



EO

**DEPARTMENT OF DEFENSE**  
**MISSILE DEFENSE AGENCY**  
5700 18<sup>TH</sup> STREET  
FORT BELVOIR, VIRGINIA 22060-5573

JAN 23 2018

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

SUBJECT: Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002  
Report

Attached is the Missile Defense Agency's submission of the Notification and Federal Employee Anti-discrimination and Retaliation (No FEAR) Act of 2002 Report for Fiscal Year 2017. This report specifies matters relating to the enforcement of certain anti-discrimination 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 Anita.boush@mda.mil.

A handwritten signature in black ink, appearing to read "Sam Greaves", is positioned above the typed name.

SAMUEL A. GREAVES 1/24/18  
Lieutenant General, USAF  
Director

Attachment:  
As stated



# **Missile Defense Agency**

**Notification and Federal Employee  
Antidiscrimination and Retaliation Act (NoFEAR)**

**Fiscal Year 2017 Report**

ATTACHMENT

## Table of Contents

I.	Introduction.....	1
II.	Reporting Requirements .....	3
III.	Analysis.....	4
	a. Examination of Trends.....	4
	b. Causal Analysis.....	4
	c. Practical Knowledge Gained Through Experience .....	5
	d. Actions Planned or Taken for Improvement Measures .....	6
IV.	Conclusion .....	7
	Appendix A.....	9
	Appendix B.....	16
	Appendix C.....	17

## I. INTRODUCTION

The Missile Defense Agency (MDA) 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 and allies from ballistic missile attacks of all ranges in all phases of flight. MDA coordinate with the Combatant Commanders, other DoD components and federal agencies, foreign governments, international organizations and others as authorized. This No Fear Act Annual Report covers fiscal year (FY) 2017, from October 1, 2016 to September 30, 2017.

This report provides information on the number of cases pending or resolved that resulted in judgments, awards or comprised settlements, the amount of money required to be reimbursed by the MDA and the final year-end data about discrimination complaints. Fortunately, MDA is in good standing this reporting period, with no judgments or compromised settlements. This information is provided each fiscal year and is posted on the agency's external website in accordance with Equal Employment Opportunity Commission (EEOC) regulations at 29 C.F.R. 1614 subpart G (implementing section 301(c) (1) (B) of the No Fear Act).

The Equal Opportunity and Diversity Management Office (EO) is authorized to employ a team of five personnel (4 Government and 1 Contractor) to carry out its mission: one (1) Director; one (1) Complaints Program Manager; one (1) Disability Program Manager, one (1) Affirmative Employment/Special Emphasis Program Manager and one (1) Contractor, EO Support.

MDA's EO policy is to stand with the nation and ensure that we prohibit unlawful discrimination in the workplace. MDA is committed to maintaining a healthy environment that fosters good order, discipline, teamwork and trust. The MDA promotes equal employment opportunity for its employees and applicants for employment.

At the end of FY 2017, MDA's total government workforce included approximately 2,450 government civilian employees, 115 MDA military service members, 550 other government agency (OGA) employees and 49 OGA military service members who supported MDA. The workforce is located in five (5) states and international locations. The civilian workforce increased by 3.16% over the previous fiscal year, representing a gain of 75; 38 men and 37 women.

There were a total of 7 complaints on hand at the beginning of FY 2017, and a total of 15 new complaints filed during FY 2017 for a total of 22 complaints, 8 complaints were closed and 14 complaints were on hand at the end of the reporting period. There have been no findings of discrimination issued against MDA for this reporting period.

The following cites notable metrics from FY 2016 to FY 2017 respectively:

	<b>FY 2016</b>	<b>FY 2017</b>
Complaints Filed	5	15
Complaints Closed	1	8
Successful ADR (Informal)	0	1
Number of Findings	0	0
Average Days in Investigation	42	208*

\*There was an increase in the average investigation processing time from 42 days in FY 2016 to 208 days in FY 2017. One major factor accounts for the increase in processing time. In FY 2016 MDA EO used a General Services Administration (GSA) approved contract vendor to complete one formal investigation, which required completion within 60 calendar days. In FY 2017, MDA/EO elected to use the DoD Investigations Resolutions Directorate (IRD), a Defense Civilian Personnel Advisory Service (DCPAS) entity as the primary source for conducting formal discrimination complaint investigations. DCPAS serves as the primary provider of choice throughout DoD. The military services use IRD exclusively for conducting investigations. Another reason MDA/EO elected to utilize IRD is because service is provided to DoD customers at no charge to the agency and the quality of investigations are sufficient to meet the needs of the agency.

