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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Fiscal Year 2016 Annual Report to Congress on the
Notification and Federal Employee
Antidiscrimination and Retaliation Act of 2002

LEADING INTELLIGENCE INTEGRATION

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Purpose of this Report

To support the Federal Government's longstanding obligation to provide a work environment free of discrimination and retaliation, the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, requires annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each federal agency. The No FEAR Act is intended to enable Congress to improve its oversight of federal agencies' compliance with the laws and reduce the incidence of discrimination within the Federal Government by making agencies more accountable through a series of tracking, reporting, and fiscal reimbursement requirements. The Office of the Director of National Intelligence (ODNI) submits this annual report in compliance with Section 203 of the No FEAR Act, covering Fiscal Year (FY) 2016.

As provided by Section 203, this report is submitted to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the ODNI, the Equal Employment Opportunity Commission (EEOC), the Attorney General, and the Director of the Office of Personnel Management. The No FEAR Act Annual Report contains information relating to the ODNI's Equal Employment Opportunity (EEO) complaints activity (including Federal District Court cases), as well as any resulting disciplinary actions and Judgment Fund reimbursements. The Agency's reporting obligations contained in Title 5 Code of Federal Regulations Part 724 have been incorporated into the ODNI's No FEAR FY 2016 year-end data report concerning EEO complaints (Appendix I).

A. Introduction

Following the tragic events of 11 September 2001, Congress saw the need for sweeping change in the Intelligence Community (IC), resulting in the passage of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), signed on 17 December 2004. The IRTPA created the ODNI to lead the 17 member IC and improve information sharing, strategically promote a unified direction, and ensure integration across the IC. The ODNI began operations on 22 April 2005. See <http://www.odni.gov/index.php/about/history>.

Since its inception, the ODNI has developed IC-wide strategies and policies, including personnel policies, to ensure a diverse workforce. The Director of National Intelligence (DNI) serves as the head of the IC, acts as the principal advisor to the President and the National Security Council on intelligence matters related to national security, and oversees and directs the implementation of the National Intelligence Program. In addition to his IC-wide mission, the DNI also leads the ODNI workforce and organization.

The IC Equal Employment Opportunity and Diversity (EEOD) Office in the ODNI serves as the principal advisor to the DNI on issues related to equity, fairness, and inclusion. In accordance with 29 C.F.R. § 1614.102(b)(4), the Chief, IC EEOD, reports directly to the DNI. In addition to IC-wide responsibilities for policy and oversight, the office provides EEO and diversity services to the ODNI workforce. In this capacity, it educates and trains managers, supervisors, and employees on their obligation to maintain a workplace free of unlawful discrimination and harassment, processes all informal and formal complaints of discrimination in

accordance with EEOC guidelines and timeframes, promotes understanding of diversity as a mission-critical imperative, and creates and implements diversity and inclusion programs.

By statute, the ODNI does not fall under the whistleblower framework described in the No FEAR Act.¹ The Congress amended the National Security Act of 1947 to include whistleblower protections for ODNI employees and all IC employees who properly disclose information about intelligence activities reasonably believed to be unlawful or contrary to Executive Order or Presidential Directive.² These statutory provisions provide the foundation of a whistleblower framework that is implemented through the Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information* (October 2012). The Inspector General of the Intelligence Community (IC IG) provides an independent review of whistleblower allegations for ODNI employees to determine whether or not a reprisal has occurred. The IC IG's statutory authority is derived from the National Security Act of 1947, which also protects IC whistleblowers who participate in communicating "urgent concerns" to Congress about intelligence activities that may reasonably be a violation of law or Executive Order.³ Together, these statutory authorities and presidential policies provide IC employees with whistleblower protections akin to those found in the No FEAR Act.

No FEAR Act web-based training, required for all ODNI employees, addresses the rights and remedies available to IC employees via the EEO process. The ODNI updated the No FEAR Act web-based training in FY 2015, disseminating copies to the IC elements who did not currently have their own No FEAR training. IC Whistleblowing training, mandatory for all ODNI employees and contractors, addresses the rights and remedies available in Presidential Policy Directive 19 and Intelligence Community Directive 120 to those who appropriately disclose allegations of wrong-doing.

Preventing discrimination in the workplace is the law of the nation and the ODNI is committed to preventing discrimination in the ODNI workplace and the IC. The IC EEOD staff meets frequently with senior leaders, managers, and other employees in the ODNI to resolve disputes; address reasonable accommodations issues; and promote measures to prevent workplace harassment. IC EEOD staff refers employees to the IC IG for whistleblower and other appropriate issues.

