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DEPARTMENT OF DEFENSE
MISSILE DEFENSE AGENCY
5700 18TH STREET
FORT BELVOIR, VIRGINIA 22060-5573

MAR 23 2016

MEMORANDUM FOR DEPARTMENT OF DEFENSE OFFICE OF DIVERSITY
MANAGEMENT AND EQUAL OPPORTUNITY

SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
Report

Please find attached the Missile Defense Agency's submission of the Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act of 2002 Report for FY 2015. This report specifies matters relating to the enforcement of certain antidiscrimination and whistleblower laws.

The point of contact for this report is Ms. Anita B. Boush, Director, Office of Equal Opportunity and Diversity Management. Ms. Boush may be reached at 571-231-8176 or email: Anita.Boush@mda.mil.

A handwritten signature in black ink, appearing to read "J. D. Syring", is positioned above the printed name and title.

J. D. SYRING
Vice Admiral, USN
Director

Attachment:
As stated

Notification and Federal Employee
Antidiscrimination and Retaliation Act of 2002

Annual Report to Congress
Fiscal Year 2015
(October 1, 2014 – September 30, 2015)



Vice Admiral James D. Syring, USN
Director, Missile Defense Agency

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I. Introduction

The Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act requires Federal agencies to submit annual reports not later than 180 days after the end of each fiscal year to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Attorney General, and the Equal Employment Opportunity Commission (EEOC). Additionally, the U.S. Office of Personnel Management's (OPM) final regulation, Title 5 U.S. Code of Federal Regulations (CFR) Part 724, Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002 – Reporting and Best Practices issued December 28, 2006, requires that OPM also receive a copy of the report.

The Act holds federal agencies accountable for violations of anti-discrimination and whistleblower protection law relating to federal employment. The report contains data and analysis concerning equal employment opportunity complaints filed with the Missile Defense Agency (MDA) during fiscal year (FY) 2015.

The MDA's FY 2015 submission is in accordance with these reporting requirements.

II. Executive Summary

The Missile Defense Agency is a research, development, and acquisition agency within the U.S. Department of Defense (DoD). The MDA is responsible for managing, directing, and executing the Ballistic Missile Defense System (BMDS) program. The MDA's mission is to develop and deploy a layered BMDS to defend the United States, its deployed forces, allies, and friends from ballistic missile attacks of all ranges in all phases of flight. MDA coordinates with the Combatant Commanders, other DoD components and federal agencies, foreign governments, international organizations, and others as authorized.

MDA's policy is to stand with the nation and ensure that we prohibit unlawful discrimination in the workplace. MDA is committed to maintaining an environment which provides equal employment opportunity for its employees and applicants for employment.

At the end of FY 2015, MDA's total government workforce included approximately 2,334 government civilian employees, 115 military service members, and 841 other government agency (OGA) employees, who supported MDA. The workforce is located in 5 states and international locations.

The MDA Office of Equal Opportunity and Diversity Management (EO) ensures Agency compliance with the laws, regulations, policies, and guidance that prohibit discrimination in the federal workplace based on race, color, national origin, religion, sex (sexual orientation, gender identity, LGBT (lesbian, gay, bi-sexual, transgender) and pregnancy), age (40 and over), mental/physical disability, genetic information, and reprisal for participating in prior Equal Employment Opportunity (EEO) activity. The Agency's EO Director monitors the complaint

processing activities and issues guidance and leadership on EEO policy to MDA leadership and supervisors implementing EEO law and higher level EEO directives, such as the annual EEOC Discrimination Complaint Status Report and the EEOC Management Directive 715 Report.

III. Data – Reporting Obligation

The following information is provided in accordance with OPM’s final regulation, Title 5 U.S. Code of Federal Regulations (CFR) Part 724, Implementation of Title II of the No FEAR Act of 2002 – Reporting and Best Practices.

Subpart C – Annual Report

§724.301 Purpose and Scope: This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act Of 2002 in regard to Federal agencies’ obligation to report on specific topics concerning Federal Anti-discrimination Laws and Whistleblower Protection Laws that are applicable to their employees, former employees, and applicants for employment.

§724.302 Reporting Obligations: Each Agency must report no later than 180 calendar days after the end of each fiscal year the following:

(a)(1) Number of Cases in Federal Court, Pending or Resolved during FY 2011, Arising under the Various Antidiscrimination Laws and Whistleblower Protection Laws Listed in the No FEAR Act.