## II. REPORTING REQUIREMENTS

### a. Cases in federal court by statute

Statute	Cases Opened in FY 2017	Cases Resolved in FY 2017		Cases Pending at Close of FY 2017
		Settled	Other	
<b>Title VII, Civil Rights Act of 1964</b> 42 U.S.C. 2000e-16	0	0	0	4
<b>Age Discrimination in Employment Act</b> 29 U.S.C. 631, 633a	0	0	0	1
<b>Fair Labor Standards Act of 1938</b> 29 U.S.C. 206(d)	0	0	0	0
<b>Section 501 of Rehabilitation Act</b> 29 U.S.C. 791	0	0	0	1
<b>Equal Pay Act</b> 29 U.S.C. 206(d)	0	0	0	0
<b>Whistleblower Protection Act</b> 5 U.S.C. 2302(b)(1)	0	0	0	0

### b. Reimbursement to the judgment fund

\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys' Fees	Adjustment Needed
0	0	0

### c. Employees disciplined

Statute	# of Employees Disciplined	Nature of Disciplinary Action
<b>Title VII, Civil Rights Act of 1964</b> 42 U.S.C. 2000e-16	0	N/A
<b>Age Discrimination in Employment Act</b> 29 U.S.C. 631, 633a	0	N/A
<b>Fair Labor Standards Act of 1938</b> 29 U.S.C. 206(d)	0	N/A
<b>Section 501 of Rehabilitation Act</b> 29 U.S.C. 791	0	N/A
<b>Equal Pay Act</b> 29 U.S.C. 206(d)	0	N/A
<b>Whistleblower Protection Act</b> 5 U.S.C. 2302(b)(1)	0	N/A

---

---

<b>Matters that did <u>NOT</u> result in a federal court case</b>	0	N/A
---	---	-----

### III. ANALYSIS

#### a. Examination of Trends

MDA had 15 formal complaints filed in FY 2017 which is an increase of 10 compared to formal complaints filed in FY 2016. The top three bases was sex (female), reprisal, and disability (mental/physical). The top three issues are assignment of duties, non-sexual harassment, and reasonable accommodations. Of the 15 cases filed in FY 2017, three were dismissed by the MDA Equal Opportunity Office and one withdrawal prior to a final decision. There was also one complaint pending a final agency decision (FAD), four pending a formal hearing before an EEOC Administrative Judge, six pending in formal investigation and three were pending accept/dismissal determination. The 15 complaints were filed by 12 different individuals across the agency.

The following represents the agency's continued effects to improve Complaint or Civil Rights Programs of the Agency with the Goal of Eliminating Discrimination and Retaliation in the Workplace:

- Effectively communicate between MDA sites by publicizing EEO, Anti-Harassment, and Diversity Management policy memoranda to the workforce.
- Monitor complaints processing performance metrics to ensure compliance and efficiency.
- Provide Equal Opportunity and Diversity Management training to supervisors and employees on a quarterly basis.
- Conduct monthly Equal Opportunity and Diversity Management training to MDA new hires.
- Process Reasonable Accommodation requests within 30 work days.
- Develop a Barrier Analysis Workgroup for Hispanic employees. Conduct ongoing barrier analyses for all EEO groups.
- Collaborate with EEO program enforcement agencies (OSD, EEOC, MSPB, OPM) to remain current on emerging diversity and EEO issues.
- Monitor No FEAR Training on a quarterly basis to ensure the workforce is current.
- Develop and update ADR policy and procedures. Evaluate evidenced based best practices for effective utilizing and expansion of program.

#### b. Causal Analysis

During this reporting period MDA has seen an increase in the number of formal complaints. Historically, MDA has not experienced a large number of complaints. Five formal complaints

were filed in FY 2016 compared to 15 complaints in FY 2017. Although there was a moderate increase in the number of filings from FY 2016 to FY 2017, the filings still comprise less than one percent (.61% FY 2017 compared to 0.21% in FY16) of the total civilian MDA workforce (2,450 compared to 2,375 in FY 2016). This percentage remains statistically insufficient to establish any causal relationship or to glean a discernible pattern from the filings. A review of complaints filed indicate there is no correlation to where the complaint was filed (organization) and who was named as the management official. However, any increase is worth noting and we will continue to monitor for patterns and trends in the filings as well as continue exploring creative and effective ways to mutually resolve complaints at the lowest possible level.

