to be special agents passed DEA's medical requirements and interview process at about the same rates. However, African American and Hispanic applicants had lower passing rates on (1) the test of an applicant's ability to recall and write about a video of a drug-related enforcement action and (2) suitability requirements measured through a background investigation and other tests. DEA's hiring procedures are based on criteria in federal regulations, professional standards, and standards established by subject matter experts. However, DEA had not studied its hiring requirements to see why its procedures resulted in different selection rates and whether they could be modified to reduce differences while maintaining the high standards necessary for special agents.

There were no statistically significant differences in promotion rates among the various racial, ethnic, and gender groups during fiscal years 1997 through 2001. DEA has a rigorous and validated competency-based process that uses job simulations to assess capabilities at the target grade level. However, the job-relatedness of a key step involving recommending special agents for promotion had not been established and our analysis showed that African American and Hispanic special agents were recommended for promotion at significantly lower rates. Despite differences in recommendation rates, DEA's promotion decisions mirrored the race, ethnic, and gender makeup of the agency's special agent workforce. Additionally, the agency, working with a diverse panel of special agents, subsequently developed a revised recommendation process. At the time of GAO's review, DEA and the African American representatives were involved in mediation to reach final agreement.

Disciplinary data for fiscal years 1997 to 2001 showed that the proportion of African American, Hispanic, and women special agents disciplined for misconduct was significantly higher than their representation in the DEA special agent workforce. These higher rates reflect that African Americans, Hispanics, and women had a significantly higher percentage of allegations of misconduct lodged against them and that a significantly higher percentage of these allegations were substantiated by investigations and resulted in disciplinary action. A recent study by an outside contractor found DEA's disciplinary process to be fair and nondiscriminatory, but that study only considered African Americans and whites and not women or other minority groups.

Contents

Letter	1
Results in Brief	2
Background	5
The Diversity of DEA's Special Agent Workforce	10
A Higher Proportion of Minority Applicants Did Not Meet Hiring Requirements	15
No Statistically Significant Differences in Promotion Rates	25
DEA's Discipline Process Has Been Found to Be Nondiscriminatory	34
Employee Views on Promotion and Discipline	40
Conclusions	42
Recommendations for Executive Action	44
Agency Comments and Our Evaluation	44

Appendixes	
Appendix I: Objectives, Scope, and Methodology	47
DEA Special Agent Workforce Diversity	47
DEA's Hiring, Promotion, and Discipline Processes	48
Appendix II: Physical Task Test Minimum Requirements	51
Appendix III: Competencies in Assessing GS-13 and GS-14 Special Agents for Promotion	52
Performance Rating Competencies for GS-13 and GS-14 Special Agents	52
Competencies Measured by Assessment Center Job Simulations	52
Interim Special Agent in Charge/Office Head Recommendation Process	53
Proposed SAC/Office Head Recommendation Process	54
Appendix IV: Comments from the Drug Enforcement Administration	55

Tables	
Table 1: Demographic Distribution of the Federal Workforce and Criminal Investigators (Special Agents) in DEA, Governmentwide, and the Nonfederal Workforce	11
Table 2: Demographics of DEA's Special Agent Workforce, 1980-2002	12
Table 3: Distribution of DEA Special Agents in Nonsupervisory, Supervisory, and SES Positions by EEO Group, September 2002	13

Table 4: Demographic Profile of Applicants under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	16
Table 5: Percentage of Applicants Meeting Minimum Requirements under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	17
Table 6: Percentage of Applicants Passing Written Assessment under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	18
Table 7: Applicant Interview Passing Rates under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	19
Table 8: Applicant Medical Examination Passing Rates under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	19
Table 9: Percentage of Applicants Passing the Physical Task Test under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	20
Table 10: Percentage of Applicants Found Suitable under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	22
Table 11: Percentage of Applicants Found Suitable by the 1811 Hiring Panel, September 29, 2000, to May 7, 2002	23
Table 12: Overall Selection Rates for Applicants for Whom DEA Made Hiring Eligibility Determinations under BA-98-01 and BA-20-00, by EEO Group, October 15, 1997, to March 31, 2002	24
Table 13: Demographic Profile of Applicants Who Met Minimum Requirements and Applicants Hired under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002	24
Table 14: Special Agents Participating in the SAPP, 1997-2001	26
Table 15: Average SAPP Scores, 1997-2001	30
Table 16: Frequency of Applicants Appearing on Best-Qualified Lists Being Recommended by SACs, 2000-01	32
Table 17: Individuals on at Least One Best-Qualified List from Which Promotions Were Made and Individuals Selected for Promotion, by EEO Group, Fiscal Years 1997-2001	34
Table 18: Special Agents Disciplined Compared with Special Agent Population, by EEO Group, Fiscal Years 1997-2001	36
Table 19: Distribution of Cases of Alleged Misconduct Involving Special Agents, by EEO Group, Compared with Workforce Representation, Fiscal Years 1997-2001	37
Table 20: Cases of Alleged Misconduct Involving Special Agents That Resulted in Disciplinary Action, by EEO Group, Fiscal Years 1997-2001	37

Table 21: DEA Physical Task Test Minimum Performance Requirements	51
Table 22: Performance Rating Competencies for GS-13 and GS-14 Special Agents	52
Table 23: Competencies Measured by Assessment Center Job Simulations in 2001	53

Abbreviations

ARTS	Agent Recruiting and Tracking System
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
GS	General Schedule
DEA	Drug Enforcement Administration
MSPB	Merit Systems Protection Board
OPM	Office of Personnel Management
OPR	Office of Professional Responsibility
SAC	Special Agent in Charge
SAPP	Special Agent Promotion Program
SES	senior executive service

This is a work of the U.S. Government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. It may contain copyrighted graphics, images or other materials. Permission from the copyright holder may be necessary should you wish to reproduce copyrighted materials separately from GAO's product.



United States General Accounting Office
Washington, D.C. 20548

June 10, 2003

The Honorable Eddie Bernice Johnson
House of Representatives

Dear Ms. Johnson:

In 1981, ruling on a class action racial discrimination lawsuit brought by African American special agents, a U.S. district court found that the Drug Enforcement Administration (DEA)¹ had discriminated against the agents in a variety of personnel practices. Some 20 years have passed since the initial decision, and not all areas covered by the court's orders have been finalized, particularly in regard to promotions. In your role as Chair of the Congressional Black Caucus, minority representatives of DEA's special agents continued to raise issues with you about some of the personnel practices at DEA. Based on discussions with your office, we agreed to (1) develop information on the diversity of DEA's special agent workforce and (2) examine the processes DEA has put in place to provide for fair and nondiscriminatory hiring, promoting, and disciplining of special agents and provide information about racial, ethnic, and gender differences in those three areas.

With regard to the diversity of DEA's special agent workforce, we developed information by race, ethnicity, and gender for each pay grade level. To examine DEA's processes for hiring, promoting, and disciplining special agents, we reviewed policies and procedures and discussed them with knowledgeable officials and representatives of groups representing minority special agents. To identify the results that have been achieved, we analyzed data by race, ethnicity, and gender generally for fiscal years 1997 through 2001, the 5 most recent fiscal years for which data were available, with regard to how applicants fared at each step of DEA's hiring process, promotions of special agents to the General Schedule (GS) grade 14 and 15 levels, and disciplinary actions taken. Our analyses were not designed to prove or disprove discrimination; rather, they were designed to provide information about race, ethnicity, and gender differences in personnel actions. In analyzing hiring actions, we used the 80 percent rule set out in the federal government's *Uniform Guidelines on Employee Selection*

¹DEA, an agency within the Department of Justice, enforces the nation's controlled substances laws and regulations in the United States and worldwide. DEA has 21 domestic field divisions with more than 200 offices and 79 foreign field offices in 50 countries.

Procedures. Under the 80 percent rule, a selection rate for a racial, ethnic, or gender group that is less than 80 percent of the selection rate for the group with the highest rate is considered a substantially different rate of selection that usually requires an employer to study the job relatedness of selection procedures. To analyze differences in promotion and disciplinary actions, we used standard statistical techniques. We did our work from September 2001 through February 2003 in accordance with generally accepted government auditing standards. Further details about our methodology are discussed in appendix I.

Results in Brief

The diversity of DEA's special agent (criminal investigator) workforce was below overall government workforce percentages but generally comparable with the governmentwide population of criminal investigators, except for women. In September 2002, whites made up 80.3 percent, African Americans 8.2 percent, Hispanics 8.8 percent, Asian/Pacific Islanders 2.2 percent, and Native Americans 0.5 percent of DEA's special agents. These percentages compared with governmentwide criminal investigator levels of 80.3 percent white, 7.1 percent African American, 8.9 percent Hispanic, 2.7 percent Asian/Pacific Islanders, and 1 percent Native American. Women were 8.3 percent of special agents in DEA but 16.4 percent of criminal investigators governmentwide. Minority representation in DEA's special agent workforce resembles an inverted pyramid, with proportional representation of minority special agents in senior executive service (SES) and supervisory special agent positions higher than in nonsupervisory positions. In September 2002, minorities represented 36.7 percent of SES special agents, 23.2 percent of supervisory special agents, and 18.4 percent of the nonsupervisory agents. Women, on the other hand, were 8.8 percent of the nonsupervisory special agents, which was more than their representation among supervisory special agents (6.6 percent) but less than their representation among SES special agents (10.2 percent). Because of the relatively low representation of minorities and women in the lower ranks of special agents, DEA could face problems in enhancing, or even maintaining, diversity in the upper ranks in the near future as attrition occurs, especially if DEA experiences a high level of retirements like that expected governmentwide. However, DEA does not have a clear picture of future workforce trends because the agency has not prepared a workforce analysis that takes into account the demographics of the workforce, including age, grade, retirement eligibility, and expected retirements over the next 5-year or longer period.

Our analysis of DEA's hiring decisions showed that a higher proportion of minority applicants did not meet the requirements to become a special agent at some steps in the hiring process. We found that in applying the 80 percent rule, African American men, Hispanic men, and Hispanic women had substantially lower passing rates on the written test intended to measure the ability to observe and recall details and write. In addition, African Americans (men and women) had substantially lower rates of being found suitable for hiring as a special agent, based on the results of background investigations, psychological evaluations, and polygraph tests. Overall, DEA hired 13.7 percent of African American applicants, 15.8 percent of Hispanic applicants, and 22.9 percent of white applicants. The proportion of white applicants hired was substantially higher than that of the two minority groups. The *Uniform Guidelines* require employers to study the job-relatedness of selection procedures when there are substantial differences in the selection rate for any race, ethnic, and gender group. Although DEA's hiring procedures are based on criteria in federal regulations, professional standards, or standards established by subject matter experts, the agency had not studied why its procedures resulted in different selection rates and whether they could be modified to reduce differences while maintaining high standards.

Our analysis showed no statistically significant differences in promotion rates among the various racial, ethnic, and gender groups. However, issues regarding promotions of African Americans to GS-14 and GS-15 special agent positions remain in litigation because the court found in 1999 that DEA's promotion process did not fully comply with title VII of the Civil Rights Act. Although DEA has a validated process to assess special agents' promotion potential, the 1999 court decision found that a subsequent step involving recommendations to the selecting authority by the office heads with vacancies of specific special agents on the best-qualified lists had resulted in an underrepresentation of African American special agents compared with whites, and that this step had not been validated. Interim measures modifying the recommendation process had not eliminated this situation. Although DEA's monitoring and reporting of promotion process results gave particular attention to African American special agents, our analysis also showed that Hispanics were recommended at statistically significant lower rates than white special agents, particularly applicants for GS-14 positions. Although DEA has developed a recommendation process, the agency and the plaintiffs need to resolve issues about implementation and procedures for monitoring the results before the proposed process can be put in place. In addition, the court must approve the process.

Our analysis of disciplinary data for fiscal years 1997 through 2001 showed that the proportion of African American, Hispanic, and women special agents disciplined for misconduct was substantially higher than their representation in the DEA special agent workforce and that this difference was statistically significant. During fiscal years 1997 through 2001, African Americans made up 8.3 percent of the special agent workforce but accounted for about 16 percent of the agents disciplined. Similarly, Hispanics, while making up 8.9 percent of the special agent workforce during the same time period, accounted for about 15 percent of agents disciplined. Women, who made up 7.8 percent of special agents during fiscal years 1997 through 2001, accounted for about 13 percent of agents disciplined. These higher rates reflect that African American, Hispanic, and women special agents had a proportionately higher number of allegations of misconduct lodged against them and that a higher proportion of these allegations were substantiated by investigations and resulted in disciplinary actions. DEA does not know why these differences exist nor does any study offer a reason for them. However, the results of two studies by outside contractors, approved by an oversight group and which we found methodologically sound, found DEA's disciplinary process to be fair and nondiscriminatory. The most recent of these studies, however, compared only disciplinary actions of African American and white special agents. Disciplinary actions related to other minorities and women have not been studied since 1986.

Although there were no statistically significant differences in the promotion rates among the racial, ethnic, and gender groups and studies found DEA's disciplinary process to be fair and nondiscriminatory, minority and women special agents perceived that these processes were not fair and had a disparate effect on minorities. The perceptions may have been driven in part by a lack of data and other information because DEA did not widely share analyses of its promotion and discipline processes with the special agent workforce. Sharing such data could help special agents formulate informed views about the fairness and equity of the promotion and discipline processes.

We recommend that DEA (1) prepare a workforce analysis that takes into account expected attrition to guide DEA's recruiting and hiring, (2) initiate a process to monitor hiring process results, (3) monitor promotion recommendation rates among the racial, ethnic, and gender groups, (4) expand the study of disciplinary actions to include all racial, ethnic, and gender groups, and (5) share information about promotion and discipline processes with its special agent workforce.

In commenting on this report, the Acting Administrator of DEA agreed with our recommendations and listed a number of actions DEA was taking to implement them.

Background

Under title VII of the Civil Rights Act of 1964, as amended,² it is unlawful for employers to discriminate against employees or job applicants on the basis of race, color, religion, sex, or national origin. Other civil rights statutes prohibit discrimination based on age or disability.³ Under these laws, it is illegal to discriminate in any aspect of the terms and conditions of employment, including hiring, firing, disciplinary actions, promotion, pay assignments, and training. In addition, for federal civilian employees, Executive Order 13087 prohibits discrimination based on sexual orientation and the Office of Personnel Management (OPM) has interpreted the Civil Service Reform Act of 1978⁴ to prohibit sexual orientation discrimination in the federal workplace.⁵

Intentionally treating people differently on account of their race, color, religion, sex, national origin, age, or disability is called “disparate treatment.”⁶ Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex. Personnel policies that are neutral on their face but have a substantially different though unintended affect on a group are said to have a “disparate impact” or

²42 U.S.C. §§ 2000e et seq.

³The Age Discrimination in Employment Act of 1967 prohibits discrimination against individuals who are 40 years of age or older (29 U.S.C. §§ 621 et seq.), the Americans with Disabilities Act of 1990 prohibits employment discrimination against qualified individuals with disabilities in the private sector and in state and local governments (42 U.S.C. §§ 12111 et seq.), and the Rehabilitation Act of 1973 prohibits discrimination against qualified individuals with disabilities by the federal government (29 U.S.C. § 791).

⁴5 U.S.C. 2302(b)(10).

⁵An employee or applicant may not file a complaint or lawsuit based on sexual orientation discrimination under title VII because that statute does not prohibit this form of discrimination. However, an aggrieved person may seek redress through administrative processes available to federal employees.

⁶Although proof of disparate treatment requires a showing that an employer acted with discriminatory motive or intent, discriminatory motive may be inferred from the mere fact of differences in treatment.