- There were three cases filed in Federal court. One individual filed two cases and as such the cases were consolidated for processing. (Civil Action No 5:14-CV-2304-MHH; and Civil Action No 15-3161) in FY 2015.

(a)(2)(i) Status or Disposition of Federal Court Cases

- These cases are pending litigation.

(a)(2)(ii) Amount required to be reimbursed to the Judgment Fund by the Agency in Federal Court Cases

- Cases are pending litigation, Therefore there were no reimbursements to the Judgment Fund in FY 2015. Therefore, there is no adjustment needed or made to MDA’s budget to comply with its judgment Fund reimbursement obligations incurred under 5 CFR § 724.103.

(a)(2)(iii) Amount of Reimbursement to the Judgment Fund for Attorney’s fees in Federal Court Cases

- There was no reimbursement to the Judgment Fund for attorney’s fees because cases are pending litigation.

(a)(3) Number of Employees Disciplined in Connection with Federal Court Cases and Specific Nature of the Disciplinary Actions Taken, Separated by the Provisions(s) of Law Involved.

- There were no findings of discrimination against any MDA employee during Fiscal Year 2015. There were no disciplinary actions taken against Agency employees related to having unlawfully discriminated against another individual during Fiscal Year 2015.

(a)(4) Final Fiscal Year-End Data – Discrimination Complaints.

- See attached (Appendix A)

(a)(5) Whether or Not in Connection with Cases in Federal Court, the Number of Employees Disciplined as Defined in §724.102¹ of subpart A of this Part in Accordance with Any Agency Policy Described in Paragraph (a)(6) of this section:

- No disciplinary actions were taken in accordance with Agency policy as defined in § 724.102 of subpart A.

(a)(6) Description of Agency’s Policy for Taking Disciplinary Action:

- MDA is committed to maintaining a workplace which promotes productivity and professionalism and an environment that protects the dignity of all its employees. The MDA Director is currently revising his Anti-Harassment Policy Memorandum to include information regarding the importance of preventing bullying and hazing in the workplace. The memo is in the final stages of official coordination and is expected to be approved, signed, and issued by the end of FY 2016.
- The MDA Director issued his most recent Anti-Harassment Policy Memorandum to the workforce on December 16, 2013 and stated “when allegations are substantiated immediate and appropriate corrective action must be taken to eliminate the harassing activity. Violators of MDA policies will be subject to appropriate corrective or disciplinary action up to and including removal to ensure that no further harassing conduct occurs.” The MDA Director further stated “unlawful discrimination has not been, and will not be, tolerated or condoned at MDA.” “Living up to the principles of EEO is integral to our Agency’s mission, vision, and core values as we chart our course for the future. I expect each of you to share my commitment to the principle of EEO.” See the attached Washington Headquarters Service (WHS) Administrative Instruction – Disciplinary and Adverse Actions at Appendix B, MDA Policy Memoranda at Appendix C, and HR Management Handbook for New Supervisors at Appendix D.

¹In § 724.102 of subpart A, the definition of *discipline* is “any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

- On March 19, 2015, the MDA Executive Director issued the Procedures for Preventing and Eliminating Harassing Conduct in the Workplace. On February 25, 2016, The MDA Executive Director expanded coverage of the procedures to include bullying and hazing. The memo introduces the procedures and states “It is MDA policy to maintain a model workplace that is free from harassment and other forms of discrimination based on race, color, religion, sex (sexual orientation, gender identity, LGBT (lesbian, gay, bi-sexual and transgender) and pregnancy), national origin, age, disability, and genetic information, or as reprisal for prior Equal Employment Opportunity (EEO) activity. Violation of this policy may result in disciplinary action, up to and including removal. Each MDA employee and applicant is entitled to be treated with dignity and respect and has the right to work in an environment that is free of harassment.”
- The Procedures for Preventing and Eliminating Harassing, Hazing and bullying conduct in the Workplace ensure that appropriate officials are notified of and have the opportunity to take immediate and appropriate corrective action when it is determined that harassment has occurred.

