

Notification and Federal Employee  
Antidiscrimination and Retaliation Act of 2002

**Annual Report to Congress**  
**Fiscal Year 2013**  
**(October 1, 2012 – September 30, 2013)**



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## **I. Introduction**

The Notification and Federal Employee Antidiscrimination 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 U.S. 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 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 antidiscrimination and whistleblower protection law relating to federal employment. The report contains data and analysis concerning equal employment opportunity complaints filed with Missile Defense Agency (MDA) during fiscal year 2013.

The MDA's FY 2013 submission is in accordance with these reporting requirements.

## **II. Executive Summary**

The 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, allies, and friends from ballistic missile attacks of all ranges in all phases of flight. It also coordinates with the Combatant Commanders, other DoD components and federal agencies, foreign governments, international organizations, and others as authorized.

It is the policy of MDA to stand with the nation to 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. MDA's workforce includes approximately 2450 government civilian employees and approximately 110 military services members located in 5 states and in international sites. The workforce also includes approximately 905 OGA civilians and 4550 contractor employees providing staff support.

The MDA Office of Equal Opportunity and Diversity Management (EO) was established in November 2008 with the appointment of the Director of EO. Since that time of transition from being fully serviced by the Washington Headquarters Services (WHS), MDA EO has grown to a total of three (3), adding a [Complaint's Manager](#) and a [Special Emphasis Program \(SEP\) Manager](#). The EO Office 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 (including sexual harassment and gender identity), age, disability, genetic information, pregnancy, and reprisal for participating in prior EEO activity. The 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 (**No FEAR**) of 2002 in regard to Federal agencies’ obligation to report on specific topics concerning Federal Antidiscrimination 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 2013, Arising under the Various Antidiscrimination Laws and Whistleblower Protection Laws Listed in the No FEAR Act.**

- There were no cases filed or pending in Federal court in FY 2013.

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

- There were no cases pending or resolved in Federal court in FY 2013.

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

- There were no reimbursements to the Judgment Fund in FY 2013. 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.

**(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 2013. There were no disciplinary actions taken against agency employees related to having unlawfully discriminated against another individual during Fiscal Year 2013.

**(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 §724.102<sup>1</sup> 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 stated in his August 13, 2012 Anti-Harassment Policy Memo, “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 action or disciplinary action up to and including removal to ensure that no further harassing conduct occurs.”
- In his Anti-Discrimination Policy memo dated January 11, 2013, the MDA Director stated, “unlawful discrimination has not been, and will not be tolerated or condoned at MDA.” In addition, “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 Human Resources Management Handbook for New Supervisors at Appendix D.

**(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 six formal complaints filed against it in FY 2013; one more than the number of formal complaints filed in FY 2012. The top Bases were Disability, Age, Sex, and Reprisal and the top issues are identified as Harassment (non-sexual), Reasonable Accommodations, and Terms/Conditions of Employment. Of the six

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<sup>1</sup> In § 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.

cases filed in FY 2013 three (3) were dismissed for failure to state a claim and untimely counseling contact; one (1) was settled 55 days after the filing of the formal complaint; one is pending in investigation, and the last is pending hearing before the EEOC Washington Field Office. The six formal complaints were filed by six different individuals. These six individuals comprise less than one-half percent (0.24%) of the total civilian MDA workforce (2,453), which is not statistically significant to establish any causal relationship or to glean a discernible pattern from the filings.