“adverse impact.” In general, the use of any procedure that has an adverse impact on the hiring, promotion, or other employment actions of members of any race, gender, or ethnic group is considered to be discriminatory unless the procedure is shown to be job related and consistent with business necessity.⁷

Uniform Guidelines on Employee Selection Procedures

The *Uniform Guidelines on Employee Selection Procedures*,⁸ adopted in 1978 by the Equal Employment Opportunity Commission (EEOC), the Civil Service Commission (the predecessor agency to OPM), and the departments of Justice and Labor, provide a uniform set of principles governing use of employee selection procedures and identifying adverse impact. The guidelines apply to tests and other selection procedures that are used to make employment decisions, including hiring, promotion, and discipline.

Under the guidelines, adverse impact is a substantially different rate of selection in hiring, promotion, or other employment decisions that works to the disadvantage of a race, ethnic, or gender group. Specifically, a selection rate for any group that is less than 80 percent of the selection rate for the group with the highest rate is generally regarded as evidence of adverse impact. This is not a legal definition of discrimination; rather, it is a rule of thumb or guideline that is a practical means of keeping an agency’s attention on different selection rates in personnel actions and on the procedures they use. Tests of statistical significance may be used in lieu of the 80 percent rule. The guidelines call for adverse impact determinations to be made for each racial, ethnic, or gender group.

When adverse impact is identified, the *Uniform Guidelines* generally require employers to conduct validity studies to determine the job-relatedness of a procedure or its business necessity. The guidelines also call for an employer to make a reasonable effort to become aware of suitable alternative selection procedures and methods that have as little adverse impact as possible and to investigate those that are suitable. The guidelines recognize validation strategies of the American Psychological Association, and the validation provisions of the guidelines are designed to be consistent with the generally accepted standards of the psychological

⁷42 U.S.C. § 2000e-2(k).

⁸29 C.F.R. Part 1607.

profession. One approach is “content validity,” which determines whether the selection tests and measures used are representative of the knowledge, skills, and abilities necessary for a job.

Litigation History

In February 1981, the U.S. District Court for the District of Columbia ruled on a class action lawsuit, commonly known as the *Segar* case,⁹ finding that DEA had discriminated against African American special agents.¹⁰ The court found that DEA’s personnel practices had an adverse impact on African American special agents in terms of salary, grade at entry, supervisory evaluations, discipline, and promotions. In addition, the court found evidence of disparate treatment in work assignments because of the way in which DEA used African American special agents for undercover operations. The court found no discrimination in the type of appointments or in training of special agents, and found that allegations of harassment and reprisal were unsubstantiated. The court did not rule on issues relating to hiring that DEA and the plaintiff class had already settled.

The court ordered DEA to change its procedures and conduct validity studies on those changes in order to provide for effective, nondiscriminatory supervisory evaluation, discipline, and promotion systems. To oversee the implementation of its orders, two groups were established. One is called the “Working Group.” Its mission is to help ensure that the orders of the court requiring DEA to develop and validate nondiscriminatory personnel practices are carried out. The Working Group is made up of three industrial psychologists—two from OPM and one representing the plaintiff class members. The other group is called the “Equal Employment Opportunity Monitoring Committee” or Monitoring

⁹*Segar v. Civiletti*, 508 F. Supp. 690 (D.D.C. 1981), *aff’d in relevant part subnom. Segar v. Smith*, 738 F.2d 1249 (D.C. Cir. 1984), *cert. denied subnom. Meese v. Segar*, 471 U.S. 1115 (1985).

¹⁰In 1992, DEA settled a class action lawsuit that Hispanic special agents brought alleging discrimination in promotion and assignment practices, as well as other terms of employment (*Muniz, et al. v. Barr*). Terms of the settlement, which expired in 1996, included adding an additional SES voting member to DEA’s Career Board, DEA’s commitment to the objective of having Hispanic special agents fill this position in approximate proportion to their representation in the SES workforce, and putting procedures in place regarding wiretap, undercover, and temporary assignments. In addition, the settlement recognized that since 1984 DEA had promoted Hispanic special agents consistent with their representation in the relevant applicant pool and that DEA was committed to the objective of promoting Hispanics in rates roughly equal to the promotion rates of similarly situated and qualified non-Hispanics.

Committee. Made up of eight African American special agents representing plaintiff class members, this committee monitors DEA's compliance with the court's orders. The committee also is to help facilitate informal resolutions of disputes.

Over the years, all issues raised in the court's findings, except with regard to the process for promoting special agents to the GS-14 and GS-15 levels and creating a career development program, have been resolved through court-approved agreements between the plaintiff class and DEA. In September 1999, the district court ruled on a motion for compliance brought by the plaintiff class that claimed adverse impact in promotions of African American special agents to managerial GS-14 and GS-15 positions.¹¹ The plaintiffs argued that there were disparities in two steps of the multistep promotion process. They alleged that one step in the process, called the Special Agent Promotion Program (SAPP), which involves assessing candidates' job-related knowledge and skills through job simulations, had an adverse impact on African Americans, thereby decreasing their opportunities to be placed on best-qualified lists for promotion. The plaintiffs further argued that they were adversely impacted by another step in the process, whereby DEA senior executives—special agents in charge (SAC) and other office heads—for the offices advertising promotion opportunities, recommended a select few from a best qualified candidate list to DEA's Career Board, the head of which ultimately makes promotion decisions. However, the plaintiffs did not claim that there was adverse impact in the ultimate number of promotions. According to the court decision, the plaintiffs stated that “some of the expected effect of denying African American agents spots on the [SAC/office head lists] is not visible in the ultimate number of promotions because the Career Board tends to ‘overselect’ African American agents when they appear on [SAC/office head lists], and also when the Career Board bypasses the [SAC/office head list].”

In its ruling, the court noted that the use of the SAPP caused an adverse impact despite its having been validated. Although the court did not conclude that the use of the SAPP violated title VII, it ordered DEA to implement a career development program to reduce the acknowledged

¹¹*Segar, et al. v. Reno, et al.*, C.A. No. 77-81 (D.D.C. Sept. 14, 1999).

disparate impact of the SAPP.¹² The court found that the process for recommendations made by SACs and office heads did have an adverse impact on African American special agents. In its analysis, the court said that “the fact that some of the discriminatory effect of the use of [SAC/office head recommendations] may not appear in ultimate hiring decisions, because the Career Board appears to be more likely to select African Americans when they do appear, does not excuse the use of a discriminatory device earlier in the process.” The court concluded that the SAC/office head recommendation process violated title VII, and enjoined DEA from using such recommendations in making promotion decisions until their use had been validated as job related. As a result, DEA suspended promotions to GS-14 and GS-15 special agent positions. DEA and the plaintiffs subsequently entered into a court-approved agreement in January 2000 allowing DEA to temporarily use SAC/office head recommendations for promotion decisions in accordance with certain terms and conditions, until DEA created a permanent, validated process for using SAC/office head recommendations.

At the time of our review, DEA, working with the plaintiff class and other employees, had developed a recommendation process. The Working Group approved this process, which met the requirements of content validity as described in the *Uniform Guidelines on Employee Selection Procedures*.¹³ A diverse six-person panel of senior managers appointed by the DEA Administrator and under the direction of an industrial psychologist accomplished validation. In terms of job-relatedness, panel members first individually reviewed descriptions of each competency to be assessed in the SAC/office head recommendation process and the weight each competency would receive. The panel then analyzed the knowledge, skills, and abilities required for GS-14 and GS-15 special agent positions; rated their importance to these positions; and individually linked the knowledge,

¹²DEA has since developed training and career development manuals for GS-13, GS-14, and GS-15 special agents, which the Working Group and the Equal Employment Opportunity Monitoring Committee approved for issuance.

¹³*Uniform Guidelines’* standards for content validity include (1) conducting a job analysis that identifies the important work behaviors required for successful performance of the job in question and their relative importance, and also identifies the knowledges, skills, and abilities used in work behaviors and the relationship between each knowledge, skill, or ability and each work behavior, (2) describing the selection procedure, (3) providing evidence showing that the content of the selection procedure is representative of important aspects of performance on the job for which the candidates are to be evaluated, and (4) considering alternative procedures.

skills, and abilities to the competencies.¹⁴ The panel members followed the same process for tasks required of GS-14 and GS-15 special agents. Final agreement between the plaintiffs and DEA, particularly with regard to procedures for monitoring the implementation of the recommendation process, and approval by the court remained to be accomplished as of March 2003.

The Diversity of DEA's Special Agent Workforce

In September 2002, 4,481 (about 51 percent) of DEA's 8,726 employees were criminal investigators (in the 1811 occupational series), better known as special agents. Special agents conduct investigations, perform surveillance, infiltrate drug trafficking organizations, confiscate illegal drugs, arrest violators, collect and prepare evidence, and testify in criminal court cases.

Data from DEA showed that in September 2002, whites made up 80.3 percent, African Americans 8.2 percent, Hispanics 8.8 percent, Asian/Pacific Islanders 2.2 percent, and Native Americans 0.5 percent of the agency's special agents. Women made up 8.3 percent of DEA's special agents. The diversity of DEA's special agent workforce was below overall government workforce percentages but generally comparable with the governmentwide population of criminal investigators, except for women whose representation was about half that of criminal investigators governmentwide. (See table 1.)

¹⁴The knowledge, skills, abilities, and tasks were developed by an outside contractor that performed a job analysis of the special agent position.

Table 1: Demographic Distribution of the Federal Workforce and Criminal Investigators (Special Agents) in DEA, Governmentwide, and the Nonfederal Workforce

	Asian/Pacific Islander	African American	Hispanic	Native American	White	Women
Overall federal workforce (September 2002)	4.5%	17.6%	6.9%	2.0%	69.0%	44.0%
Criminal Investigators						
DEA (September 2002)	2.2%	8.2%	8.8%	0.5%	80.3%	8.3%
Governmentwide (September 2002)	2.7%	7.1%	8.9%	1.0%	80.3%	16.4%
Nonfederal (1990 census) ^a	1.0%	11.4%	6.5%	0.8%	80.3%	12.0%

Source: OPM and DEA.

Note: Racial and ethnic categories include men and women; the women category includes women of all races and ethnicities.

^aIncludes accident investigators, police officers, traffic officers, police department chauffeurs, private investigators, detectives, criminal investigators, and narcotics investigators.

Table 1 is not a measure of the appropriateness of DEA's diversity but rather a comparison of it with other law enforcement groups. The table includes another common measure of diversity—the nonfederal law enforcement labor force—that is derived from the decennial census and includes individuals working in nonfederal law enforcement and security-related occupations that OPM, EEOC, and the Department of Labor consider comparable to the 1811 occupational series. In addition to the governmentwide criminal investigator workforce, DEA compares its special agent workforce to the nonfederal law enforcement labor force. The overall minority representation in DEA's special agent workforce is comparable to the nonfederal law enforcement labor force, although there is some variation in the representation of the various minority groups. DEA has a lower representation of Native Americans and African Americans while having a higher representation of Asian/Pacific Islanders and Hispanics. Representation of DEA's women special agents is lower, compared with the nonfederal law enforcement labor force. However, there are several limitations to these data. First, these figures are dated in that they are based on the 1990 census. Figures based on the 2000 census will not be available until the fall of 2003, according to an official with OPM's Office of Diversity. Additionally, the data are based on a wide variety of police, detective, and public service occupations that include traffic officers and police department chauffeurs as well as criminal investigators and narcotics officers. A further problem with the nonfederal law enforcement labor force data is that they do not distinguish educational attainment of those working in comparable 1811 occupations—DEA requires a 4-year college degree.

Workforce Trends—1980-2002

Over the last two decades, the overall representation of minorities in DEA special agent positions hardly changed, increasing from 19.1 percent in 1980 to 19.7 percent in 2002, while the representation of women increased, from 2.3 percent in 1980 to 8.3 percent in 2002. While minority representation in DEA's special agent workforce showed increases during the 1980s, it decreased after 1990. Only Asian/Pacific Islanders continued to increase throughout the 1980-2002 time frame. (See table 2.)

Table 2: Demographics of DEA's Special Agent Workforce, 1980-2002

Year ^a	Asian/Pacific Islander	African American	Hispanic	Native American	Total minorities	White	Women
1980	1.1%	7.9%	9.5%	0.6%	19.1%	80.9%	2.3%
1985	1.2%	9.2%	9.9%	0.8%	21.1%	78.9%	7.2%
1990	1.4%	10.0%	10.0%	0.8%	22.2%	77.8%	7.1%
1995	1.9%	9.5%	9.7%	0.6%	21.7%	78.3%	7.6%
2000	2.1%	8.2%	8.9%	0.6%	19.8%	80.2%	8.0%
2002	2.2%	8.2%	8.8%	0.5%	19.7%	80.3%	8.3%

Source: Fiscal years 1980-2000, OPM. Fiscal year 2002, DEA.

Note: Racial and ethnic categories include men and women; the women category includes women of all races and ethnicities.

^aAs of September for each year indicated.

When looked at from a grade standpoint, minority representation in DEA's special agent workforce resembles an inverted pyramid. Representation of minority special agents in Senior Executive Service (SES) and supervisory special agent (GS-14 and GS-15) positions is higher than in nonsupervisory (GS-7 to GS-13) ranks. (See table 3.) In September 2002, 36.7 percent of DEA's SES special agents, 23.2 percent of supervisors, and 18.4 percent of nonsupervisory special agents were members of minority groups. This was particularly noticeable for African American and Hispanic special agents. African Americans were 12.2 percent of SES special agents, 10.4 percent of supervisors, and 7.5 percent of nonsupervisory special agents, while Hispanics were 22.4 percent of SES special agents, 10 percent of supervisors, and 8.2 percent of nonsupervisory special agents. For women, the situation was similar in that women made up 10.2 percent of SES special agents, which was higher than their representation in the nonsupervisory and supervisory ranks. However, their representation in the nonsupervisory ranks (8.8 percent) was higher than their representation among supervisors (6.6 percent). Table 3 shows the

distribution of DEA special agents in nonsupervisory, supervisory, and SES positions by equal employment opportunity (EEO) group in September 2002.

Table 3: Distribution of DEA Special Agents in Nonsupervisory, Supervisory, and SES Positions by EEO Group, September 2002

Positions	Total	Asian/Pacific Islander	African American	Hispanic	Native American	Total minorities	White	Women
SES								
Number	49	0	6	11	1	18	31	5
Percentage	100%	0.0%	12.2%	22.4%	2.0%	36.7%	63.3%	10.2%
Supervisory--GS-14 and 15								
Number	1,009	19	105	101	9	234	775	67
Percentage	100%	1.9%	10.4%	10.0%	0.9%	23.2%	76.8%	6.6%
Nonsupervisory--GS-7 to 13								
Number	3,423	78	256	282	13	629	2794	301
Percentage	100%	2.3%	7.5%	8.2%	0.4%	18.4%	81.6%	8.8%

Source: GAO analysis of DEA data.

Note: Racial and ethnic categories include men and women; the women category includes women of all races and ethnicities.