(a)(7) Analysis of Information Provided in paragraph (a) (1) through (6) in conjunction with data provided to the EEOC in compliance with 29 CFR Part 1614 subpart F- matters of General Applicability:

- MDA had two formal complaints filed against it in FY 2015; the same number of formal complaints filed in FY 2014. The top bases were sex and religion and the top issues are identified as harassment (non-sexual) and assignment of duties. Of the two cases filed in FY 2015, one was pending in hearing and the other was dismissed at the end of FY 2015. The two formal complaints were filed by different individuals. These individuals comprise less than one percent (0.086%) of the total civilian MDA workforce (2,334), which is not statistically significant to establish any causal relationship or to glean a discernible pattern from the filings.
- Actions taken to improve Complaint or Civil Rights Programs of the Agency with the Goal of Eliminating Discrimination and Retaliation in the Workplace:
 - Continued closely monitoring complaints processing performance metrics to ensure compliance and efficiency.
 - Continued providing Equal Opportunity and Diversity Management training to supervisors and employees.
 - Implemented Procedures for Preventing and Eliminating Harassing Conduct in the Workplace (Anti-Harassment).
 - Revised and re-issued Anti-Harassment Policy Memorandum to include hazing and bullying.
 - Continued widely publicizing EEO, Anti-Harassment, and Diversity Management policy memoranda to the workforce.
 - Conducted monthly Equal Opportunity and Diversity Management training to MDA new hires.

- Continued implementing Reasonable Accommodation Procedures as the MDA EO Team prepared to acquire the Agency's Disability Program at the beginning of FY 2016.
- Provided developmental opportunities to EO staff to increase functional core competencies.
- Conducted periodic workforce climate assessments to identify systemic EEO and other workplace concerns.
- Collaborated with EEO program enforcement agencies (OSD, EEOC, MSPB, OPM) to remain current on emerging diversity and EEO issues.
- Meet regulatory compliance by submitting FY14 MD715 plan.
- Began to collect and track applicant flow data for all MDA vacancy announced through USAStaffing. MDA tracks by gender, race and national origin.
- Closely monitor No FEAR Training and send out notifications to delinquent employees.

MDA continues working to improve its EO Program. The following actions are planned for FY 2016:

1. Fill the EEO Complaints Manager vacancy expeditiously for program efficiency.
2. Develop the Disability Program to better assist employees who require reasonable accommodation(s) to perform the essential functions of their positions.
3. Expand the Disability Program by establishing program goals and objectives to meet the requirements of presidential executive order 13548.
4. Create a database to track the progress, efficiency, and effectiveness of all reasonable accommodation requests.
5. Continue efforts to revitalize the MDA EO Alternative Dispute Resolution Program and aggressively market the benefits of early resolution of workplace disputes.
6. Continue to leverage the support of the MDA Diversity Wellness Morale Advisory Council to meet programmatic objectives.
7. Continue basic Equal Opportunity and Diversity Management training for new employees and supervisors.
8. Sponsor EEO and Diversity Management training for MDA Leadership and Supervisors to strengthen cultural competencies.
9. Conduct quarterly and Ad Hoc EEO/Diversity briefings to MDA Senior management.
10. Continue to foster an MDA culture which embraces the philosophy that diversity is a business imperative.
11. Conduct periodic workforce climate surveys to identify systemic EEO and other workplace concerns.
12. Conduct an analysis of the Federal employee view point survey to determine if there are any barriers or systemic issues.
13. Continue to collaborate with EEO program enforcement agencies (OSD, EEOC, MSPB, and OPM) to remain current on emerging diversity and EEO issues.

(a)(8) Adjustment to Agency Budget – Judgment Fund Reimbursement

MDA had no judgments against it with respect to unlawful discrimination or retaliation in FY 2015. Therefore, there is no adjustment needed or made to the budget of MDA to comply with its Judgment Fund reimbursement obligations incurred under 5 CFR § 724.103.

(a)(9) No FEAR Act Training Plan

In addition to the bi-annual No FEAR training provided to all MDA employees, all new employees are informed of the No FEAR Act training requirement during new employee orientation. Each employee is required to complete their initial No FEAR Act training within thirty (30) days of their arrival at MDA. During FY 2015, 98% of all MDA employees, supervisors, and managers completed on-line No FEAR Act training via the Agency's Employee Development Center Learning Management System (E-LMS). In accordance with OPM's rules, No FEAR Act training is conducted every two years.

APPENDICES:

Appendix A – End of FY 2015 Complaint Data Posting

Appendix B – WHS Instruction – Disciplinary and Adverse Actions

Appendix C – Policy Memorandums 11, 20, and 55

Appendix D – HR Management Handbook for New Supervisors

**Equal Employment Opportunity Data Posted
Pursuant to the No FEAR Act:**

Missile Defense Agency

For the period beginning October 1, 2014 and ending September 30, 2015

Mixed cases are included in this report.