B. Reporting Obligations

¹ The No FEAR Act provides for Judgment Fund reimbursement of, and annual reporting related to, proceedings brought under: (1) any provision of law prohibiting any form of discrimination under the laws interpreted by the EEOC, and (2) the 5 U.S.C. § 2302(b)(8) and (9) whistleblower provisions. See Section 201(a) and (c) of the No FEAR Act.

² See 50 U.S.C. § 3234, *Prohibited personnel practices in the intelligence community*; and 50 U.S.C. § 3341(j) *Retaliatory revocation of security clearances and access determinations*. To obtain whistleblower protections under these provisions, ODNI employees are required to make disclosures in a manner consistent with the need to protect classified information. See also Presidential Policy Directive (PPD) 19 (10 October 2012), *Protecting Whistleblowers with Access to Classified Information*; Intelligence Community Directive (ICD) 120 (20 March 2014), *Intelligence Community Whistleblower Protection*.

³ See 50 U.S.C. § 3033(k)(5)(A). For purposes of this statute, an "urgent concern" is a serious or flagrant problem, abuse, violation of law or intelligence activities that IC personnel have reason to believe may be unlawful or contrary to Executive Order; or a false statement or willfully omitted material information to Congress, relating to the funding, administration, or operation of an intelligence activity within the DNI's cognizance; or an actual or threatened adverse personnel action for having reported an urgent concern.

During FY 2016, the ODNI had one case filed in Federal District Court, pending under the laws covered in the No FEAR Act. The case is pending and alleges violation of the Rehabilitation Act of 1973.

ODNI has made no reimbursements to the Judgment Fund for payments as defined in 5 C.F.R. § 724.102.

During FY 2016, there were no disciplinary actions taken against ODNI employees based on findings of discrimination, retaliation, or harassment.

The ODNI is committed to providing a workplace that promotes productivity and professionalism and an inclusive environment that protects the dignity of the entire workforce. The DNI annually issues anti-harassment, equal opportunity, and diversity policy statements declaring that any harassment, sexual or nonsexual, is strictly prohibited and will not be tolerated. These statements advise that employees will be subject to appropriate corrective action if they are found to have engaged in discriminatory or harassing behavior.

(1) No FEAR FY 2011–FY 2016, Year-End Data Report

Appendix I contains the ODNI's year-end FY 2016 EEO complaint data and the data from preceding fiscal years, in accordance with 5 C.F.R. § 724.302(a)(4).

(2) Analysis of EEO Complaint Trends and Causality

(A) EEO Complaint Activity and Causality

Following the ODNI's stand up in 2005, the baseline number of complaints has remained small, as is reflected in Appendix I. The six complaints in FY 2016 represented a reversal of the downward trend from FY 2014 to FY 2015. With relatively few cases each year, an increase of a few cases may be statistically significant; the ODNI will continue to closely monitor activity to determine if the increase during FY 2016 was an anomaly. However, the increased number of complaints may also reflect the maturity of the IC EEOD Compliance program, which has increased its outreach to and training of the workforce.

In addition, as the Compliance program has tracked the increasing number of complaints alleging retaliation and discrimination based on disability, IC EEOD has increased its focus on providing training on preventing retaliation, and the Disability Program Manager has offered training on reasonable accommodation. As referenced above, ODNI mandates that all employees take web-based No FEAR Act training, and all employees and contractors are required to take IC Whistleblowing web-based training. IC EEOD also has incorporated expert training on EEO issues at its annual EEO conference and sponsored training at ODNI by a nationally recognized expert in disability law.

(B) Bases of Discrimination in EEO Complaints

During FY 2016, the most-frequently alleged bases of discrimination in formal EEO complaints filed with the IC EEOD were (in order of frequency) retaliation, age, and disability. In comparison, the most frequently alleged basis in FY 2015 was race. There are no obvious trends in the data for basis of discrimination for complaint activity from FY 2009 to FY 2016.

(C) Issues in EEO Complaints

The two most frequently raised issues in formal discrimination complaints filed during FY 2016 involved non-sexual harassment and promotion/non-selection. There are no clear trends in the issues raised, given the small number of complaints, although the most consistent and frequent issue raised was harassment (non-sexual).

(D) Practical Knowledge Gained Through Experience

In addition to training, discussed above, the ODNI offers a program outside of the EEO process to address harassment and bullying complaints that are not based on any category protected under a nondiscrimination statute. That program results in addressing complaints of ordinary workplace friction, conflict, and disputes. Absent that program, the affected employees may have resorted to the EEO process to address these concerns. The IC EEOD also participates in the ODNI's Success Strategies for Supervisors course to provide managers and supervisors with the tools to prevent harassment and discrimination and address workplace conflict.