### **c. Practical Knowledge Gained Through Experience**

To maximize effectiveness, MDA seeks to have exemplary EEO and Diversity programs. The Equal Opportunity and Diversity Management Office reports to the Director to provide advice on civil rights concerns. The EO office assists leadership in shaping policies to protect the civil rights of all employees, applicants and former employees. The EO office also develop policies and plans, generate reports, forecast trends, assess demographics, deliver training and briefings, conduct oversight, process EEO complaints, process reasonable accommodations requests, integrate civil rights into initiatives and activities and submit annual reports to internal and external customers and stakeholders.

MDA recognizes the critical role valuable training plays in raising awareness of EEO laws, regulations and procedures. In addition to providing NO FEAR Act Training, MDA also provides employees and managers training on the prevention of sexual harassment in the workplace, EEO Complaints Overview, Diversity Training and Reasonable Accommodations Training on a recurring basis. On a monthly basis, EEO participates in New Employee Orientation Training to ensure that new employees are aware MDA fosters a culture that values diversity and empowers individuals so they may participate and contribute to their fullest potential in support of the Agency's mission.

In an effort to reduce the number of formal complaints filed, MDA EO is in the process of expanding implementation of its Alternative Dispute Resolution (ADR)/Mediation policies and procedures. The Equal Employment Opportunity Commission's regulations at 29 C.F.R. § 1614.102 (b)(2) require agencies to establish and make available an effective EEO ADR program. The program must be available during the pre-complaint process and the formal complaint process. MDA began the work to develop an enterprise-wide survey to gain a clearer understanding of the workforce's perceptions about ADR/mediation for the purpose of improving processes and increasing participation of ADR/mediation.

MDA provided a framework for successful diversity and inclusion efforts as outlined below:

1. Conducted a two-day staff meeting with the EO Director to develop strategies for the Barrier Analysis Workgroup for Hispanic employees.
2. Participated in conference calls with Defense Logistics Agency officials to obtain workforce data on employees as well as applicant flow data.



3. Participated in numerous job fairs to target outreach strategies to reach groups that have a historically low participation rate in engineering and business career fields.
4. Increased the number of outreach events to Hispanic Serving Institutions throughout the FY.
5. Consistently published Internal Canvas job announcements to the workforce in an effort to retain valuable employees by rotation in other career fields.
6. EO/HR teams participated in job and career fairs at five engineering and national diversity conferences and 50 colleges and universities nationwide.
7. Advertised approximately 100 Career Development positions for engineering, contracting, financial management, HR and other positions.
8. Participate in a Tiger Team bi-weekly to address common concerns of employees.
9. MDA employees were selected for Most Promising Engineer of the Year, Modern Day Technology Leadership Award, and Professional Achievement Awards.
10. MDA hosted the HBCU Engineering Deans Roundtable in conjunction with the 30th Annual Black Engineer of the Year Award.
11. EO/HR personnel participated in a series of Career Fairs at Black Engineer of the Year Award Conference, Women of Color Conference, Women in Science and Engineering, Great Minds in STEM, and at several Minority Serving Colleges and Universities.
12. Developed quarterly EO Newsletter with valuable information about MDA's EO/Diversity Program and initiatives.

#### **d. Actions Planned or Taken for Improvement Measures**

1. Reissued EO Equal Employment Opportunity, Equal Employment Opportunity Anti-Harassment and Diversity Policy Memoranda.
2. Created an ADR Policy Memorandum to complement the existing ADR procedures published by the MDA Office of General Counsel.
3. Successfully filled the vacant Disability Program Manager position on July 10, 2017.
4. Complaints Manager participated in the DoD, Defense Civilian Personnel and Advisory Services Alternative Dispute Resolution (ADR) Symposium.
5. EO, Human Resources, and Office of the General Counsel personnel attended the 15<sup>th</sup> Annual Labor and Employment Law Symposium.
6. MDA personnel actively participated in eight Special Emphasis Programs held throughout the year as part of Team Redstone. Participation included displays, essay contests and program attendance. MDA received a display award and several MDA employees received essay awards.
7. MDA continued its active partnership with Human Resources and Office of the General Counsel through bi-weekly meetings.
8. Continue to provide online training module for existing and new employees on the provisions of the NoFear Act.
9. Work closely with the MDA Diversity Wellness Morale Advisory Council to address and meet programmatic objectives.
10. MDA secured a contract for FAD writing services through a GSA approved vendor to improve issuance of FADs within regulatory timelines.