The implication of the inverted pyramid is that DEA could face problems in enhancing, or even maintaining, diversity in the agency's upper ranks in the near future as supervisory and SES special agents retire or otherwise leave DEA. The extent of future attrition in DEA's upper ranks (and at all levels) is unclear because DEA has not performed a sufficient workforce analysis. However, if governmentwide estimates are any indication, DEA could be facing high levels of attrition. According to our estimates, 27 percent of federal criminal investigators on board in fiscal year 1998 were expected to retire from fiscal year 1999 through fiscal year 2006.¹⁵

Our work in the human capital area, as discussed in *A Model of Strategic Human Capital Management*, found that high-performing organizations identify their current and future human capital needs and then create

¹⁵U.S. General Accounting Office, *Federal Employee Retirements: Expected Increase Over the Next 5 Years Illustrates the Need for Workforce Planning*, [GAO-01-509](#) (Washington, D.C.: Apr. 27, 2001).

strategies for filling these needs.¹⁶ In May 2001, the Office of Management and Budget instructed each federal agency to provide information on the demographics of its workforce, including age, grade, retirement eligibility, and expected retirements over the next 5 years, and attrition, including trends in recent retirements over the past 5 years.¹⁷ Such an analysis could guide the development of DEA's recruiting and hiring plans and strategies for a diverse special agent workforce. However, DEA's workforce analysis is limited to examining attrition data for the previous 24 months to estimate the coming year's hiring needs. The agency has not developed estimates on the number of its special agents who are or will become eligible for retirement or reach mandatory retirement age¹⁸ over the next 5 years or longer and how this could affect the diversity of the special agent workforce at the supervisory and SES levels and future recruiting needs. DEA has faced challenges in meeting its special agent workforce needs. As we will discuss later in this report, in addition to the high percentage of applicants failing to meet DEA's hiring standards during the 1997-2002 time frame covered by our review, a large number of applicants dropped out of the hiring process. DEA officials said that many of them dropped out because of the lengthy hiring process, which, the officials said, was averaging about 2 years. As a result, DEA was left with a relatively small pool of candidates meeting its hiring standards from which the agency could hire. In fact, virtually everyone who made it through all the steps in the hiring process was offered employment. DEA officials said that it would be preferable to have a larger pool of suitable candidates from which the agency could select. Because the agency is concerned about having lost quality candidates that could have enhanced the agency's skills base and diversity due to the long hiring process and not having a larger pool of suitable candidates from which to choose, DEA implemented hiring process changes in December 2002 in an attempt to reduce the time to hire a special agent. In February 2003, the coordinator of the hiring project said it was too early to tell the extent to which time efficiencies were being realized.

¹⁶U.S. General Accounting Office, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: Mar. 15, 2002).

¹⁷OMB Bulletin No. 01-07, May 8, 2001.

¹⁸Special agents can retire at any age with 25 years of service or at age 50 with 20 years of service and reach mandatory retirement at age 57.

A Higher Proportion of Minority Applicants Did Not Meet Hiring Requirements

DEA's multistep recruitment and hiring process is intended to assess whether an applicant demonstrates the competencies, physical and psychological fitness, and personal integrity and character required of a DEA special agent. Following an initial qualifications review for basic requirements like education and citizenship, an applicant must pass a written assessment, interview, medical examination, and physical task test. An applicant is also subject to psychological testing, a polygraph examination, and a background examination, which are used to make a suitability determination.¹⁹ Using the 80 percent rule, we found that a higher proportion of minorities, particularly African Americans and Hispanics, did not meet the requirements to become a special agent in all the steps in DEA's hiring process except for the interview and medical examination steps. Overall, minority special agent applicants were selected at lower rates, compared with white applicants. The *Uniform Guidelines* require an employer to study the job-relatedness of selection procedures when there are substantial differences in the selection rate for any race, ethnic, or gender group. DEA's hiring procedures appear job related and consistent with the *Uniform Guidelines on Employee Selection Procedures* in that they are based on criteria in regulations, professional standards, or standards established by subject matter experts. However, the agency had not studied the effects of these procedures on minorities and women and whether the procedures could be modified to lessen the differences without compromising the high standards necessary to perform the job successfully.

Qualifications Review

As the first step in the special agent hiring process, DEA reviews and rates applications²⁰ to determine whether an applicant meets minimum requirements for the special agent position—a bachelor's degree and

¹⁹Applicants meeting minimum eligibility requirements receive conditional offers of employment. Applicants passing all phases of the hiring process receive final offers of employment.

²⁰DEA solicits applicants by recruiting at colleges, including colleges with high minority and women enrollments; placing ads in publications targeting minority audiences; and reaching out to law enforcement organizations, professional associations (e.g., Asian American Police Officers Association, National Organization of Black Law Enforcement Executives, Hispanic American Police Command Officers Association, and Women in Federal Law Enforcement), and advocacy groups (e.g., Blacks in Government). In addition, DEA's special agent vacancy announcement is posted on USAJOBS, the Web site for federal jobs (<http://www.usajobs.opm.gov/>).

specialized skills or substantive experience, especially in law enforcement.²¹ DEA officials said that the experience requirement was a barrier to recruiting minority and women college graduates with diversified skills.²² As a result, in May 2000, DEA changed its policy so that applicants with bachelor's degrees in special skills areas—economics, accounting, computer science/information systems, certain foreign languages,²³ finance, mechanical/electrical/telecommunications engineering, or criminal justice—would meet minimum requirements without having additional experience.

We reviewed DEA's actions on applications received under the two most recent vacancy announcements—BA-98-01 and BA-20-00.²⁴ The proportion of minority applicants increased from 27 percent for BA-98-01 to 31 percent for BA-20-00. Similarly, the proportion of women applicants increased, from 12.7 percent under BA-98-01 to 16.4 percent under BA-20-00. Table 4 shows the demographic distribution of applicants reviewed and rated under both vacancy announcements. We show the results separately for BA-98-01 and BA-20-00 because of the revised qualifications under BA-20-00.

Table 4: Demographic Profile of Applicants under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander		African American		Hispanic		Native American		White		Total	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
BA-98-01	0.4%	3.2%	2.4%	10.7%	1.3%	8.2%	0.1%	0.7%	8.5%	64.5%	12.7%	87.3%
BA-20-00	0.6%	3.6%	3.6%	11.0%	2.6%	8.4%	0.1%	0.8%	9.5%	59.8%	16.4%	83.6%

Source: GAO analysis of DEA data.

²¹DEA also determines whether an applicant meets other eligibility requirements (e.g., must be a U.S. citizen) and has no disqualifying criminal or drug use history disclosed on the application form.

²²In rating applications, DEA had awarded points for education and experience. The number of points awarded for a bachelor's degree alone did not enable an applicant to meet minimum requirements. Points awarded for experience varied based on the type and length of experience. For example, more points were awarded for law enforcement narcotics and investigative experience, compared with professional/administrative experience.

²³The languages are Spanish, Russian, Hebrew, Arabic, Nigerian, Chinese, and Japanese, with fluency verified.

²⁴BA-98-01 was open from October 15, 1997, through March 7, 2000, and BA-20-00 opened on May 8, 2000, and remained open during our review.

The extent to which DEA found that applicants met its minimum requirements was uneven. Applications from African American women, in particular, were much less likely to meet DEA's minimum education and experience requirements, even after BA-20-00 changed the criteria for awarding credit for special skills. We show the results separately for BA-98-01 and BA-20-00 in table 5 below because of the revised qualifications under BA-20-00.

Table 5: Percentage of Applicants Meeting Minimum Requirements under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander		African American		Hispanic		Native American		White		Total	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
BA-98-01	62.5%	82.7%	56.6%	73.6%	79.1%	86.9%	70.0%	77.6%	66.9%	75.6%	66.1%	76.7%
BA-20-00	75.8%	85.0%	56.0%	65.3%	74.7%	79.8%	75.0%	72.1%	72.7%	78.4%	69.4%	77.0%

Source: GAO analysis of DEA data.

Written Assessment

Applicants who meet DEA's minimum qualifications requirements must then pass a written assessment of their ability to (1) observe and recall details, (2) organize the details in a writing sample, and (3) write in a grammatically correct manner. The assessment, which consists of showing applicants a videotape of a simulated "drug bust" and asking them to write a narrative describing what was observed, was developed by subject matter experts and tested to help ensure job-relatedness. The written assessment is administered, and applicants' narratives are first reviewed and rated, in a field division. Later, headquarters staff review the narratives, in order to help assure DEA-wide consistency with established rating standards.

Because of concerns about low passing rates of African American and Hispanic applicants, based on the recommendation of an advisory panel of subject matter experts, DEA changed scoring criteria under BA-20-00 by reducing the number of details from the videotape that applicants were expected to recall and identify. At the same time, however, responding to senior special agents' concerns that newer special agents lacked the writing skills necessary for preparing investigation reports and other documents, DEA required that applicants pass all three parts of the written assessment, not two, as had been the policy under BA-98-01. These changes resulted in lower passing rates for all applicant groups. However, the passing rates for African American men, Hispanic men, and Hispanic

women under BA-20-00 were substantially lower compared with white women, who had the highest passing rate. In table 6 below, we show the passing rates separately for BA-98-01 and BA-20-00 because of the changes to the written assessment under BA-20-00.

Table 6: Percentage of Applicants Passing Written Assessment under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander		African American		Hispanic		Native American		White		Total	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
BA-98-01	^a	89.0%	93.5%	84.6%	87.5%	80.3%	^a	^a	94.5%	91.9%	93.7%	89.5%
BA-20-00	^a	76.4%	78.9%	71.3%	64.5%	63.4%	^a	^a	91.8%	82.9%	84.2%	79.2%

Source: GAO analysis of DEA data.

^aSmall number of applicants precluded meaningful application of the 80 percent rule.

DEA officials had not studied the effects of the changes to the written assessment and were unaware of the lower pass rates. However, they said the lower pass rates might be an unintended result of requiring applicants to pass all three parts.

Interview

A panel of three special agents at a field division office interviews applicants who pass the written assessment. The interview follows a structured format of 21 questions to elicit responses to evaluate an applicant's abilities in (1) structuring work activities, (2) demonstrating interpersonal skills, (3) tolerating stress, (4) evaluating information, and (5) communicating orally. Special agents and Office of Personnel staff involved in recruiting developed the interview questions and pilot tested them to help assure their job-relatedness.²⁵ The interview panel rates applicants in accordance with established standards and the Special Agent Recruitment Unit staff in headquarters later reviews ratings to check that panelists adequately documented their assessment and adhered to the rating standards.

As table 7 shows, interview-passing rates showed relatively little variation, with about 90 percent of all applicants passing.

²⁵The questions are modified periodically to protect the integrity of the testing process.

Table 7: Applicant Interview Passing Rates under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander		African American		Hispanic		Native American		White		Total	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
BA-98-01	^a	87.7%	^a	92.5%	^a	89.9%	^a	^a	90.8%	91.6%	90.6%	91.3%
BA-20-00	^a	91.4%	85.7%	89.0%	^a	82.6%	^a	^a	90.1%	90.1%	88.9%	89.3%

Source: GAO analysis of DEA data.

^a Small number of applicants precluded meaningful application of the 80 percent rule.

Medical Examination

Applicants who pass the written assessment and interview are scheduled for a medical examination and, if they pass, are scheduled for the physical task test. According to DEA's Chief Medical Officer, the medical examination follows standards developed by the Federal Law Enforcement Medical Program Division of the Public Health Service, based on a 1999 survey of the physical demands of a special agent's job. Prior to 1999, DEA followed OPM-prescribed medical standards. About 95 percent of applicants passed the medical exam and there was little difference in the pass rates among the applicant groups, as table 8 shows.

Table 8: Applicant Medical Examination Passing Rates under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander		African American		Hispanic		Native American		White		Total	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
BA-98-01	^a	92.2%	^a	96.0%	^a	97.0%	^a	^a	96.1%	93.6%	96.1%	94.2%
BA-20-00	^a	97.8%	96.8%	98.0%	^a	96.4%	^a	^a	99.0%	96.4%	98.1%	96.5%

Source: GAO analysis of DEA data.

^aSmall number of applicants precluded meaningful application of the 80 percent rule.

Physical Task Test

The physical task test is the next step for applicants who have passed the interview and medical examination. This test, intended to measure an applicant's ability to participate in physical activity during Basic Agent Training, consists of six tasks—pull-ups, sit-ups, push-ups, shuttle run,²⁶

²⁶The shuttle requires the applicant to start from a resting position on his/her back and jump up and run 60 yards up and back around traffic cones set on the floor.

2-mile run, and, until March 2003, the handgun trigger pull.²⁷ (See app. II for physical task test minimum requirements.) According to the Chief of DEA's Health Services Unit and the unit's Health Fitness Specialist, the physical task test format (except for the trigger pull test) is based on standards developed by the Cooper Institute,²⁸ which reports that the fitness tests it recommends for law enforcement have been validated through scientific research to be job related. With regard to the handgun trigger pull, a DEA official formerly with DEA's Firearms Training Unit said that the unit developed the trigger pull standard based on tests of Basic Agent Training students.

Overall, men had a higher passing rate on the physical task test than women.²⁹ African American applicants passed the physical task test at rates lower than other groups. In fact, African American applicants had a significantly lower passing rate under BA-20-00, as table 9 shows.³⁰

Table 9: Percentage of Applicants Passing the Physical Task Test under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander	African American	Hispanic	Native American	White	Women	Men
BA-98-01	73.9%	66.9%	77.7%	^a	81.9%	73.2%	79.8%
BA-20-00	78.3%	64.6%	70.9%	^a	81.2%	64.2%	80.5%

Source: GAO analysis of DEA data.

^aSmall number of applicants precluded meaningful application of the 80 percent rule.

DEA officials had not studied physical task test trends and did not know which test tasks accounted for lower pass rates. The Chief of DEA's Health Services Unit and the unit's Health Fitness Specialist said that they would

²⁷DEA eliminated the trigger pull test based on recommendations from the DEA Firearms Training Unit.

²⁸The Cooper Institute is nationally recognized for aerobics research and work with fitness programs for law enforcement, public safety, and the military.

²⁹Failure of the initial physical task test is not automatically disqualifying. Applicants are given 30 days to retake and pass the test. Data we analyzed reflect the latest physical task test results.

³⁰For this analysis, we combined men and women of each race because of the small number of minority women.

examine test results for the physical task test components as they look into updating the physical task test to be consistent with contemporary standards.

Suitability

Applicants passing the physical task test are scheduled for polygraph and psychological tests and a background investigation to assess their character and conduct. DEA special agents trained as polygraphists administer the polygraph test in accordance with standardized techniques and procedures for conducting polygraph examinations established by the Department of Defense Polygraph Institute.³¹ For quality assurance, senior polygraphists in DEA headquarters review test results, including the audiotape made during each polygraph session. For the psychological assessment, a licensed psychologist under contract with DEA reviews two validated written psychological tests³² and DEA's Life Experiences Inventory completed by the applicant, interviews the applicant, and prepares an overall assessment, which a DEA psychologist reviews. DEA contracts with OPM to do full-field background investigations on special agent applicants in accordance with federal regulations.³³ The investigation develops information through interviews with coworkers, employers, friends, educators, neighbors, and other individuals; a personal interview with the applicant; and records checks of investigative files and other records held by federal agencies, and state and local law enforcement and court records. In addition, an applicant is subject to a financial review, including a credit bureau check.

The results of the polygraph and psychological tests and the background investigation are considered together for a suitability determination. Suitability determinations are made in accordance with federal

³¹This institute establishes standards for federal agency polygraph programs and trains all federal polygraph examiners. In addition, the institute conducts ongoing evaluations of the validity of polygraph techniques used by federal examiners and inspects federal polygraph programs to ensure compliance with both those techniques and procedures. The institute last inspected DEA's polygraph program in January 2001 and found the program's policies and procedures were in compliance with the standards for a federal government polygraph program.

³²The Minnesota Multiphasic Personality Inventory-2, a test of adult psychopathology, and the 16 Personality Factor Questionnaire, a personality assessment instrument.

³³5 C.F.R. parts 731, 732, and 736.

regulations³⁴ by the approving official in the Office of Personnel or, where there is a question about an applicant's suitability,³⁵ by a three-person panel called the "1811-hiring panel."³⁶ DEA officials said that the panel approach helps to assure consistency in applying criteria in cases in which there is some question about an applicant's suitability. To come to a determination about an applicant's suitability, the three panel members must be in agreement. If the approving official or the panel approves an applicant, he or she is offered employment.