During FY 2016, the ODNI continued to experience increasing numbers of requests for reasonable accommodation. The IC EEOD's Disability Program Manager focuses both on internal compliance and coordination with other IC disability programs. The ODNI also focused on ensuring that agency facilities are accessible for individuals with disabilities.

(E) Improvements in the Complaint or Civil Rights Programs of the Agency

As an EEO compliance organization within the ODNI, IC EEOD works with the ODNI training office to ensure that all ODNI employees and detailees complete No FEAR Act training biennially. All employees receive reminders of the No FEAR Act mandatory training requirement. New employees are required to take the No FEAR Act training within 90 days of entering on duty, and all employees must take the training biennially. The ODNI's Chief Management Officer ensures that component chiefs are aware and tracking the biennial No FEAR training and annual IC Whistleblowing training requirements.

The ODNI continues to offer an EEO briefing during new employee orientation. The IC EEOD's FY 2016 "Diversity and Inclusion Campaign" included Unconscious Bias training for all senior managers and supervisors who participate in the ODNI's Career Advisory Boards (career development and promotion boards) and training on disability rights and EEO compliance. Through the Success Strategies for Supervisors course, IC EEOD educates ODNI managers and employees on a range of EEO issues, including how to use performance management tools; preventing or mitigating EEO issues; the importance of confidentiality in the EEO process; reasonable accommodation; and identifying actions that constitute unlawful retaliation.

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From FY 2012 through FY 2016, all investigations of formal complaints were timely conducted within the time provided by the EEOC's regulations.

APPENDIX:

Appendix I: ODNI No FEAR Statistics FY 2009–2016

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

Number of Complaints, Reported Pursuant to 29 C.F.R. § 1614.704(a)-(c)

	FY 2009	FY 2010	FY2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of Complaints								
– Filed during the FY	2	3	4	4	3	5	3	6
Number of Complainants								
– Who filed a complaint during the FY	2	3	4	4	3	5	3	6
– Who filed two or more complaints during the FY	0	0	0	0	0	0	0	0

Number of Complaints by Basis, Reported Pursuant to 29 C.F.R. § 1614.704(d)

	FY 2009	FY 2010	FY2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Race								
1. American Indian/Alaskan Native	0	0	0	0	0	1	0	0
2. Asian/Pacific Islander	0	0	0	1	0	0	0	0
3. Black	1	0	2	2	1	4	1	0
4. White	0	0	0	0	0	0	1	0
5. Two or More Races	0	0	0	0	0	1	0	0
Color	0	0	1	1	1	0	0	0
Religion	0	0	0	0	1	0	1	1
Reprisal	0	1	2	1	0	1	1	3
Sex								
1. Female	1	0	1	0	1	5	1	1
2. Male	0	1	0	0	0	0	0	0
Pregnancy Discrimination Act	0	0	0	0	0	1	0	0
National Origin								
1. Hispanic	1	0	0	0	0	0	0	1
2. Other	0	0	0	0	1	0	1	0
Equal Pay Act	0	0	0	0	0	0	0	0
Age	1	2	0	2	2	2	1	3
Disability								
1. Physical	0	1	1	0	0	1	0	1
2. Mental	0	0	1	0	0	1	1	2
Genetic Information Nondiscrimination Act	0	0	0	0	0	0	0	1
Non-EEO	0	0	0	0	0	0	0	1

Number of Complaints by Issue, Reported Pursuant to 29 C.F.R. § 1614.704(e)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Appointment/Hire	0	0	0	0	0	0	1	1
Assignment of Duties	0	0	0	1	0	1	0	0
Awards	1	1	0	0	1	0	0	0
Conversion to Full-Time	0	0	0	0	0	0	0	0
Disciplinary Action								
1. Demotion	0	0	1	1	0	0	0	0
2. Reprimand	0	0	1	1	0	1	1	0
3. Suspension	0	0	0	0	0	1	0	0
4. Removal	0	0	0	0	0	0	0	0
5. Other	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0
Evaluation/Appraisal	0	0	0	1	0	1	0	1
Examination/Test	0	0	0	0	0	0	0	0
Harassment								
1. Non-Sexual	1	1	2	3	0	2	1	2
2. Sexual	0	0	0	0	0	0	0	0
Medical Examination	0	1	0	0	0	0	0	1
Pay/Overtime	0	0	1	0	0	0	0	0
Promotion/Non-Selection	1	0	0	0	0	0	1	2
Reassignment								
1. Denied	0	0	0	0	1	0	0	0
2. Directed	0	1	0	0	0	0	1	1
Reasonable Accommodation	0	0	1	0	0	0	0	1
Reinstatement	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	1
Termination	0	1	1	0	1	2	0	1
Terms/Conditions of Employment	0	1	0	2	0	0	0	2
Time and Attendance	0	0	0	0	0	1	0	1
Training	0	0	0	1	0	1	0	0
Other	0	1	0	0	0	0	0	1