11. MDA secured contract with qualified vendors to provide pre-complaint counseling and ADR services.
12. Hired a dedicated contractor support personal to provide daily support and assistance to the EEO program. Duty stationed in Huntsville, AL.
13. Complaints Manager attended EEOC FAD Writing and Accept/Dismiss training.
14. Continue to collaborate with EEO program enforcement agencies (OSD, EEOC, MSPB and OPM) to remain current on emerging diversity and EEO issues.
15. Continue its focus of assisting the agency to achieve model EEO status by focusing on the following elements: demonstrated commitment to EEO from agency leadership; integration of EEO into the agency's strategic mission, management and program accountability; proactive prevention of unlawful discrimination; efficiency; and responsiveness and legal compliance.

Note: These elements can be combined into one narrative as long as all four issues are addressed.

#### **IV. CONCLUSION**

The future of MDA depends on the success of our workforce. Our commitment to employee success involves increasing training and career development opportunities, and ensuring appropriate funding and resources for EEO programs and initiatives. Our programs are essential for success and MDA EO will facilitate the agency's effort to be responsive to the needs of a diverse workforce. MDA's success depends on our ability to strengthen diversity by developing effective partnerships and a progressive affirmative employment program.

MDA is firmly committed to developing and sustaining a culture and fostering an environment where diversity is valued and leveraged, all employees are treated with dignity and respect, and have equal access to opportunity. Moreover, we believe our workforce should be reflective of society as a whole. Practicing inclusive management creates a high performing work environment where all employees are optimal contributors to the mission objectives.

The MDA values every bright mind that helps us meet our goal. For that reason, we have cultivated an environment where each applicant and employee is offered an opportunity for equal advancement and recognition, regardless of gender, cultural background, or disability.

MDA EO will continue to:

1. Identify and monitor triggers and barriers underlying employee-supervisor issues in the workplace.
2. Consistently review and modify operational procedures according to EEOC regulations.
3. Promote the benefits of ADR as a viable and cost saving alternative to traditional EEO discrimination complaint processing.

4. Assist the Agency in achieving full diversity at all levels and within all occupational fields as well as address low participation rates of minority groups, women and individuals with disabilities.
5. Collaborate with Human Resources and General Counsel to ensure our commitment to diversity and equal opportunity is a top priority in executing the mission.

The MDA enjoys a long and proud history of defending our nation, deployed forces and allies from ballistic missile attacks. Our success stems from our ability to realize the full potential, creativity, and diversity of our workforce. We remain committed to maintain an environment where all employees are valued.

## **APPENDIX A**

Equal Employment Opportunity Data posted pursuant to the No FEAR Act: For the period beginning October 1, 2016 and ending September 30, 2017, no mixed cases this reporting period.

Complaint Activity	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
<b>Number of Complaints Filed</b>	5	6	2	2	5	15
<b>Number of Complainants</b>	5	6	2	2	5	12
<b>Repeat Filers</b>	0	0	1	0	0	3
Complaints by Basis <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
<b>Race</b>	1	1	1	0	0	8
<b>Color</b>	1	0	0	0	0	0
<b>Religion</b>	0	0	0	1	0	0
<b>Reprisal</b>	2	4	1	0	4	6
<b>Sex</b>	2	4	2	1	2	8
<b>PDA</b>	0	0	0	0	0	0
<b>National Origin</b>	1	0	0	0	0	0
<b>Equal Pay Act</b>	0	0	0	0	0	0
<b>Age</b>	2	4	0	0	0	3
<b>Disability</b>	0	5	1	0	2	6
<b>Genetics</b>	0	0	0	0	0	0
<b>Non-EEO</b>	0	0	0	0	0	0