Our analysis of suitability determinations showed that, overall, DEA found 67 percent of applicants, for whom a suitability determination was made, suitable to be special agents, with women found suitable at higher rates than men. However, the approval rate for African Americans—55.2 percent—was substantially lower. (See table 10.)³⁷

Table 10: Percentage of Applicants Found Suitable under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

Asian/Pacific Islander	African American	Hispanic	Native American	White	Women	Men	Total
73.9%	55.2%	66.4%	a	68.6%	74.8%	66.2%	67.0%

Source: GAO analysis of DEA data.

^aSmall number of applicants precluded meaningful application of the 80 percent rule.

The approving official and current and former 1811 panel members said that they had not examined the results of their decisions and could not

³⁴5 C.F.R. 731.202.

³⁵According to the criteria, factors that may be considered a basis in finding an individual unsuitable include misconduct or negligence in employment; criminal or dishonest conduct; alcohol abuse; and illegal use of narcotics, drugs, or other controlled substances.

³⁶The approving official in the Office of Personnel and the two permanent members of the 1811-hiring panel have received training in making suitability determinations, as have some rotating panel members. In addition, during 2002, field division staff began to receive suitability determination training. Field divisions make suitability recommendations to the Office of Personnel.

³⁷For this analysis, we combined men and women for each race because of the small numbers of minority women. We also combined the results under both announcements because only about 2 percent of the applicants who underwent a suitability review were applicants under BA-20-00.

explain why African Americans fared worse than other applicants or whether specific disqualifying factors predominate among one group. They also said that, generally, they were not aware of an applicant's race when making their determinations. Since the panel was established in 1997, at least one and sometimes two of the three panel members have been minorities.

Because the 1811 hiring panel makes about 80 percent of the suitability determinations, we developed information about the panel's decisions. Our analysis of the panel's data found that the panel approved about 49 percent of applicants it reviewed, while finding about 36 percent of African Americans suitable. (See table 11.)

Table 11: Percentage of Applicants Found Suitable by the 1811 Hiring Panel, September 29, 2000, to May 7, 2002

Asian/Pacific Islander	African American	Hispanic	Native American	White	Women	Men	Total
50.0%	36.2%	55.3%	^a	50.9%	57.8%	48.1%	49.1%

Source: GAO analysis of DEA data.

^aSmall number of applicants precluded meaningful application of the 80 percent rule.

Data showed that most (82.7 percent) of the applicants whose suitability was adjudicated by the panel presented multiple issues for adjudication. The most frequently identified issues related to an applicant's psychological assessment (60.6 percent of referred files), polygraph examination (36.4 percent), driving record (27 percent), not being recommended by a SAC (26.5 percent), admissions such as drug use on the Life Experiences Inventory (22.4 percent), and credit issues (17 percent). Among African American applicants, the most frequently identified reasons related to the psychological assessment (69.6 percent), not being recommended by a SAC (34.8 percent), driving record (30.4 percent), credit issues (21.7 percent), and admissions on the Life Experiences Inventory (17.4 percent). The panel's database did not show the basis for its decisions.

Final Hiring Results

As of March 31, 2002, from the 10,748 applications found to meet its minimum requirements under announcements BA-98-01 and BA-20-00, DEA hired 793 applicants, while rejecting 3,038 applicants who did not pass the written assessment, interview, medical or physical task test, or were found

unsuitable. The remaining 6,917 applicants had opted out or were still in process. Overall, we found that about 20 percent of applicants on whom DEA made a final eligibility determination met the special agent hiring standards and were selected for training. However, we found that minorities met DEA's hiring standards at lower rates than white applicants, with African American and Hispanic applicants meeting the standards and being selected at substantially lower rates. (See table 12.)

Table 12: Overall Selection Rates for Applicants for Whom DEA Made Hiring Eligibility Determinations under BA-98-01 and BA-20-00, by EEO Group, October 15, 1997, to March 31, 2002

Asian/Pacific Islander	African American	Hispanic	Native American	White	Women	Men	Total
18.7%	13.7%	15.8%	^a	22.9%	20.0%	20.3%	20.3%

Source: GAO analysis of DEA data.

^a Small number of applicants precluded meaningful application of the 80 percent rule.

DEA's hiring decisions were somewhat less diverse, compared with the pool of applicants that met DEA's minimum education, skills, and experience requirements. As table 13 shows, African Americans, Hispanics, and women represented a smaller proportion of the special agents hired under BA-98-01 and BA-20-00, compared with applicants who initially met minimum requirements, while the proportion of whites increased.

Table 13: Demographic Profile of Applicants Who Met Minimum Requirements and Applicants Hired under BA-98-01 and BA-20-00, October 15, 1997, to March 31, 2002

	Asian/Pacific Islander		African American		Hispanic		Native American		White		Total	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
Meeting minimum requirements												
Number	45	405	232	1,080	200	992	13	76	876	6,829	1,366	9,382
Percent	0.4%	3.8%	2.2%	10.0%	1.9%	9.2%	0.1%	0.7%	8.2%	63.5%	12.7%	87.3%
Hired												
Number	3	31	7	72	12	71	2	1	62	532	86	707
Percent	0.4%	3.9%	0.9%	9.1%	1.5%	9.0%	0.3%	0.1%	7.8%	67.1%	10.8%	89.2%

Source: GAO analysis of DEA data.

DEA offers employment to virtually all applicants who make it all the way through its hiring process. Because the agency is concerned about having lost quality candidates that could have enhanced the agency's skills base and diversity due to the long hiring process (which had been averaging about 2 years) and not having a larger pool of suitable candidates from which to choose, DEA made reforms to its recruiting and hiring process that had been implemented agencywide by December 2002. The reforms include giving the field more responsibility for managing the hiring process and avoiding time-consuming back-and-forth actions between the field and headquarters. For example, field recruiters are to conduct criminal history and credit records checks to identify unqualified applicants before, rather than after, an application package is forwarded to headquarters, in order to reduce the number of application packages reviewed. These preliminary records checks will also help eliminate the need for costly background investigations when an applicant is identified as unqualified, according to DEA. In addition, background investigations are to be initiated earlier in the process and by field offices, which also are to review the investigation results, perform necessary follow-up, and make preliminary suitability recommendations. Previously, background investigations had been managed by headquarters, which referred follow-up questions to the field. In addition, suitability determinations will be made before security clearance reviews are conducted. This will help reduce the security clearance backlog, which had been a major contributor to delays in the hiring process, and reduce the need to update stale applicant information when suitability determinations are made.

No Statistically Significant Differences in Promotion Rates

DEA's process for promoting special agents to GS-14 and GS-15 positions has been in place since 1992. The first step is the Special Agent Promotion Program (SAPP), which uses a supervisor's performance rating and job simulation exercises at an assessment center to measure the candidate's knowledge and abilities to perform at the next grade level and determine which applicants for promotion are placed on a best-qualified list. The SAC or head of an office with a vacancy is asked to review the qualifications of best-qualified applicants and recommend his or her top choices to DEA's Career Board, the head of which ultimately makes promotion decisions. Our analysis showed that although African American and Hispanic special agents received promotion recommendations at lower rates than white agents, particularly for promotions to GS-14, there were no statistically significant differences in promotion rates among the various race, ethnic, and gender groups.

Special Agent Promotion Program

The SAPP establishes which GS-13 and GS-14 special agents can compete for promotions. The SAPP is an annual process that was developed by an outside consultant in response to the 1981 *Segar* decision. The Working Group reviewed and approved its development. From 1997 to 2001, 1,355 GS-13 and 423 GS-14 special agents participated in the SAPP.³⁸ Of the GS-13s participating in the SAPP, 25.5 percent were minorities—mostly African American and Hispanic—and 7.4 percent were women. Among the GS-14s, 28.4 percent were minorities—mostly African American and Hispanic—and 8.5 percent were women. Table 14 shows the demographics of the GS-13 and GS-14 special agent SAPP participants for 1997 through 2001.³⁹ In our analysis of promotion-related results, we combine men and women for each race because of the small number of minority women.

Table 14: Special Agents Participating in the SAPP, 1997-2001

	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Total	Women	Men
GS-13								
Participants	24	152	161	9	999	1,355	100	1,255
Percentage of total participants	1.8%	11.2	11.9	0.7	73.7	100.0	7.4	92.6
GS-14								
Participants	10	56	51	3	303	423	36	387
Percentage of total participants	2.4%	13.2	12.1	0.7	71.6	100.0	8.5	91.5

Source: SAPP reports for 1997 through 2001.

The SAPP has two components: the performance rating on the competencies needed at the next higher grade level and testing at an assessment center in which job simulations are used to measure a special agent’s knowledge and abilities needed at the next level.

³⁸To participate in the SAPP, a GS-13 must have 3 years in grade while a GS-14 is required to have 4 years in grade.

³⁹Included in these totals are retest candidates. A special agent is eligible to take the SAPP again 2 years after his or her last participation. Of the 1,355 GS-13 SAPP participants, 406 (30 percent) were retest candidates, while 103 (24 percent) of the 423 GS-14 SAPP participants were retest candidates.

In the performance rating, special agents are evaluated on job-related competencies (see app. III) on a scale from 1 (unacceptable) to 5 (exceptional). An agent's most recent supervisor prepares the rating, which is reviewed by a SAC or office head to help ensure that performance standards are uniformly applied. Data for 1997 through 2001 show that average performance rating scale scores for SAPP participants were nearly uniformly exceptional—almost a perfect 5—for all groups, with no statistically significant differences in the scores among the various groups. In this regard, the 2001 SAPP report⁴⁰ found that the rating scores did not differentiate between highly effective and less effective performers and showed little if any correlation to assessment center tests of similar competencies. Because performance rating scores for those who participate in the assessment center are uniformly high and do little to differentiate among candidates, a candidate's assessment center score is the primary determinant of promotion competitiveness.

The assessment center replicates a day in the life of a special agent through exercises simulating the job at the next higher level. DEA conducts two assessment centers each year, one for GS-13s aspiring to GS-14 level positions and another for GS-14s aspiring to become GS-15s, which are administered under a contract DEA awards annually.⁴¹ The assessment centers consist of role-play, in-basket,⁴² and, for GS-14s, oral presentation exercises simulating the job at the next higher level to measure a candidate's performance in a variety of competencies. In 2001, GS-13 special agents were evaluated on 12 competencies in assessment center simulations while GS-14 special agents were evaluated on 9 competencies. (See app. III.) The original job simulations were developed following a content-oriented validation strategy consistent with the *Uniform Guidelines on Employee Selection Procedures* and the *Principles for Validation and Use of Personnel Selection Procedures*.⁴³ This was done by

⁴⁰2001 DEA Special Agent Promotional Programs (SAPPs) for Grades 14 and 15: Revision and Administration. Prepared for the Drug Enforcement Administration by Fields Consulting Group, Inc. (McLean, Va.: Sept. 2001).

⁴¹The same contractor was involved in the administration of the 1998-2002 SAPPs.

⁴²The in-basket contains contents similar to those that are found in the in-basket for the job that is being tested.

⁴³*Principles for Validation and Use of Personnel Selection Procedures* was adopted by the Society for Industrial and Organizational Psychology, a division of the American Psychological Association, to provide guidelines for the evaluation, development, and use of testing instruments.

detailing special agents' job tasks and the knowledge and abilities required to perform those tasks, establishing linkages between job tasks and the knowledge and abilities required, and demonstrating linkages between the required knowledge and abilities and selection procedures.⁴⁴ The 2001 SAPP report noted that there is extensive literature documenting the validity of job simulations for predicting supervisory and managerial performance and that simulation measures are viewed as having a potentially high degree of content validity, thereby reducing the possibility of discrimination.

DEA special agents trained by the contractor serve as assessors. To minimize the degree of candidate/assessor familiarity and partiality when assigning candidates to assessors, the assessment centers director collects familiarity and partiality ratings from assessors to determine the extent to which assessors know a promotion candidate and how impartially the assessors believe they could evaluate the candidate. Another way of fostering fairness is through the representation of minorities and women among the assessors. Overall, during the 1997-2001 period, the proportion of minority and women assessors for both the GS-14 and GS-15 assessment centers exceeded the proportion of minorities and women participating in the GS-14 and GS-15 SAPPs.⁴⁵ As a check on how assessors carry out exercises and developed scores, the assessment centers director reviews videotapes of exercises, evaluates assessors' notes, and independently scores candidates' performances. In addition, the director surveys candidates and prepares a report on the results of each assessment center. The report analyzes overall scores for each assessment center and scores by competency and exercise, comparing the scores of African Americans and whites and, to a lesser extent, Hispanics and whites,⁴⁶ to identify

⁴⁴An updated job analysis was completed in June 2002 and will be considered in revising the SAPP for 2003.

⁴⁵Minorities accounted for about 35 percent of assessors in the GS-14 SAPP, while approximately 26 percent of participants were minorities. Women were 8.4 percent of GS-14 SAPP assessors, while 7.4 percent of participants were women. For the GS-15 SAPP, minorities accounted for about 38 percent of assessors versus about 28 percent of participants, while women were 9.7 percent of assessors versus 8.5 percent of participants.

⁴⁶The scores of Asian/Pacific Islanders and Native Americans are not analyzed because their small numbers are insufficient for reliable statistical analysis, according to Working Group members. The Validation and Analysis Unit Chief and Working Group members said gender analysis is not performed because early analysis found no statistically significant differences between women and men. A Working Group member said, however, that analysis of assessment center results should include women.

competencies in which larger and smaller race/national origin effects were observed and suggest possible areas for concentrating test improvement, training, and developmental efforts. In this regard, the contractor made a number of revisions each year from 1997 through 2001 to the assessment centers exercises in an attempt to reduce differences.⁴⁷

The Working Group plays an integral role in the assessment centers. Working Group members said that they oversee the development of the exercises, approve the design of the annual assessment centers, monitor the proceedings, and review and approve the overall results. As part of their oversight, they said that they meet with participants to get their feedback and review videotapes of the role-play exercises to determine if they were conducted fairly and properly. They described the assessment centers as first-class operations that meet standards for fair treatment and valid procedures. They also said that differences in scores among groups have not been statistically significant and that differences in scores among the candidates are due to factors other than the testing procedures. The Working Group members said that the strengths of the assessment centers are that the exercises appropriately reflect results of job analysis, the assessors are well trained, the assessors' ratings and the rating measures are reliable, and the process is checked for adverse impact using statistical tests. Overall, they said that the assessment center process is a valid way of selecting a supervisor because it asks candidates to perform supervisory tasks. Moreover, OPM has described the SAPP as a "success story" in its use of leadership competencies in making supervisory selections.⁴⁸

The performance rating and assessment center scores each account for half in developing an overall SAPP score for each candidate. As table 15 shows, white participants generally had somewhat higher SAPP scores, although the differences from the other groups were not statistically significant, according to the Working Group. Men tended to have higher scores in the GS-14 assessment center, but women tended to have higher scores in the GS-15 assessment center.

⁴⁷For example, because race/national origin score differences were attributed to the in-basket exercises of both assessment centers, the in-basket exercises were revised over the 1997-2001 period for both assessment centers. Among the revisions were reducing the number of items in the in-basket, strengthening the relationship of in-basket items to dimensions measured, and increasing the time allowed for the exercise.

⁴⁸U.S. Office of Personnel Management, *Supervisors in the Federal Government: A Wake-Up Call* (Washington, D.C.: Jan. 2001).

Table 15: Average SAPP Scores, 1997-2001

Year	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Women	Men
GS-14 assessment center							
1997	87.33	83.92	80.57	87.50	86.20	86.18	85.12
1998	81.67	82.88	83.74	91.00	86.14	84.11	85.36
1999	85.67	82.85	85.51	83.00	85.36	84.44	85.17
2000	85.71	82.85	81.83	81.00	85.96	84.13	85.35
2001	82.20	83.53	82.75	^a	86.13	85.06	85.28
GS-15 assessment center							
1997	^a	81.08	85.32	^a	86.57	86.88	85.32
1998	84.50	81.75	84.80	^a	86.63	88.00	84.81
1999	82.50	80.45	84.50	93.00	86.29	81.75	85.41
2000	92.00	83.90	82.75	^a	85.63	87.50	84.82
2001	81.40	84.87	80.09	86.00	85.99	87.20	85.14

Source: DEA.