- **Actions Planned or Taken to improve Complaint or Civil Rights Programs of the Agency with the Goal of Eliminating Discrimination and Retaliation in the Workplace:**

MDA continues to work to improve its EO Program. The following actions are planned for FY 2014:

- Revitalize the MDA EO Alternative Dispute Resolution Program and aggressively market the benefits of early resolution of workplace disputes.
- Implement and closely monitor realistic complaints processing performance metrics to increase efficiency.
- Continue basic EO and diversity management training for new employees and managers
- Develop the junior EEO Specialist to assist in coordinating compliance with EEO reporting requirements.
- Sponsor EEO and Diversity Management training for MDA Leadership and Supervisors to strengthen cultural competencies.
- Conduct Ad Hoc EEO/Diversity briefings to MDA Senior management.
- Add an EO segment to HR Weekly to disseminate critical EO info to workforce.
- Continue to foster an MDA culture which embraces the philosophy that Diversity is a business imperative.
- Analysis existing workforce survey results to identify systemic EEO and other workplace concerns.
- Collaborate with EEO program enforcement agencies to include Office of the Secretary of Defense (OSD), EEOC, Merit Systems Protection Board (MSPB), 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 2013. 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 initial 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 days of their arrival at MDA. Also, in accordance with OPM's rules, No FEAR Act training is provided to all MDA employees every two years. To date, 95% of all MDA employees have completed their bi-annual training.

**APPENDICIES:**

**Appendix A: End of FY 2013 Complaint Data Posting**

**Appendix B: WHS Instruction – Disciplinary and Adverse Actions**

**Appendix C: Policy Memos 11, 20, and 55**

**Appendix D: HR Management Handbook for New Supervisors**

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

<b>Complaint Activity Sec. 1614.704 (a), (b), and (c)</b>	<b>FY 2013 thru 9/30</b>
Number of Complaints Filed	6
Number of Complainants	6
Repeat Filers	0
<b>Complaints by Basis Sec. 1614.704 (d)</b>	<b>FY 2013 thru 9/30</b>
Race	1
Color	0
Religion	0
Reprisal	4
Sex	4
National Origin	0
Equal Pay Act	0
Age	4
Disability	5
Non-EEO basis	0
<b>Complaints by Issue Sec. 1614.704 (e)</b>	<b>FY 2013 thru 9/30</b>
Appointment/Hire	0
Assignment of Duties	1
Awards	0
Conversion to Full Time	0
Disciplinary Action	1
(1) Demotion	0
(2) Reprimand	0
(3) Suspension	1
(4) Removal	0
(5) Other	0
Duty Hours	0
Evaluation/Appraisal	1

Complaints by Issue (Cont.)	FY 2013 thru 9/30
Examination/Test	0
Harassment	4
(1) Non-Sexual	4
(2) Sexual	0
Medical Examination	0
Pay (Including Overtime)	0
Promotion/Non-Selection	0
Reassignment	1
Denied	0
Directed	1
Reasonable Accommodation	4
Reinstatement	0
Retirement	0
Termination	1
Terms/Conditions of Employment	2
Time and Attendance	0
Training	0
Other	0
Processing Time Sec 1614.704 (f)	FY 2013 thru 9/30
Complaints pending (for any length of time) during fiscal year	13
Average number of days in investigation stage	343
Average number of days in final action stage	NA
Complaints pending (for any length of time) during fiscal year where hearing was requested	6
Average number of days in investigation stage	315.3
Average number of days in final action stage (average days processing time)	NA
Complaints pending (for any length of time) during fiscal year where hearing was not requested.	0
Average number of days in investigation stage	NA
Average number of days in final action stage	NA

<b>Processing Time (Cont.)</b>	<b>FY 2013 thru 9/30</b>	
Complaints dismissed by Agency	2	
Total Complaints Dismissed by Agency	2	
Average days pending prior to dismissal	121	
Complaints Withdrawn by Complainants	0	
Total complaints Withdrawn by Complainants	0	
<b>Total Final Actions Finding Discrimination Sec. 1614.704 (i)</b>	<b>FY 2013 thru 9/30</b>	
	<b>#</b>	<b>%</b>
Total Number of findings	0	
a. Without a hearing	0	
b. With a hearing	0	
<b>Findings of Discrimination Rendered by Basis</b>	<b>FY 2013 thru 9/30</b>	
	<b>#</b>	<b>%</b>
Total Number of findings	0	
Race	0	
Color	0	
Religion	0	
Reprisal	0	
Sex	0	
National Origin	0	
Equal Pay Act	0	
Age	0	
Disability	0	
Non-EEO	0	
Findings After Hearing	0	
Race	0	
Color	0	
Religion	0	