Complaint Activity	Comparative Data: Previous Fiscal Year Data						
	2010	2011	2012	2013	2014	Through 09-30-2015 2015	
Number of Complaints Filed	2	3	5	6	2	2	
Number of Complainants	2	3	5	6	2	2	
Repeat Filers	0	0	0	0	1	0	
Complaints by Basis	Comparative Data: Previous Fiscal Year Data						
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2010	2011	2012	2013	2014	Through 09-30-2015 2015	
	Race	1	1	1	1	0	0
	Color	0	1	1	0	0	0
	Religion	0	0	0	0	0	1
	Reprisal	2	1	2	4	1	0
	Sex	2	0	2	4	2	1
	PDA	0	0	0	0	0	0
	National Origin	0	0	1	0	0	0
	Equal Pay Act	0	0	0	0	0	0
	Age	0	0	2	4	0	0
	Disability	0	3	0	5	1	0
	Genetics	0	0	0	0	0	0
	Non-EEO	0	0	0	0	0	0

Complaints by Issue	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Appointment/Hire	0	0	0	0	0	0
Assignment of Duties	1	0	2	1	1	1
Awards	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0
Disciplinary Action	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
Demotion	0	0	0	0	0	0
Reprimand	0	0	1	0	1	0
Suspension	0	0	1	1	1	0
Removal	0	1	0	1	1	0
Other	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	5	2	3	1	0	0
Examination/Test	0	0	0	0	0	0

	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
Harassment						
Non-Sexual	0	2	4	4	2	2
Sexual	1	0	0	0	0	0
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0
Promotion/Non-Selection	1	1	0	0	0	0
	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
Reassignment						
Denied	0	0	0	0	0	0
Directed	1	1	3	1	1	0
Reasonable Accommodation	0	2	0	4	0	0
Reinstatement	0	0	0	0	0	0
Retirement	0	1	0	0	0	0
Terms/Conditions of Employment	0	1	0	2	0	0
Time and Attendance	0	0	0	0	0	0
Training	0	0	0	0	0	1
Other: Denial Deployment	0	0	1	0	0	0
Other: Denial Admin Leave	0	0	1	0	0	0
Other: ? (LGBT Info?)	0	0	0	0	0	1

Processing Time	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015
Complaints pending during fiscal year	0	224	0	343	109	0
Average number of days in investigation	0	0	0	0	0	0
Average number of days in final action	0	0	0	0	0	0
Complaint pending during fiscal year where hearing was requested	0	0	0	315.3	0	93
Average number of days in investigation	0	0	0	0	0	0
Average number of days in final action	0	0	0	0	0	0
Complaint pending during fiscal year where hearing was not requested	0	0	0	0	0	0
Average number of days in investigation	0	0	0	0	0	0
Average number of days in final action	0	0	0	0	0	0
Complaints Dismissed by Agency	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015
Total Complaints Dismissed by Agency	1	1	0	2	0	1
Average days pending prior to dismissal	31	30	0	121	0	42

	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	0	0	0	0	0	0
	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015
Total Final Agency Actions Finding Discrimination						
#						
%						
Total Number Findings	0	0	0	0	0	0
	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015
Findings of Discrimination Rendered by Basis						
#						
%						
Total Number Findings	0	0	0	0	0	0
	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015
Findings of Discrimination Rendered by Issue						
#						
%						
Total Number Findings	0	0	0	0	0	0

Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.

Previous Complaints Filed in Previous Fiscal Years by Status	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
Total complaints from previous Fiscal Years	1	2	9	9	11	11
Total Complainants	1	2	9	9	9	7
Number Complaints Pending	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
Investigation	1	0	3	3	1	0
ROI issued, pending Complainant's action	0	0	0	0	0	0
Hearing	0	2	6	6	5	4
Final Agency Action	0	0	0	0	1	0
Appeal with EEOC Office of Federal Operations	0	0	0	0	4	5
Appeal pending Civil Court	0	0	0	0	0	3
Complaint Investigations	Comparative Data: Previous Fiscal Year Data					
	2010	2011	2012	2013	2014	Through 09-30-2015 2015
Pending Complaints Where Investigations Exceed Required Time Frames	0	0	3	3	1	1