^aNo member of group participated.

The SAPP scores are used to establish score bands that determine which special agents make the best-qualified list for GS-14 and GS-15 vacancies.⁴⁹ Under the SAPP, the size of the score band for GS-14 positions is 10 points, while the score band for GS-15 positions is 11 points. The actual score band for a particular vacancy is determined by the applicant with the highest SAPP score. For GS-14 positions, for example, if the highest-scoring applicant has a SAPP score of 95, the score band for that vacancy is 86 to 95; and applicants with scores of at least 86 would be placed on the best-qualified list. Similarly, if the highest-scoring applicant for a GS-15 vacancy has a SAPP score of 95, the score band for that vacancy is 85 to 95, and applicants with scores of at least 85 would be placed on the best-qualified list.

⁴⁹The score bands are designed to help ensure that candidates having similar levels of knowledge and abilities are not penalized because of errors of measurement. The use of score bands is based on the rationale that the measurement of abilities using predictor tests results in some error with each candidate. The measurement error associated with tests means that small differences in scores do not allow one to definitively say that one candidate will do better than another on a job.

SAC/Office Head Recommendations

Once a best-qualified list is assembled for a particular vacancy, it is sent to the office with the vacancy to obtain the SAC's (or office head's) recommendations for promotion. The SAC's recommendation is solicited because DEA believes that he or she is more familiar with the requirements of the position to be filled and is in a better position to assess candidates' qualifications from their biographical and other information. A SAC typically recommends three individuals. The SAC/office head recommendation process was at the heart of the September 1999 district court decision that found that the process had not been validated and resulted in African American applicants receiving recommendations at statistically significant lower rates than whites. In addition to not having been validated, there was no format in place at the time of the 1999 decision to assure that SACs evaluated candidates using knowledge, skills, and abilities relevant to the vacant job. Following the court decision, which required DEA to either drop the SAC/office head recommendation process or stop making promotions to GS-14 and GS-15 special agent positions until the use of the recommendations could be validated as job related, DEA and the plaintiffs reached a court-approved agreement allowing SAC/office head recommendations and promotions under certain terms and conditions until a permanent, validated process could be implemented. The interim process, which was implemented in January 2000 and was still in place as of March 2003, requires that a SAC provide information about why a candidate is better suited for the position under consideration, including his or her experience and success in job-related competencies (see app. III), when making recommendations.

Despite the changes to the process, differences in SAC/office head recommendation rates for applicants seeking promotion to GS-14 and GS-15 positions continued. For GS-14 and GS-15 vacancy announcements that resulted in a promotion during fiscal years 2000 and 2001, we analyzed the number of times applicants on the best-qualified list received SAC/office head recommendations, compared with the number of times applicants appeared on best-qualified lists. (An applicant can apply for multiple positions and appear on multiple best-qualified lists.) We found that for promotions to GS-14, African American and Hispanic special agents received SAC/office head recommendations at statistically significant lower rates than white special agents. For GS-15 positions, African American special agents received SAC/office head recommendations at statistically significant lower rates than whites. Table 16 shows the frequency of applicants on best-qualified lists being recommended by SACs, 2000-2001.

Table 16: Frequency of Applicants Appearing on Best-Qualified Lists Being Recommended by SACs, 2000-01

Recommended for	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Women	Men
GS-14 promotions	28.2%	6.0%	6.8%	16.7%	15.2%	11.7%	12.9%
GS-15 promotions	33.3%	5.5%	8.2%	^a	10.8%	12.6%	9.6%

Source: GAO analysis of DEA data.

^aSmall numbers of applicants do not allow for statistical analysis.

At the time of our review, DEA, working with members of the Monitoring Committee and other special agents, had developed a revised recommendation process. The Working Group approved the revised process and said that it met the requirements of content validity as described in the *Uniform Guidelines on Employee Selection Procedures*. A major change under this process requires that a panel of three GS-14, GS-15, or SES special agents at the location with a vacancy review and rank applicants on a best-qualified list based on job-related competencies (see app. III) and any special requirements of the position. The SAC would make his or her promotion recommendations from this list, providing a comprehensive justification in recommending an individual not ranked among the top three applicants. As part of its review and evaluation of the proposed process, DEA’s plan for oversight of the SAC/office head recommendation process included tracking the race of each person (1) appearing on a best qualified list, (2) recommended by a SAC, and (3) selected for promotion, and report these results periodically to the *Segar* plaintiffs’ counsel. However, the plan did not specifically include tracking results by gender. At the end of our fieldwork, the plaintiffs and DEA were involved in mediation efforts in order to reach final agreement on the recommendation process, particularly with regard to procedures for monitoring the implementation of the process. Approval by the court is required to complete settlement on this issue.

Career Board Selections

Promotion decisions for GS-14 and GS-15 special agent positions are made following deliberations by DEA’s Career Board. The Career Board’s 11 voting members, who are DEA senior executives, make promotion recommendations by majority vote to the Career Board Chair, who

ultimately has responsibility and authority to make the selection decision.⁵⁰ DEA makes promotion decisions on a position-by-position basis when vacancies become available, with a best-qualified list assembled for each vacancy based on applicants' SAPP scores. However, minorities and women do not appear on a substantial portion of best-qualified lists because they do not apply for particular vacancies or because their SAPP scores are not high enough to place them among the best qualified.⁵¹

We analyzed the results of 641 promotions to GS-14 positions and 204 promotions to GS-15 during fiscal years 1997 through 2001 and found that, despite differences in SAC/office head recommendation rates, there were no statistically significant differences in the rates at which the Career Board selected minorities and women for promotion. Our analysis showed only small differences in the rates at which African American, Hispanic, and white special agents were selected for promotion to GS-14 and GS-15 positions. The numbers of Asian/Pacific Islanders and Native Americans eligible for promotion were too small for statistical analysis. Although women were somewhat less likely than men to be selected for promotion, this difference was not statistically significant. Table 17 shows the number of individuals on best qualified lists from which promotions were made and the number selected for promotion by EEO group for fiscal years 1997-2001.

⁵⁰In November 2002, the Career Board was increased from 10 to 11 voting members. At the same time, the number of SACs sitting on the board increased from 4 to 6, each serving time-limited tenures. The Administrator said that he made these changes to achieve rotation, greater participation, and transparency.

⁵¹African Americans were represented on 71.5 percent, Hispanics on 57.4 percent, and women on 58.2 percent of GS-14 best-qualified lists from which promotions were made during fiscal years 1997 through 2001. In addition, African Americans were represented on 87.3 percent, Hispanics on 81.9 percent, and women on 65.2 percent of GS-15 best-qualified lists from which promotions were made during this period.

Table 17: Individuals on at Least One Best-Qualified List from Which Promotions Were Made and Individuals Selected for Promotion, by EEO Group, Fiscal Years 1997-2001

	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Women	Men
Promotions to GS-14							
Individuals on best-qualified lists	20	98	95	10	740	73	890
Number selected	14	64	65	7	491	44	597
Percentage selected	70.0%	65.3%	68.4%	70.0%	66.4%	60.3%	67.1%
Promotions to GS-15							
Individuals on best-qualified lists	4	33	41	2	241	25	296
Number selected	1	20	26	1	156	14	190
Percentage selected	25.0%	60.6%	63.4%	50.0%	64.7%	56.0%	64.2%

Source: GAO analysis of DEA data.

DEA’s Discipline
Process Has Been
Found to Be
Nondiscriminatory

DEA’s centralized disciplinary system was put in place in 1984 and, in 1988, was found to meet the court’s requirements for being effective and nondiscriminatory.⁵² The three-tiered system separates the responsibilities for investigating an allegation, proposing disposition, and making a final agency decision. Our analysis of disciplinary data for fiscal years 1997 through 2001 showed that the proportion of African American, Hispanic, and women special agents disciplined was substantially higher than their representation in the DEA special agent workforce. This situation reflects that African American, Hispanic, and women special agents had a proportionately higher number of allegations of misconduct lodged against them and that a higher proportion of these allegations were substantiated by investigations and resulted in disciplinary action. Nonetheless, the results of two studies by outside contractors, approved by the Working Group, found DEA’s disciplinary process to be fair and nondiscriminatory.

DEA’s Validated Discipline
System

DEA’s Office of Professional Responsibility (OPR) is responsible for investigating all allegations of integrity violations (illegal or improper

⁵²The court approved a stipulation between the parties that the disciplinary system met the court’s requirements.

conduct) and the vast majority of allegations of misconduct involving violations of DEA's Standards of Conduct.⁵³ OPR investigations are findings of fact and do not contain conclusions or recommendations.

The Board of Professional Conduct reviews investigation files in order to propose a disposition for a matter.⁵⁴ In each case,⁵⁵ two board members independently review the investigation report, the employee's official personnel record, and how similar cases have been handled, and propose a disposition using the preponderance of the evidence standard.⁵⁶ Board members are also to consider mitigating and aggravating factors known as the Douglas factors—derived from a Merit Systems Protection Board (MSPB)⁵⁷ decision—in determining the appropriateness of a disciplinary action.⁵⁸ The board's chairman reviews their recommendations and the investigative file and issues the board's proposed disposition. The board can propose that a special agent be cleared of alleged charges, receive a letter of caution,⁵⁹ or be disciplined (receive a letter of reprimand, or be suspended, demoted, or removed).

The final agency decision is made by one of two deciding officials in headquarters using the preponderance of the evidence standard, after independently reviewing the proposed action and the investigation file and

⁵³The Department of Justice Inspector General reviews all complaints OPR receives and can decide to take the investigative lead.

⁵⁴Investigations involving senior executives are forwarded to the Department of Justice for disposition.

⁵⁵The board also reviews investigations of shooting incidents, accidents involving official government vehicles, and damage or loss of government property.

⁵⁶The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

⁵⁷MSPB hears and decides appeals by federal employees of actions taken against them by their agencies.

⁵⁸*Curtis Douglas v. Veterans Administration*, 5 MSPR 280, 5 MSPB 313 (1981). The factors include the nature, seriousness, and notoriety of the offense; the position of the employee; past work and disciplinary record; effect of an offense on the employee's ability to perform his or her job; and consistency with the agency's penalty guide.

⁵⁹A letter of caution is nondisciplinary in nature and issued in situations in which a charge is not sustained but the employee needs to be warned about the appearance of impropriety or situations in which a charge is sustained but does not warrant disciplinary action.

consulting with employee relations specialists and the DEA Chief Counsel's office. The deciding officials also apply the Douglas factors and other legal precedents. As part of the final decision process, an employee is provided the opportunity to review all evidence and make written and/or oral responses to the disciplinary charges.

Higher Proportion of African American, Hispanic, and Women Special Agents Disciplined

Our analysis of disciplinary data for fiscal years 1997 to 2001 showed that the proportion of African American, Hispanic, and women special agents disciplined was substantially higher than their representation in the DEA special agent workforce and that this difference was statistically significant. During this period, African American special agents accounted for 16.2 percent of the agents disciplined, while making up 8.3 percent of the special agent workforce; Hispanics were 15.2 percent of agents disciplined, while making up 8.9 percent of the special agent workforce; and women were 12.7 percent of special agents disciplined but 7.8 percent of the special agent workforce. Table 18 shows special agents disciplined, compared with special agent population, by EEO group for fiscal years 1997-2001.

Table 18: Special Agents Disciplined Compared with Special Agent Population, by EEO Group, Fiscal Years 1997-2001

	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Women	Men	Total
Total disciplined	9	66	62	0	271	52	356	408
Percentage of total disciplined	2.2%	16.2%	15.2%	0.0%	66.4%	12.7%	87.3%	100.0%
Representation in special agent workforce	2.0%	8.3%	8.9%	0.6%	80.3%	7.8%	92.2%	100.0%

Source: GAO analysis of DEA data.

We identified two factors that help explain why a higher proportion of African American, Hispanic, and women special agents were disciplined. One factor is that a proportionately higher number of allegations of misconduct were lodged against African American, Hispanic, and women, compared with their representation in the special agent workforce. These differences, shown in table 19, were statistically significant.

Table 19: Distribution of Cases of Alleged Misconduct Involving Special Agents, by EEO Group, Compared with Workforce Representation, Fiscal Years 1997-2001

	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Women	Men
Percentage of allegations	1.5%	12.8%	13.3%	0.1%	72.3%	10.5%	89.5%
Representation in special agent workforce	2.0%	8.3%	8.9%	0.6%	80.3%	7.8%	92.2%

Source: GAO analysis of DEA data.

The second factor that helps explain why a higher proportion of African American, Hispanic, and women special agents are disciplined is that a higher proportion of allegations levied against them are found after investigation to have merit and lead to disciplinary action. These differences, shown in table 20, were statistically significant.

Table 20: Cases of Alleged Misconduct Involving Special Agents That Resulted in Disciplinary Action, by EEO Group, Fiscal Years 1997-2001

	Total	Asian/ Pacific Islander	African American	Hispanic	Native American	White	Women	Men
Percentage of cases resulting in discipline	47.0%	64.3% ^a	59.5%	53.4%	^b	43.2%	57.1%	45.8%

Source: GAO analysis of DEA data.

Note: Does not include cases administratively closed without a final decision.

^aAlthough the percentage of cases involving Asian/Pacific Islanders resulting in disciplinary action is larger than the figures for African Americans, Hispanics, and women, this percentage is not statistically different from the percentage for whites.

^bSmall numbers prevented statistical analysis of allegations and disciplinary actions.

Concerns with DEA’s Disciplinary Data

DEA does not know why nor does any study offer a reason why African American, Hispanic, and women special agents had proportionately higher numbers of allegations of misconduct lodged against them or why a higher proportion of these allegations were substantiated by investigations and resulted in disciplinary actions.

In performing our analysis, we found discrepancies between the disciplinary data maintained by the DEA Chief Counsel’s office that were

reported to us and data the DEA Office of Equal Opportunity reported to the Monitoring Committee. We brought these discrepancies to DEA's attention, and significant time was needed to develop corrected data. The corrected data showed that data reported by the Chief Counsel's office were incomplete while data reported by the Office of Equal Opportunity counted some cases twice. Accurate and reliable data are important to DEA monitoring its disciplinary process. At the time of our review, DEA was looking into but had not developed a process to help ensure accurate and reliable reporting of disciplinary data.

Studies Have Found DEA's Disciplinary Process to Be Fair and Nondiscriminatory

Two studies done by outside contractors, which we found to be methodologically sound, have found DEA's disciplinary process to be fair and nondiscriminatory. The first study, done under a contract awarded by the Working Group in order for DEA to comply with the court order in the *Segar* case, analyzed 318 disciplinary cases for the period September 1982 through June 1986 to determine whether disciplinary action taken was consistent with the offense or offenses committed and whether special agents were treated alike regardless of race.⁶⁰ Of the 318 cases, 239 cases (75.2 percent) involved white special agents, 32 (10.1 percent) involved African Americans, 36 (11.3 percent) involved Hispanics, and 11 (3.5 percent) involved other racial/ethnic groups. The percentage of African American and Hispanic special agents disciplined was higher than their representation in the special agent workforce. African Americans, who were 10.1 percent of the agents disciplined, made up about 8.5 percent of the special agent workforce during the period, and Hispanics, who were 11.3 percent of the agents disciplined, made up 10.2 percent of the special agent workforce. Women were 3.2 percent of agents disciplined while making up 7.6 percent of the special agent workforce.