Findings of Discrimination Rendered by Basis (Cont.)	FY 2013 thru 9/30	
	#	%
Reprisal	0	
Sex	0	
National Origin	0	
Equal Pay Act	0	
Age	0	
Disability	0	
Non-EEO	0	
Findings Without Hearing	0	
Race	0	
Color	0	
Religion	0	
Reprisal	0	
Sex	0	
National Origin	0	
Equal Pay Act	0	
Age	0	
Disability	0	
Non-EEO	0	
Findings of Discrimination Rendered by Issue	FY 2013 thru 9/30	
	#	%
Total Number of Findings	0	
Appointment/Hire	0	
Assignment of Duties	0	
Awards	0	
Conversion to Full Time	0	
Disciplinary Action	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2013 thru 9/30	
	#	%
Demotion	0	
Reprimand	0	
Suspension	0	
Removal	0	
Other	0	
Duty Hours	0	
Evaluation/Appraisal	0	
Examination/Test	0	
Harassment	0	
Non-Sexual	0	
Sexual	0	
Medical Examination	0	
Pay ( <i>Including Overtime</i> )	0	
Promotion/Non-Selection	0	
Reassignment	0	
Denied	0	
Directed	0	
Reasonable Accommodation	0	
Reinstatement	0	
Termination	0	
Terms/Condition of Employment	0	
Time and Attendance	0	
Training	0	
Other	0	
Findings After Hearing	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2013 thru 9/30	
	#	%
Appointment/Hire	0	
Assignment of Duties	0	
Awards	0	
Conversion to Full Time	0	
Disciplinary Action	0	
Demotion	0	
Reprimand	0	
Suspension	0	
Removal	0	
Other	0	
Duty Hours	0	
Evaluation/Appraisal	0	
Examination/Test	0	
Harassment	0	
Non-Sexual	0	
Sexual	0	
Medical Examination	0	
Pay ( <i>Including Overtime</i> )	0	
Promotion/Non-Selection	0	
Reassignment	0	
Denied	0	
Directed	0	
Reasonable Accommodation	0	
Reinstatement	0	
Termination	0	
Terms/Condition of Employment	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2013 thru 9/30	
	#	%
Time and Attendance	0	
Training	0	
Other	0	
Findings Without Hearing	0	
Appointment/Hire	0	
Assignment of Duties	0	
Awards	0	
Conversion to Full Time	0	
Disciplinary Action	0	
Demotion	0	
Reprimand	0	
Suspension	0	
Removal	0	
Other	0	
Duty Hours	0	
Evaluation/Appraisal	0	
Examination/Test	0	
Harassment	0	
Non-Sexual	0	
Sexual	0	
Medical Examination	0	
Pay ( <i>Including Overtime</i> )	0	
Promotion/Non-Selection	0	
Reassignment	0	
Denied	0	
Directed	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2013 thru 9/30	
	#	%
Reasonable Accommodation	0	
Reinstatement	0	
Termination	0	
Terms/Condition of Employment	0	
Time and Attendance	0	
Training	0	
Other	0	
<b>Pending Complaints Filed in Previous Fiscal Years by Status Sec. 1614.704 (k)</b>	<b>FY 2013 thru 9/30</b>	
Total complaints from previous Fiscal years	9	
Total Complainants	9	
Status of complaints pending from previous fiscal years	Remanded by EEOC	
Investigation	3	
Hearing	6	
Final Agency Action	0	
Appeal with EEOC Office of Federal Operations	0	
<b>Complaint Investigations</b>	<b>FY 2013 thru 9/30</b>	
Pending Completion Where Investigation Exceeds Required Time Frames	3	

\* All citations are contained at 29 CFR Part 1614  
Federal Sector Equal Employment Opportunity.