Complaints by Issue	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
<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	2
Assignment of Duties	2	1	1	1	1	10
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					
	2012	2013	2014	2015	2016	Through 09-30-2017
Demotion	0	0	0	0	0	0
Reprimand	1	0	1	0	0	1
Suspension	1	1	1	0	0	3
Removal	0	1	1	0	1	0
Other (Disciplinary Warning)	0	0	0	0	0	1
Duty Hours	0	0	0	0	0	0
Evaluation Appraisal	3	1	0	0	3	8
Examination/Test	0	0	0	0	0	0

Harassment	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
Non-Sexual	4	4	2	2	1	8
Sexual	0	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	0	0	0	0	1	3
Reassignment	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
Denied	0	0	0	0	0	0
Directed	3	1	1	0	2	1
Reasonable Accommodation	0	4	0	0	1	7
Reinstatement	0	0	0	0	0	0
Retirement	0	0	0	0	0	0
Terms/Conditions of Employment	0	2	0	0	0	1
Time and Attendance	0	0	0	0	0	3
Training	0	0	0	1	0	2
Other: Denial Deployment	1	0	0	0	0	0
Other: Denial Admin Leave	1	0	0	0	0	0
Other: (LGBT Info?)	0	0	0	1	0	0

<b>Processing Time</b>	<b>Comparative Data: Previous Fiscal Year Data</b>					
<b>Complaints pending during fiscal year</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Through 09-30-2017</b>
<b>Average number of days in investigation</b>	0	343	109	0	42	208
<b>Average number of days in final action</b>	0	0	0	0	0	0
<b>Complaint pending during fiscal year where hearing was requested</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Through 09-30-2017</b>
<b>Average number of days in investigation</b>	0	315.3	0	93	97	175
<b>Average number of days in final action</b>	0	0	0	0	0	50
<b>Complaint pending during fiscal year where hearing was not requested</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Through 09-30-2017</b>
<b>Average number of days in investigation</b>	0	0	0	0	0	188
<b>Average number of days in final action</b>	0	0	0	0	0	56
	<b>Comparative Data: Previous Fiscal Year Data</b>					
<b>Complaints Dismissed by Agency</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Through 09-30-2017</b>
<b>Total Complaints Dismissed by Agency</b>	0	2	0	1	0	3
<b>Average days pending prior to dismissal</b>	0	121	0	42	0	81



Complaints Withdrawn by Complainants	Comparative Data: Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		Through 09-30-2017	
Total Complaints Withdrawn by Complainants	0		0		0		0		0		2	
Total Final Agency Actions Finding Discrimination	Comparative Data: Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		Through 09-30-2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	0
Findings of Discrimination Rendered by Basis <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	Comparative Data: Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		Through 09-30-2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	0
Findings of Discrimination Rendered by Issue	Comparative Data: Previous Fiscal Year Data											
	2012		2013		2014		2015		2016		Through 09-30-2017	
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		0	

Previous Complaints Filed in Previous Fiscal Years by Status	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
<b>Total complaints from previous Fiscal Years</b>	9	9	11	11	11	7
<b>Total Complainants</b>	9	9	9	7	11	7
Number Complaints Pending	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
<b>Investigation</b>	3	3	1	0	2	6
<b>ROI issued, pending Complainant's action</b>	0	0	0	0	0	0
<b>Hearing</b>	6	6	5	4	1	4
<b>Final Agency Action</b>	0	0	1	0	0	1
<b>Appeal with EEOC Office of Federal Operations</b>	0	0	4	5	5	5
<b>Appeal pending Civil Court</b>	0	0	0	3	3	2
Complaint Investigations	Comparative Data: Previous Fiscal Year Data					
	2012	2013	2014	2015	2016	Through 09-30-2017
<b>Pending Complaints Where Investigations Exceed Required Time Frames</b>	3	3	1	1	0	6

## **APPENDIX B**

Attached Department of Defense Administrative Instruction 8, Disciplinary and Adverse Actions  
Effective Date, December 16, 2016

Attachment:  
As stated

## APPENDIX C

MDA requires all employees to complete required EEO training through an internal website (E-Learning Management System). EEO courses introduce laws prohibiting discrimination and harassment and protections afforded to employees under Title VII and Whistle-blowers Protection Act. MDA EO Policy Memoranda supports EEO training.