The study's results, issued in April 1987 and approved by the Working Group, concluded that, based on statistical analysis, there appeared to be no discrimination against minorities in general, and African Americans in particular, with regard to the number of individuals recommended for discipline, the severity of the proposed punishment, or the severity of the actual punishment carried out as related to the severity of the offense. The study also found a strong relationship between the severity of the charge and the discipline ultimately meted out. The study found that although

⁶⁰A *Study of the Drug Enforcement Administration's Current Conduct and Discipline System*, Advanced Research Resources Organization, Bethesda, Md.: Apr. 1987.

African American special agents were charged on average with more serious offenses than white special agents, there were no statistically significant differences in the discipline decisions as a function of the severity of the charges. Although the study did not identify the cause for African Americans being charged with more serious offenses, it raised but did not examine whether, race, type of assignment, or small sample size of the study could have been factors.

The second study, done at the request of the Monitoring Committee and Working Group, examined whether there were differences in the discipline administered to white versus African American special agents during calendar years 1994-2000.⁶¹ Of 365 disciplinary cases of special agents during this period, 237 (64.9 percent) involved whites, 58 (15.9 percent) involved African Americans, 6 (1.6 percent) involved Hispanics, 6 (1.6 percent) involved Asian/Pacific Islanders, and 3 (0.8 percent) involved Native Americans. There was no race information in 3 cases. In addition, no breakout by gender was reported. The study methodology was developed so that the results could be applied to any protected group, but because the study was done in the context of the *Segar* case, only discipline administered to African American and white special agents was analyzed.

According to the report, issued in August 2001 and approved by the Working Group, there were no statistically significant differences in the imposition of discipline between African American and white special agents for any offense or violation category. The study also concluded that the data “decisively and unequivocally” showed no differences between African American and white special agents in terms of the severity of the punishment administered, which the study said confirmed the integrity of the discipline process. Although the data reported by the study showed that the percentage of African American special agents disciplined (15.9 percent of agents disciplined) was higher than the group’s representation in the workforce (less than 9 percent), the study did not analyze the relationship between the number of African Americans disciplined and their representation in the special agent workforce.⁶²

⁶¹Frank J. Landy, *Drug Enforcement Administration Discipline System Study*, SHL Landy Jacobs: Litigation Support Group, Boulder, Colo.: Aug. 8, 2001.

⁶²The situation was similar for Hispanic special agents. Although less than 9 percent of the special agent workforce, Hispanics accounted for 15.9 percent of the agents disciplined during the study period.

The integrity of DEA's discipline process from a legal perspective was also evident in MSPB decisions. Employees can appeal removals, demotions, and suspensions of more than 14 days to MSPB and, during, fiscal years 1997-2001, MSPB decided the cases of 28 DEA special agents.⁶³ Of the 28 cases, MSPB affirmed DEA's actions in 24 cases (85.7 percent), affirmed some or all of the charges and mitigated the penalty in 2 cases (7.1 percent), and reversed DEA's actions in 2 cases (7.1 percent). In comparison, governmentwide, MSPB reversed 22 percent of agency decisions in fiscal year 2001. A Justice Department review of fiscal year 1997 Justice cases before MSPB found that, among department components, DEA had the highest affirmation rate, which was attributed to the quality of documentation and evidence supporting charges. The report said that DEA's centralized disciplinary system provides for impartiality and consistency in developing defensible disciplinary actions.

Employee Views on Promotion and Discipline

As agreed with your office, during our review, we spoke with minority and women special agents, including members of the Monitoring Committee as well as members of the Hispanic Advisory and Asian-American Advisory Committees, to obtain their views on promotion and discipline issues.⁶⁴ Our work has found that high-performing organizations promote a diverse and inclusive workforce and have workplaces in which perceptions of unfairness are minimized.⁶⁵ However, comments of many of the minority and female special agents with whom we spoke indicated that they believed trust and fairness were lacking with regard to the promotion and discipline processes. For example, members of these committees said they perceived that their groups were underrepresented in promotions to GS-14 and GS-15 and that selection outcomes were frequently based on "who you

⁶³Includes initial appeals and Board reviews of initial decisions regarding the same individual.

⁶⁴We recognize that the views of the members of the committees may not necessarily represent the views of their constituents. Also, there was no group of nonminority special agents to which we could speak. We recognize that the views of nonminority special agents could be different from the views of the minority agents.

⁶⁵For a discussion of this and other attributes of high performing organizations, see U.S. General Accounting Office, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: Mar. 15, 2002); *Human Capital: Practices That Empowered Employees*, [GAO-01-1070](#) (Washington, D.C.: Sept. 14, 2001); and *Human Capital: Key Principles from Nine Private Sector Organizations*, [GAO/GGD-00-28](#) (Washington, D.C.: Jan. 31, 2000).

know.” These special agents said that candidates, especially in field divisions, may have been disadvantaged because of a lack of personal knowledge of an agent among the board members. The November 2002 change to increase the number of SACs serving as rotating members was made to address this concern. Another concern the minority special agents expressed was about the board’s racial, ethnic, and gender representation. However, in January 2003, the Career Board included two African Americans, two Hispanics, one Native American, and six whites; one of the members was a woman. During the 1997-2002 time frame, the board had a similar makeup.

One additional concern of many of the minority special agents with whom we spoke was the perceived unfairness in the discipline process. These agents said that they believed that minorities were subject to more scrutiny and, as a result, were disproportionately investigated for misconduct. A number of the agents also said that they perceived that there were inconsistencies in punishment meted out, with minorities receiving harsher punishment. Our work showed that African American, Hispanic, and women special agents had a proportionately higher number of allegations of misconduct lodged against them and that a higher proportion of these allegations were substantiated by investigations and resulted in disciplinary actions. However, the results of two studies by outside contractors, approved by an oversight group and which we found methodologically sound, found DEA’s disciplinary process to be fair and nondiscriminatory.

The perceptions minority and women special agents have with regard to fairness in promotions and discipline may be driven by an absence of data and other information. For example, DEA had not shared the racial analysis of its promotion actions or SAC/office head recommendations with its special agent workforce, except the Monitoring Committee.⁶⁶ Our analysis of promotions to GS-14 and GS-15 special agent positions for fiscal years 1997 through 2001 showed no statistically significant differences in the promotion rates among the racial, ethnic, and gender groups. In addition, DEA only shared the results of the 2001 discipline study, which found no statistically significant differences in the imposition of discipline between African American and white special agents, with the Monitoring

⁶⁶Because the *Segar* case had remained under court supervision, DEA provided the Monitoring Committee with the results of promotion decisions, breaking out the data by African American, white, and other, though not by gender.

Committee. On the other hand, although the study methodology was developed so that the results could be applied to any protected group, the study was done in the context of the *Segar* case and examined only discipline administered to African American and white special agents. However, it appears that discipline actions taken against Hispanics were to have been included in the study, according to a memo from a former DEA Administrator to the Hispanic Advisory Council. Neither council members nor DEA officials could explain why this did not occur.

As we discuss in our exposure draft *A Model of Strategic Human Capital Management*, our work in the human capital area has shown that leading organizations promote an inclusive workforce by seeking employee input and using that input to adjust their human capital approaches.⁶⁷ DEA has taken, or plans to take, some steps in this regard. One step was that, as DEA's study of a valid SAC/office head recommendation process progressed, the agency involved minorities, in addition to Monitoring Committee representatives that had been involved, and women. Also, the November 2002 changes to the structure of the Career Board were based on input from the Monitoring Committee and other special agents, and, according to the Administrator's memo announcing the change, were intended to bring transparency and greater participation to the promotion process. Furthermore, in March 2002, the Administrator established an ombudsman office⁶⁸ to address workplace conflicts, facilitate fair and equitable resolutions to concerns, and serve as an advisor and information and communications resource. The ombudsperson said that she had handled a variety of matters, mostly involving special agents, including issues concerning performance appraisals and Career Board decisions to reassign agents.

Conclusions

At some steps of DEA's hiring process, a higher percentage of minorities do not meet the requirements to become a special agent, with African American and Hispanic applicants hired at substantially lower rates compared with white applicants. DEA has not analyzed why some groups of applicants have lower passing rates and whether alternative procedures

⁶⁷[GAO-02-373SP](#).

⁶⁸For additional information about ombudsmen in the federal workplace, see U.S. General Accounting Office, *Human Capital: The Role of Ombudsmen in Dispute Resolution*, [GAO-01-466](#) (Washington, D.C.: Apr. 13, 2001).

could lessen these differences without compromising the high standards necessary to perform the job successfully. Furthermore, because a large number of applicants drop out or do not meet hiring standards, DEA offers employment to virtually all applicants it finds suitable, leaving the agency with little choice in whom it hires. DEA has not performed a workforce analysis that takes into account expected attrition of the special agent workforce, especially due to retirements, that could help the agency plan for a sufficiently large pool of suitable special agent candidates with diverse cultural and skills backgrounds from which it could selectively hire.

Promotions of special agents to supervisory GS-14 and GS-15 positions have not shown statistically significant differences among groups. However, DEA's rigorous promotion process has been subject to litigation surrounding the SAC/office head recommendation process, the step in the overall promotion process that had not been validated. DEA has since developed a revised recommendation process and proposed a monitoring process that the agency and the plaintiffs are discussing to reach agreement about and which still must be court approved. However, the proposed monitoring process does not take gender into account.

The proportion of African American, Hispanic, and women special agents disciplined for misconduct was substantially higher than their representation in the DEA special agent workforce. However, two studies have found DEA's discipline process to be valid and fair, but neither of the studies addressed differences in the rates at which different groups were disciplined, and the second study compared only disciplinary actions involving African American and white special agents. Reliable data would be necessary to carry out a study covering all race, ethnic, and gender groups, and our analysis of disciplinary actions was delayed by the lack of reliable data. Although DEA eventually developed corrected data, the agency has not developed a process to maintain accurate and reliable disciplinary data.

Finally, minority and female special agents with whom we spoke generally perceived that the promotion and discipline processes lacked fairness. Perceptions of unfairness can be almost as corrosive to the workplace as actual instances of unfair treatment and can undermine trust. Because DEA did not widely share analyses of promotion and disciplinary actions with its special agent workforce, agents were hindered in formulating informed views about the fairness and equity of the promotion and discipline processes. This situation would continue under DEA's proposal for

monitoring the promotion process because reporting of outcomes would be limited to the African American special agents plaintiff group.

Recommendations for Executive Action

We recommend that the Administrator of DEA direct that

- a process be initiated to monitor the results of decisions at the various steps in the hiring process to identify differences in selection rates among groups, and where substantial differences are found, determine why they occur and what, if anything, can be done to reduce the differences while maintaining the high standards necessary for the job of special agent;
- a workforce analysis be done, which takes into account retirement eligibility, expected retirements, and other attrition, to guide the development of DEA's recruiting and hiring plans and strategies;
- the plans to monitor the results of the SAC/office head recommendation process by race and ethnicity be expanded to include monitoring by gender;
- steps be taken to develop, maintain, and ensure the reliability of a discipline database and that the study of disciplinary actions taken against African American and white special agents be expanded to analyze disciplinary actions against all racial, ethnic, and gender groups of special agents; and
- appropriate, aggregate statistical data on the outcomes of the promotion and discipline processes for all racial, ethnic, and gender groups are available to its special agent workforce to help special agents formulate informed views about the fairness and equity of the agency's promotion and discipline processes.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the Acting Administrator of DEA agreed with our recommendations and said that DEA was acting to implement them. (See app. IV for the text of the comments.)

Regarding hiring of special agents, DEA said it will monitor the results of decisions at the various steps in the hiring process to identify differences in selection rates. DEA's response said that it would identify differences

among minority groups but did not specifically mention gender differences. DEA should examine differences in selection rates among all groups, including gender groups. DEA also said that it will conduct a study to review each part of the special agent hiring process. The study will include analysis of processes used by other law enforcement agencies to identify alternative strategies that might lessen differences in selection rates.

DEA agreed with our recommendation that a workforce analysis be done to guide the development of recruiting and hiring plans and strategies. DEA said that it will analyze its workforce to determine the portion eligible for, or who anticipates, retirement, and to identify other attrition concerns for the agency and use the results to guide the development of its recruiting and hiring plans and strategies.

DEA also agreed with our recommendation to monitor the SAC/office head recommendation process for all EEO groups, including by gender. DEA said that, if it is put in place, its monitoring plan will include evaluating results for all demographics of the workforce, including race, ethnicity, and gender.

Regarding the reliability of discipline data, DEA said that it agreed with our recommendation and had begun an effort to consolidate multiple discipline databases. With regard to our recommendation that DEA expand the study of disciplinary actions taken against African American and white special agents to analyze disciplinary actions against all racial, ethnic, and gender groups of special agents, DEA said that it will do so.

Finally, DEA concurred with our recommendation to make statistical data on the outcomes of the promotion and discipline processes for all racial, gender, and ethnic groups available to its special agent workforce. DEA said that it will make available aggregate statistical data concerning promotion selections and types of misconduct found.

Overall, the actions DEA describes, when fully implemented, should meet our recommendations. DEA also provided technical comments, which we incorporated in the report where appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its date. We will then send copies of this report to the Attorney General, the Administrator of DEA, and interested congressional committees. We will

also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>. If you or your staff have questions about this report, please call me at (202) 512-6806 or Thomas Dowdal, Assistant Director, on (202) 512-6588. Key contributors to this assignment were Anthony Lofaro, Domingo Nieves, and Gregory Wilmoth.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Victor S. Rezendes". The signature is fluid and cursive, with the first name "Victor" and last name "Rezendes" clearly distinguishable.

Victor S. Rezendes
Managing Director, Strategic Issues

Objectives, Scope, and Methodology

In her letter of May 25, 2001, Congresswoman Eddie Bernice Johnson expressed concerns about discrimination in the Drug Enforcement Administration's (DEA) hiring, promotion, and discipline processes. Based on discussions with her office, we agreed to (1) develop information on the diversity of DEA's special agent workforce and (2) examine the processes DEA has put in place to provide for fair and nondiscriminatory hiring, promotion, and disciplining of special agents and the results that have been achieved.

DEA Special Agent Workforce Diversity

With regard to the diversity of DEA's special agent workforce, we developed information by race, ethnicity, and gender for each pay grade, using data from the Office of Personnel Management's (OPM) Central Personnel Data File (CPDF) as of September 1980, 1985, 1990, 1995, and 2000, and data from DEA as of September 2002. We selected these dates to show changes, if any, that had occurred in DEA's special agent workforce from around the initial decision of the U.S. District Court for the District of Columbia in 1981 with regard to a class action racial discrimination lawsuit brought against DEA by the agency's African American special agents¹ through the end of fiscal year 2002. To compare the racial, ethnic, and gender composition of the DEA special agent (criminal investigator job occupation series 1811) workforce with other criminal investigator workforces, we used data OPM provided for criminal investigators governmentwide and the nonfederal law enforcement labor force, a measure that includes nonfederal law enforcement and security-related occupations that are considered comparable to the 1811 occupational series by the OPM, the Equal Employment Opportunity Commission, and the Department of Labor. In addition, we obtained overall federal workforce diversity data as of September 2002 from OPM. We determined based on our past work² that the CPDF data are sufficiently reliable for the purpose used in this report.

¹*Segar v. Civiletti*, 508 F. Supp. 690 (D.D.C. 1981), *aff'd in relevant part subnom. Segar v. Smith*, 738 F. 2d 1249 (D.C. Cir. 1984), *cert. denied subnom. Meese v. Segar*, 471 U.S. 1115 (1985).

²U.S. General Accounting Office, *OPM's Central Personnel Data File: Data Appear Sufficiently Reliable to Meet Most Customer Needs*, GAO/GGD-98-199 (Washington, D.C.: Sept. 30, 1998).