Average Processing Time, Reported Pursuant to 29 C.F.R. § 1614.704(f)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1614.704(f)(1) All Pending	366	323	362	580	345	203	345	307
1614.704(f)(2) – No Hearing Requested	366	323	339	269	194	127	220	92
1614.704(f)(3) – Hearing Requested	0	0	414	735	797	735	1101	356

Number of Complaints Dismissed Pursuant to 29 C.F.R. § 1614.107(a) and Average Length of Time Pending Prior to Dismissal, Reported Pursuant to 29 C.F.R. §1614.704(g)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of Complaints Dismissed	0	1	0	1	3	3	0	1
Average Number of Days Pending Prior to Dismissal	0	102	0	157	93	109	0	150

Number of Complaints Withdrawn by Complainants, Reported Pursuant to 29 C.F.R. § 1614.704(h)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of Complaints Withdrawn	0	1	0	0	2	0	0	2

Number of Final Agency Actions, Reported Pursuant to 29 C.F.R. § 1614.704(i)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1614.704(i)(1): Total Number of Findings of Discrimination	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %
1614.704(i)(2): – Without a Hearing	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
1614.704(i)(2) – After a Hearing	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0

Number of Final Actions Involving a Finding of Discrimination by Basis, Reported Pursuant to 29 C.F.R. § 1614.704(i)

* Rendered without a hearing ** Rendered after a hearing	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Total Number of Findings of Discrimination	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %	# 0 %
Race	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
1. American Indian/Alaskan Native	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
2. Asian/Pacific Islander	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
3. Black	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
4. White	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
5. Two or More Races	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0

Color	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Religion	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Reprisal	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Sex	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
1. Female	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
2. Male	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
National Origin	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
1. Hispanic	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
2. Other	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Equal Pay Act	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Age	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Disability	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
1. Physical	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
2. Mental	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0
Non-EEO	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0

**Number of Final Agency Actions Involving a Finding of Discrimination by Issue, Reported Pursuant to
29 C.F.R. § 1614.704(k)**

* Rendered without a hearing	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
** Rendered after a hearing								
Total Number of Findings of Discrimination	#	#	#	#	#	#	#	#
Appointment/Hire	%	%	%	%	%	%	%	%
	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
Conversion to Full-Time	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
1. Demotion	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
2. Reprimand	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
3. Suspension	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
4. Removal	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
5. Other	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0
Evaluation/Appraisal	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0

Examination/Test	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0
1. Non-Sexual	0	0	0	0	0	0	0	0
2. Sexual	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0
Pay/Overtime	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0
Reassignment	0	0	0	0	0	0	0	0
1. Denied	0	0	0	0	0	0	0	0
2. Directed	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0

Number of Complaints Pending at Any Time During the Fiscal Year, Reported Pursuant to 29 C.F.R. § 1614.704(l)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of Complaints								
Total Number of Complaints Pending for any length of time during the FY	4	7	8	9	8	8	7	14
29 C.F.R. § 1614.704(l)(1) – Number Filed before 10/1	2	4	4	5	5	3	4	8
29 C.F.R. § 1614.704(l)(2)(i) – Number of Complainants	2	4	4	5	5	3	4	12
29 C.F.R. § 1614.704(l)(2)(ii) – Number Pending Investigation	2	4	1	4	0	2	3	10
– Number Pending Hearing	1	0	2	1	1	1	1	6
– Number Pending Final Agency Action	2	0	0	0	0	1	0	0
– Number Pending Appeal	0	0	0	0	0	2	2	0

Number of Complaints Pending at Any Time During the Fiscal Year that Exceeded the Authorized Investigation Timeframe, Reported Pursuant to 29 C.F.R. § 1614.704(m)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of Pending Complaints that Exceeded the Investigation Time Authorized by 29 C.F.R. §1614.106(e)(2) including extensions	1	3	3	0	0	0	0	0
Number of Pending Complaints that Exceeded the Investigation Time Authorized by 29 C.F.R. §1614.108(e)	0	0	0	0	0	0	0	0