DEA's Hiring, Promotion, and Discipline Processes

To determine the DEA processes for hiring, promoting, and disciplining special agents and the results that have been achieved, we reviewed relevant DEA policies and procedures and interviewed knowledgeable DEA officials. In addition, we spoke with employee representatives, including members of the Monitoring Committee, a court-established group of African American special agents representing plaintiff class members; the Hispanic Advisory Council; and the Asian-American Advisory Counsel. Further, we spoke with the members of the Working Group that was established to help ensure that the orders of the court are carried out and that DEA's personnel practices are nondiscriminatory. With regard to developing information about the job-relatedness of DEA's hiring, promotion, and discipline processes, we spoke with DEA officials, Working Group members, and contractors who had studied the processes and reviewed available studies and other documentation.

In analyzing results, we compared each racial and ethnic group and compared men of all races/ethnicities with women of all races/ethnicities. In addition to this level of analysis, where there were a sufficient number of individuals, we analyzed data for men and women within each race and ethnic group. In analyzing differences in how racial, ethnic, and gender groups fared in DEA's hiring process, we used the 80 percent rule set out in the *Uniform Guidelines on Employee Selection Procedures*.³ Under this rule, a selection rate for any race, ethnic, or gender group that is less than 80 percent of the selection rate for the group with the highest rate is generally considered a substantially different rate of selection. In analyzing promotion and disciplinary actions, we applied standard statistical tests to determine if there were statistically significant differences among the racial, ethnic, and gender groups. We used statistical techniques in these analyses to be consistent with how other studies of DEA's promotion and discipline process were conducted. Our analyses generally covered fiscal years 1997-2001, except as noted below, and were not designed to prove or disprove discrimination. Rather, they were designed to provide information about race, ethnicity, and gender differences in DEA's hiring, promotion, and disciplinary actions.

³The *Uniform Guidelines on Employee Selection Procedures*, adopted in 1978 by the Equal Employment Opportunity Commission, the Civil Service Commission (the predecessor agency to OPM), and the departments of Justice and Labor, provide a uniform set of principles governing use of employee selection procedures and identifying adverse impact (29 C.F.R. Part 1607).

Hiring Results

We analyzed the results of DEA's screening of special agent applicants at each step of the hiring process on applications received under two vacancy announcements—BA-98-01, which was open from October 15, 1997, through March 7, 2000, and BA-20-00, which opened on May 8, 2000, and remained open during our review. We selected these two announcements to facilitate an analysis of (1) the effect of changes to eligibility criteria and written assessment scoring beginning with BA-20-00 and (2) final hiring rates. We examined DEA's screening actions on applicants from October 15, 1997, through March 31, 2002, analyzing the data by race, ethnicity, and gender. Data we analyzed were provided by DEA from the agency's Agent Recruiting and Tracking System (ARTS), which tracks applications received, the status of applicants, decisions on applicant eligibility at each step of the hiring process, and final hiring decision. We examined ARTS data and concluded that the data were reliable for our purposes because the disposition of applications reconciled with applications processed.

With regard to suitability determinations DEA made on applicants based on the results of psychological and polygraph examinations and background investigations, we reviewed two sets of data. First, we reviewed data recorded in ARTS to provide an overall picture on the outcomes of suitability determinations. Because about 80 percent of suitability determinations are made by a three-person panel, we reviewed data maintained by the panel on its decisions. However, because the panel's database had only been initiated for decisions on or after September 29, 2000, we only reviewed panel decisions from September 29, 2000, through May 7, 2002. To gain an understanding of materials the panel considers in making its determinations, we reviewed a nongeneralizable sample of applicant suitability determination case files.

Promotion Results

Our analysis of promotions focused on competitive promotions to General Schedule grade levels 14 and 15 special agent positions. We reviewed three elements of the promotion process: the Special Agent Promotion Program (SAPP), which uses performance ratings and job simulation exercises to measure knowledge and abilities to perform at the next grade level; promotion recommendations that Special Agents in Charge or other office heads make to the Career Board, the body that makes final promotion recommendations and whose chair makes the final selections; and the final selections. We analyzed data by race, ethnicity, and gender. With regard to the SAPP, we analyzed data contained in annual reports on the SAPP for 1997 through 2001. SAPP results and the reports had been reviewed and

approved by the Working Group. For recommendations and selections, we examined actions related to best-qualified certificates for vacancies from which promotions were made for fiscal years 1997 through 2001.⁴ We obtained data from DEA on the number and demographic profile of applicants on the best-qualified lists, the number of them who received recommendations, and the number selected. Because applicants can appear on multiple best-qualified lists, we also obtained an unduplicated count of the number of applicants on the best-qualified lists and the number who received recommendations. To check the reliability of the data DEA provided to us, we compared the minutes of Career Board deliberations on promotion decisions to data reported to the Monitoring Committee.

Discipline Results

With regard to disciplinary actions, we analyzed data by race, ethnicity, and gender for cases resolved during fiscal years 1997 through 2001. For these cases, we determined the number and demographic profile of special agents against whom allegations of misconduct were made, the disposition of their cases, and the nature of disciplinary actions taken. However, in performing our analysis, we found discrepancies between the data maintained by DEA's Chief Counsel's office that were reported to us and the data the Office of Equal Opportunity reported to the Monitoring Committee. We brought these discrepancies to DEA's attention. After some delay, DEA provided us with corrected data. We performed a limited verification of the corrected data and found them to be reliable. In addition to our analysis of disciplinary data, we reviewed the two studies of DEA's disciplinary process performed by contractors as well as a report prepared by the Justice Department. In addition, we reviewed the disposition of appeals by special agents to the Merit Systems Protection Board.

We performed our work from September 2001 through February 2003 in accordance with generally accepted government auditing standards.

⁴The promotion fiscal year begins October 22 of each year.

Physical Task Test Minimum Requirements

The minimum requirements in each of the six tasks that applicants for Drug Enforcement Administration (DEA) special agent positions must meet to pass the physical task test are shown in table 21.

Table 21: DEA Physical Task Test Minimum Performance Requirements		
Task	Women	Men
Trigger pull ^a	29 pulls of a handgun trigger in 30 seconds with stronger hand	same
Pull-ups (number) ^b	10	2
Sit-ups (number within 2 minutes)	46	46
Push-ups (number)	14	25
120-yard shuttle run	No longer than 29 seconds	No longer than 26 seconds
2-mile run	No longer than 18:45 minutes	No longer than 16:30 minutes

Source: DEA.

^aEliminated in March 2003.

^bThe pull-up test for women is performed using a horizontal bar mounted 3 feet from the floor and 2 feet from the wall. A woman begins the pull-up lying on her back. The pull-up test for men is performed using a horizontal bar mounted above the floor and out-of-reach of the subject. A man begins the pull-up hanging from the horizontal bar.

Competencies in Assessing GS-13 and GS-14 Special Agents for Promotion

Performance Rating Competencies for GS-13 and GS-14 Special Agents

In the Special Agent Promotion Program (SAPP) performance rating, General Schedule (GS) grade 13 special agents are evaluated on seven competencies and GS-14 special agents are evaluated on eight competencies, as table 22 shows.

Table 22: Performance Rating Competencies for GS-13 and GS-14 Special Agents

Competency	Competencies rated	
	GS-13	GS-14
Written communication	X	
Acting as a model	X	X
Gathering information and making judgments/decisions	X	X
Interacting with others	X	X
Monitoring and guiding	X	X
Oral communication	X	X
Planning and coordinating	X	X
Mentoring, developing, and evaluating others		X
Persuading		X

Source: DEA Promotion Ratings Scales Booklets for GS-13 and GS-14 special agents.

Competencies Measured by Assessment Center Job Simulations

In 2001, GS-13 special agents were evaluated on 12 competencies in SAPP assessment center simulations, while GS-14 special agents were evaluated on 9 competencies, as table 23 shows.¹

¹Competencies were unchanged during the 1997-2001 period, except for the 1997 GS-15 SAPP, which included the competency “ability to allocate resources.”

Table 23: Competencies Measured by Assessment Center Job Simulations in 2001

Competency	GS-13	GS-14
Ability to communicate in writing	X	X
Ability to communicate orally	X	X
Ability to expand case to fullest potential	X	
Ability to evaluate and develop subordinates	X	X
Ability to integrate information and draw conclusions	X	X
Ability to delegate	X	X
Ability to recognize and establish evidence	X	
Ability to effectively utilize cooperating sources	X	
Ability to organize, plan, and prioritize activities	X	X
Ability to coordinate and monitor work	X	
Ability to plan and coordinate enforcement operations		X
Ability to relate effectively with others	X	X
Knowledge of DEA manuals, policies, and procedures	X	X

Source: 2001 SAPP report.

Interim Special Agent in Charge/Office Head Recommendation Process

The interim recommendation process, which was implemented in January 2000 and was still in place as of December 2002, requires that a special agent in charge (SAC) or office head, when making promotion recommendations to the Career Board, provide information about the personal characteristics, traits, or attributes that make a candidate better suited to the position under consideration and how a candidate's past or present experiences or demonstrated success makes him or her a top candidate. The latter requirement covers seven specific areas:

- directing enforcement and/or investigative-related programs;
- managing, motivating, and mentoring subordinates;
- working in a team environment;
- working individually;
- managing agency resources;
- building and maintaining coalitions; and

- acquiring or possessing technical knowledge, education, and special skills, or training peculiar to or required by the position.
-

Proposed SAC/Office Head Recommendation Process

Among the changes under a proposed recommendation process are that applicants for promotions would be asked to provide a summary of their major accomplishments and how they are best qualified for the position applied for, including technical knowledge, education, special skills, or training specified in the vacancy announcement, and provide a narrative describing their achievements in the following competencies:

- directing enforcement and/or investigative-related programs or other appropriate managerial experience in a law enforcement setting;
- managing, motivating, mentoring, and/or training personnel;
- working in a team environment of mutual cooperation and assistance;
- building and maintaining coalitions with other personnel and entities internal and external to the agency; and
- for applicants for GS-15 positions, managing agency resources.

Comments from the Drug Enforcement Administration



U.S. Department of Justice
Drug Enforcement Administration

MAY 02 2003

Managing Director Victor S. Rezendes
Strategic Issues Division
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Rezendes:

This is to provide you with the Drug Enforcement Administration's (DEA) formal response to the General Accounting Office's (GAO) recently completed draft report, "*EQUAL EMPLOYMENT OPPORTUNITY: Hiring, Promotion, and Discipline Processes at the DEA*" (GAO-03-413). DEA has reviewed the draft report and submits the following technical comments addressing corrections for accuracy on the facts and findings of this report. Technical comments are followed by DEA's response to the recommendations of the GAO.

The draft GAO report addressed three major personnel systems at the DEA concerning that part of its workforce consisting of Special Agents in the General Schedule (GS) 1811 series. The three major personnel systems are: (1) the hiring procedures, (2) promotion process, and (3) discipline process.¹ Concerning overall diversity, the draft GAO report concluded that,

The diversity of DEA's [S]pecial [A]gent ([C]riminal [I]nvestigator) workforce was below overall government workforce percentages but generally comparable with the governmentwide population of criminal investigators, except for women.

GAO-03-413, page 2. According to Table 1: "Demographic Distribution of the Federal Workforce and Criminal Investigators (Special Agents) in DEA, Governmentwide, and the Nonfederal Workforce a)", DEA notes that the Agency was "generally comparable" with the Governmentwide population of criminal investigators for Asian/Pacific Islander and Hispanic, was not as high as the average for Native American and women, but was *higher than* the Governmentwide percentage for African-Americans. DEA also notes the average percentage

¹ In reviewing each process, DEA notes GAO investigators requested discussions with minority members, which became the basis for attributing attitudes and sentiments to the entire 1811 workforce. DEA was not requested to present a representative sampling of the 1811 workforce, which would have included individuals from the remaining 80% of the 1811 workforce. The Agency remains willing to provide a representative sampling of the entire 1811 workforce.

of White Special Agents reported in Table 1 was precisely the same for the Governmentwide population and the non-Federal workforce.

Hiring Procedures

Concerning the DEA hiring procedures for Special Agents, the draft GAO report contained conclusions that, for fiscal years 1997 through 2001, the “proportion of white applicants hired was substantially higher” than African-American or Hispanic applicants. For this analysis, the draft GAO report relied upon the “80-percent rule” pursuant to the Uniform Guidelines on Employee Selection Procedures.²

The draft GAO report did find that the “DEA’s hiring procedures are based on criteria in federal regulations, professional standards, or standards established by subject matter experts.” DEA concurs with this assessment. The draft report also stated that “the [A]gency had not studied why its procedures resulted in different selection rates and whether they could be modified to reduce differences while maintaining high standards.” *See* GAO-03-413, page 2. As a result of DEA initiative, studies were begun before the draft GAO report to examine the hiring process for reasons of increasing efficiency, recruitment, and the quality of applicants.

Further, there also appear to be fundamental misconceptions in the draft report concerning the manner in which applicants are extended offers of employment. Applicants are extended conditional offers of employment upon meeting minimum eligibility criteria. Applicants are presented final offers of employment after they have succeeded in passing all phases of the hiring process. The draft report, however, critically examined the DEA process of extending final offers of employment to applicants, by stating,

DEA officials said that many [applicants] dropped out because of the lengthy hiring process, which, they said, was averaging about two years. As a result, DEA was left with a limited pool of candidates meeting its hiring standards for which the agency could hire. Virtually everyone who made it through all the steps in the hiring process was offered employment.

GAO-03-413, page 17. This critical assessment is repeated at the end of the draft report,

Furthermore, because a large number of applicants drop out or do not meet hiring standards, DEA offers employment to virtually all applicants it finds suitable, leaving the agency with very little choice in whom it hires.

² The draft report does not contain an explanation of the GAO’s selection of the “80% rule” for hiring analysis, and statistical significance determinations for analysis of the promotion and discipline processes.

GAO-03-413, page 51.

The Agency's Special Agent hiring process is designed to obtain the best qualified candidates for the position of DEA Special Agent. Throughout each step of the process, DEA assesses potential applicants for compatibility with the position description. Those applicants who successfully complete all phases of the hiring process are considered to be among the most competitive applicants and are offered employment based upon that reasoned justification. The applicants who successfully clear all of the processes are deemed to be highly valued and the top candidates. As such, language such as "limited pool of candidates" and "little choice in whom it hires" are inconsistent with an understanding of the structure of the process.

Misconceptions concerning the hiring process were carried over equally into the draft report's presentation of the part of the hiring process that addresses suitability and security examinations of potential applicants. The draft report stated,

In addition, background investigations are to be initiated earlier in the process and by field offices, which also are to review the investigation results, perform necessary follow up, and make a preliminary suitability recommendation.

GAO-03-413, page 29. This statement is not accurate. The hiring process contains two processes to assess requirements for the position of DEA Special Agent - preliminary records checks followed by a background investigation. The revised hiring process allows for field offices to conduct criminal history and credit records checks. The preliminary records checks eliminate the need for initiating costly background investigations. Background investigations are now initiated by field offices through the United States Office of Personnel Management (OPM), and would not be initiated until applicants complete a medical examination and Physical Task Test (PTT). As such, it cannot be fairly stated that background investigations are conducted early in the hiring process.

Promotion System

The draft GAO report reviewed the DEA promotion system for Special Agents seeking promotion to the GS 14 and GS 15 levels under standard statistical techniques.³ This current system at DEA consists of (1) the Special Agent Promotion Program (SAPP); (2) the interim Special Agent in Charge / Office Head recommendation process; and (3) Career Board recommendation to the selecting official (Deputy Administrator for DEA).

As the GAO notes in the draft report, the development of the DEA promotion system resulted from a history of civil litigation in the area of equal employment opportunity, and as a result, the Agency closely monitors promotion rates to ensure adherence to accepted selection procedures. In reviewing the draft GAO report, however, DEA is concerned with the description

³ The draft GAO report does not explain why investigators chose to analyze hiring actions under the 80-percent rule and the promotion process under standard statistical techniques.

of the civil litigation history in the opening section entitled "Litigation History." The draft GAO report stated,

In its [1999] ruling [in Segar, et al. v. Reno, et al.,⁴] the court did not address whether there was adverse impact in promotions.

GAO-03-413, page 11. The Court, however, did address whether there was adverse impact in promotions in the 1999 Segar decision. In that decision, the United States District Court for the District of Columbia examined each stage of the promotion process as members of the class action in Segar (hereinafter "Plaintiff Class Members") presented their challenges to the Court for adjudication. The Court found that the selections which had been recommended by the Career Board resulted in no "bottom-line" "disparate impact." DEA considers this to be a significant finding.

Because the Agency relied upon the SAC / Office Head recommendations in a segment of the larger promotion process, the Court found that the recommendation process could be independently analyzed to assess disparate impact. Nothing in the SAC / Office Head recommendation process, which was the subject of the 1999 decision, however, negated the Court's finding that Plaintiff Class Members could not establish disparate impact in the resulting selections for promotions.

With this historical backdrop, the draft GAO report found that,

Our analysis showed no statistically significant differences in promotion rates among various racial, ethnic, and gender groups.

This conclusion is consistent with the Agency's vigilant analysis and monitoring of the promotion process. The draft GAO report also noted that, as it concerned that part of the process regarding reliance upon a validated SAC / Office Head recommendation process, DEA is involved in pending litigation with the Plaintiff Class Members in the matter of Segar. As such, implementation of a new SAC / Office Head recommendation process to replace the interim process would be dependent upon approval by the District Court as either compliant with the District Court Order issued in 1999, or through a settlement agreement negotiated with Plaintiff Class Members. The parties are currently involved in mediation efforts to explore whether a joint stipulation can be obtained for the development of a validated SAC / Office Head recommendation process. As with most matters subject to negotiation, however, the SAC / Office Head recommendation process currently being considered in earnest by both parties is undergoing evolutionary changes, which may cause it to appear drastically different from what the draft GAO report describes. It would be, therefore, premature for the DEA or any agency to comment upon it or draw any conclusions related to what is substantially still a pending process.

⁴ C.A. No. 77-81 (D.D.C. Sept. 14, 1999).

Additionally, in the section entitled “Results in Brief,” the draft GAO report stated,

Although DEA has a validated process to assess [S]pecial [A]gents’ promotion potential, the 1999 court decision found that a subsequent step involving recommendations by office heads of assessed [A]gents for promotion had resulted in an underrepresentation of African-American [A]gents, compared with whites, and that this step had not been validated. Interim measures modifying the recommendation process had not eliminated this situation.

GAO-03-413, page 4-5. This statement contains inaccurate information. The 1999 decision in Segar addressed the step in the SAC / Office Head recommendation process whereby SAC / Office Heads with the vacancy assessed candidates for promotion on the Best Qualified Lists (BQLs). The above referenced statement attributes the recommendation to the “office head of the assessed [A]gent,” which is a reference to the senior executive in the candidate’s chain of supervision.

Additionally, DEA data comparing the number of recommendations under the interim recommendation procedures by Special Agents making a BQL that included at least one African American did not indicate a statistically significant difference between African-American and White Special Agents. The interim procedures, therefore, remain a viable alternative for compliance with the 1999 Segar decision. However, as with any process affecting the entire workforce, DEA continues to monitor the process. Should a new process be instituted at the Agency, the oversight plan encompasses an evaluation of all demographics of the workforce, including, race, national origin (RNO), and gender.

Additionally, for reasons described above, DEA must clarify the statement of the draft report, that stated,

At the time of our review, DEA, working with the plaintiff class and other employees, has developed and validated a recommendation process.

GAO-03-413, page 12. In the development of the current proposal for a SAC / Office Head recommendation system to replace the interim procedures currently in place, the EEOMC and DEA worked together with the Segar Working Group to assess and refine the proposal. In addition to the EEOMC, DEA convened a representative and diverse panel of DEA employees to review the proposal. The Segar Working Group provided conditional approval of the proposal, based upon inclusion of an oversight and monitoring plan. DEA does not have the authority to independently “validate” a promotion system. Rather, the members of Segar Working Group are the parties’ resident experts concerning the selection of a validated process which uses job-related criteria to make merit based selections. As previously stated, the process is still the subject of mediation, and neither party currently seeks its approval with the District Court.

Concerning the oversight and monitoring of the SAC / Office Head recommendation system, the draft report stated that DEA “had not initially considered tracking results by gender.” GAO-03-413, page 38. This statement is also not accurate. The oversight and monitoring will monitor all segments of the workforce.

Furthermore, the draft report references the Career Board recommendations to the selecting official as selections by majority vote. By crediting the Career Board with selections, the draft report contains a fundamental misunderstanding of the DEA selection process. The Career Board is a body of senior executives that makes recommendations by majority vote to the Chair, who ultimately has responsibility and the authority to make the selection decision.

Disciplinary Process

The draft GAO report reviewed two studies of the discipline process at DEA,⁵ and found both to be methodologically sound. The reports that the GAO found to be methodologically sound found the disciplinary process at DEA to be fair and nondiscriminatory. The draft GAO report, however, noted that there was a higher rate of sustained discipline for minorities and women as compared to their representation in the total workforce during fiscal years 1997-2001.⁶ The GAO used standard statistical techniques for its analysis.⁷

These higher rates reflect that African-American, Hispanic, and women [S]pecial [A]gents had a proportionally higher number of allegations of misconduct lodged against them and that a higher portion of these allegations were substantiated by investigations and resulted in disciplinary actions. DEA does not know why these differences exist nor does any study offer a reason for them.

GAO-03-413, page 5.

For the integrity of the process, the disciplinary process at DEA does not restrict or otherwise control the reporting of allegations against members of its workforce. The DEA Office of Professional Responsibility (OPR) intakes allegations of misconduct from all sources, both internal and external to the Agency. Among the sources from which DEA OPR may receive allegations are DEA employees, contractors, prosecuting attorneys, other law enforcement

⁵ The DEA implemented the discipline process that currently exists at DEA as a result of Segar v. Civiletti, 508 F. Supp. 690 (D.D.C. 1981), aff’d in relevant part subnom. Segar v. Smith, 738 F.2d 1249 (D.C. Cir. 1984), cert. denied subnom. Meese v. Segar, 471 U.S. 1115 (1985).

⁶ Percentages for African-Americans: 16% of Agents disciplined to 8.3 % of workforce, Hispanics: 15% of Agents disciplined to 8.9 % of workforce, and women: 13% of Agents disciplined to 7.8 % of workforce. GAO-03-413, page 5.

⁷ The draft GAO report does not explain why investigators chose to analyze hiring actions under the 80-percent rule and the discipline process under standard statistical techniques.

organizations, or private citizens. Additionally, the intake process does not include assignment of RNO or gender information to the allegations, or processing based on such data. As a Federal law enforcement agency, DEA ensures that all allegations are processed without regard to RNO or gender, as all allegations are processed. Additionally, every complaint received by DEA OPR is reviewed by the Office of the Inspector General (OIG), Department of Justice.

DEA notes that the draft report omits the letter of reprimand from the discussion of potential disciplinary actions. GAO-03-413, page 41. The Agency's Table of Penalties includes issuance of a letter of reprimand as a disciplinary action. Unlike a letter of caution, a letter of reprimand becomes part of an employee's Official Personnel Folder (OPF) for up to two years.

Additionally, in the description of the disciplinary process, the draft report did not acknowledge that DEA employees are afforded procedural due process, including notice, the opportunity to review all evidence upon which the Board relied, and to make oral and written replies.

In conclusion, DEA endeavors to ensure that there is a diverse workforce at the Agency. The processes examined in this report will undergo additional examination based upon the structured recommendations of the GAO. Specifically, the GAO made the following recommendations (DEA has provided numbering for easier reference):

"We recommend that the Administrator of the DEA direct that:

- 1. A process be initiated to monitor the results of decisions at the various steps in the hiring process to identify differences in selection rates among groups, and, where substantial differences are found, determine why they occur and what, if anything, can be done to reduce the differences while maintaining the high standards necessary for the job of special agent;"*

DEA Response: Concur. DEA will conduct a study to review each part of the Special Agent hiring process. The DEA will study the following steps in the hiring process for Special Agents:

- (a) Minimum qualifying education and experience;
- (b) Evaluation of a written test to measure the ability to write, observe, and recall details;
- (c) Minimum qualifying Physical Task Test (PTT) criteria;⁸
- (d) Criteria for suitability overall.

⁸ DEA reviewed the applicant Physical Task Test (PTT) program in the summer of 2002. After this program review, DEA conducted market research concerning the selection of an outside firm to complete a validation study of the PTT for DEA. The market research focused upon firms with experience in the completion of validation studies for law enforcement agencies and which have the requisite subject matter expert in the area of fitness program standards. Should the program undergo any modification as a result of the study, DEA will conduct a training program for the recruiters and the Physical Task Test Administrators (PTTAs).

The study, which is expected to take at least 18 months, will include the following:

- (a) Description of process used, history of the process, and analysis of other processes utilized by federal and non-federal law enforcement agencies in a search for alternative strategies that are equally valid, administratively feasible in the DEA environment, but that might have lesser impact on groups noted in the GAO Report;
- (b) Summary of research literature on the topic, to include review of recent job analysis, linkages and analysis of race and national origin (RNO) and gender data for each process;
- (c) Preparation of content validation reports;
- (d) Management assessment of recommendations concerning implementation of any new processes; and
- (e) Implementation of revised processes, if any.

Concurrent with the study and subject to available data, DEA continues to monitor the results of Agency decisions at the various steps in the hiring process to identify differences in selection rates among minority groups. DEA also continues to pursue the Affirmative Employment Program Plan for overcoming possible barriers within the hiring process. After the study has been completed and should new processes be implemented, DEA will adjust the monitoring process, as necessary, for continuation of appropriate review and assessment.

2. *A workforce analysis be done, which takes into account retirement eligibility, expected retirements, and other attrition, to guide the development of DEA's recruiting and hiring plans and strategies;*

DEA Response: Concur. To guide the development of the recruiting and hiring plans and strategies at DEA, the Agency will review the Agency's personnel data systems to assess that part of the DEA workforce that is eligible for, or anticipate, retirement, and to identify other attrition concerns for the Agency. Additionally, DEA understands that, as of the date of this correspondence, the Human Resources Office of the United States Department of Justice (DOJ) is commissioning a workforce analysis for DOJ offices and components. DEA has volunteered and been accepted to be the pilot agency for the DOJ workforce analysis, which will take into account retirement eligibility, expected retirements, and other attrition.

3. *Expand the plans to monitor the results of the SAC recommendation process by race and ethnicity to include monitoring by gender;*

DEA Response: Qualified Concurrence. The use of the Special Agent-in-Charge (SAC) / Office Head recommendations in the Agency's promotion system for Special Agents at the GS 14 and GS 15 levels was the focus of civil litigation in *Segar, et al. v. Reno, et al.*⁹ in 1999. Implementation of a new SAC / Office Head Recommendation process is dependent

⁹ C.A. No. 77-81 (D.D.C. Sept. 14, 1999).

upon approval by the United States District Court for the District of Columbia. The parties are currently in mediation concerning development of a validated process and appropriate monitoring of that process. Should a SAC / Office Head recommendations process be validated at the Agency and approved by the District Court, DEA monitoring of the results of the proposed process includes an oversight plan that evaluates all demographics of the workforce, including, race, national origin, and gender.

4. *Steps be taken to develop, maintain, and assure the reliability of a discipline database and that the study of disciplinary actions taken against African-American and white special agents be expanded to analyze disciplinary actions against all racial, ethnic, and gender groups of special agents; and*

DEA Response: Concur. DEA began an effort in mid-November 2002, to consolidate multiple discipline databases at the Agency. Each department or office within the DEA that has responsibility for investigating, adjudicating, or advising on matters concerning discipline¹⁰ is currently being assessed to identify functional and reporting requirements for development of the consolidated database. DEA expects the assessment to provide the composite for selection of the appropriate information technology system to accomplish the task with the requisite amount of file security. The effort, which encompasses requirement definition, development of information technology, capital planning, testing and accreditation, and appropriate notice and comment in the Federal Register, is expected to take at least 24 months.

Concerning the study of disciplinary actions taken against Special Agents at DEA, two studies have been commissioned. The first study, which was obtained by the Segar Working Group, did not find any discrimination against minorities in the number recommended for discipline or the severity of the discipline proposed or imposed as it related to the underlying misconduct. The study, which was issued in April 1987 for the period September 1982 to June 1986, reported results by race, national origin, and gender.

The DEA commissioned a second study to assess the disciplinary actions during the period 1994 through 2000. Again, the study did not support a finding of discrimination against minorities in the Agency's administration of the disciplinary system. The study, which was issued in August 2001, reported results by race and national origin. Analysis was conducted of discipline of African-American and white Special Agents. The methodology for analysis of the data obtained in this recent study, however, was developed for application to any group. Accordingly, DEA will revisit the August 2001 study to analyze disciplinary actions taken concerning remaining racial, ethnic, and gender groups of Special Agents.

Additionally, in October 2002, the DOJ Office of the Inspector General (OIG) initiated an audit of the "Review of the Drug Enforcement Administration's (DEA) Discipline Process."

¹⁰ Currently, the DEA Human Resources Employee Relations Office, Office of Professional Responsibility, Board of Professional Conduct, Deciding Officials, and Office of Chief Counsel have responsibility in the discipline process.

10

The purpose of this review is to: "Assess the process by which the DEA identifies, refers, and investigates employee misconduct, and imposes and enforces disciplinary actions in response

to substantiated employee misconduct allegations." The review is pending; however, to date, there have been no indications that the OIG has found the process to be unfair.

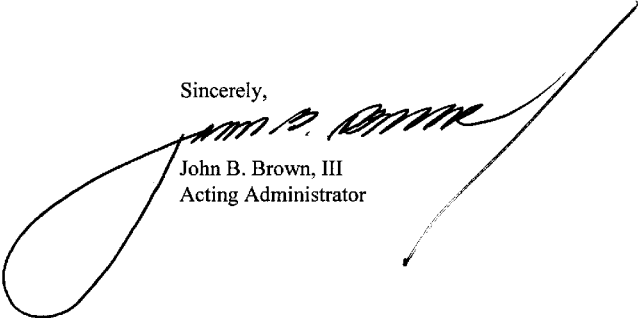
5. *Appropriate, aggregate statistical data on the outcomes of the promotion and discipline processes for all racial, ethnic, and gender groups are available to its special agent workforce to help special agents formulate informed views about the fairness and equity of the agency's promotion and discipline processes.*

DEA Response: Concur. To the extent that it is consistent with law, rule, and regulation, DEA will make available aggregate statistical data concerning promotion selections, at a minimum, semi-annually to the general workforce. Concerning disciplinary actions, the Agency will make available aggregate statistical data concerning the types of misconduct sustained on at least an annual basis to the general workforce.¹¹

In sum, DEA concurs with recommendations, but where noted, qualifies concurrence on matters dependent upon the outcome of pending litigation. DEA will follow up with GAO on a course of action to address the recommendations included in this report. In addition, DEA has enclosed additional technical corrections to the report language that should be made to ensure accuracy. The DEA appreciates the opportunity to provide comment to the GAO in these matters.

Enclosure

Sincerely,



John B. Brown, III
Acting Administrator

¹¹ Due to the small number of disciplinary cases processed each year, to report any more frequently would comprise the Agency's responsibilities in the area of privacy interests.

GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to GAO Mailing Lists" under "Order GAO Products" heading.

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
 TDD: (202) 512-2537
 Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Nelligan, Managing Director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Official Business
Penalty for Private Use \$300**

Address Service Requested

<p>Presorted Standard Postage & Fees Paid GAO Permit No. GI00</p>
--

