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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R.

To amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to strengthen Federal antidiscrimination laws enforced by the Equal Employment Opportunity Commission and expand accountability within the Federal government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Employee
5 Antidiscrimination Act of 2015”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 Section 102 of the Notification and Federal Em-
3 ployee Antidiscrimination and Retaliation Act of 2002 (5
4 U.S.C. 2301 note) is amended—

5 (1) in paragraph (4), to read as follows:

6 “(4) accountability in the enforcement of Fed-
7 eral employee rights is furthered when Federal agen-
8 cies take appropriate disciplinary action against
9 Federal employees who have been found to have
10 committed discriminatory or retaliatory acts;” and

11 (2) in paragraph (5)(A)—

12 (A) by striking “nor is accountability” and
13 inserting “but accountability is not”; and

14 (B) by inserting “for what by law the
15 agency is responsible” after “under this Act”.

16 **SEC. 3. NOTIFICATION OF VIOLATION.**

17 Section 202 of the Notification and Federal Em-
18 ployee Antidiscrimination and Retaliation Act of 2002 (5
19 U.S.C. 2301 note) is amended by adding at the end the
20 following:

21 “(d) NOTIFICATION OF FINAL AGENCY ACTION.—

22 “(1) Not later than 30 days after a Federal
23 agency takes final action or the Equal Employment
24 Opportunity Commission issues an appellate decision
25 involving a finding of discrimination or retaliation
26 prohibited by a provision of law covered by para-

1 graphs (1) or (2) of section 201(a), as applicable,
2 the head of the agency subject to the finding shall
3 provide notice for at least 1 year on the agency's
4 Internet Web site in a clear and prominent location
5 linked directly from the agency's Internet home page
6 stating that a finding of discrimination or retaliation
7 has been made.

8 “(2) The notification shall identify the date the
9 finding was made, the date or dates on which the
10 discriminatory or retaliatory act or acts occurred,
11 and the law or laws violated by the discriminatory
12 or retaliatory act or acts. The notification shall also
13 advise Federal employees of the rights and protec-
14 tions available under the respective provisions of law
15 covered by paragraphs (1) or (2) of section 201(a).”.

16 **SEC. 4. REPORTING REQUIREMENTS.**

17 (a) **ELECTRONIC FORMAT REQUIREMENT.—**

18 (1) **IN GENERAL.—**Section 203(a) of the Notifi-
19 cation and Federal Employee Antidiscrimination and
20 Retaliation Act of 2002 (5 U.S.C. 2301 note) is
21 amended by inserting “(in an electronic format pre-
22 scribed by the Office of Personnel Management)”
23 after “an annual report”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on the date that
3 is 1 year after the date of enactment of this Act.

4 (3) TRANSITION PERIOD.—Notwithstanding the
5 requirements of section 203(a) of the Notification
6 and Federal Employee Antidiscrimination and Retal-
7 iation Act of 2002 (5 U.S.C. 2301 note), the report
8 required under such section may be submitted in an
9 electronic format, as prescribed by the Office of Per-
10 sonnel Management, during the period beginning on
11 the date of enactment of this Act and ending on the
12 effective date in paragraph (2).

13 (b) REPORTING REQUIREMENT FOR DISCIPLINARY
14 ACTION.—Section 203 of such Act is amended by adding
15 at the end the following:

16 “(c) DISCIPLINARY ACTION REPORT.—Not later
17 than 60 days after the date on which a Federal agency
18 takes final action or an agency receives an appellate deci-
19 sion issued by the Equal Employment Opportunity Com-
20 mission involving a finding of discrimination or retaliation
21 in violation of a provision of law covered by paragraphs
22 (1) or (2) of section 201(a), as applicable, the employing
23 Federal agency shall submit to the Commission a report
24 stating whether disciplinary action has been initiated
25 against a Federal employee as a result of the violation.”.

1 **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**
2 **AGENCIES.**

3 Section 301(b) of the Notification and Federal Em-
4 ployee Antidiscrimination and Retaliation Act of 2002 (5
5 U.S.C. 2301 note) is amended—

6 (1) in paragraph (9)—

7 (A) in subparagraph (A), by striking
8 “and” at the end;

9 (B) in subparagraph (B)(ii), by striking
10 the period at the end and inserting “, and”;
11 and

12 (C) by adding at the end the following:

13 “(C) for each such finding counted under
14 subparagraph (A), the agency shall specify—

15 “(i) the date of the finding,

16 “(ii) the affected agency,

17 “(iii) the law violated, and

18 “(iv) whether a decision has been
19 made regarding necessary disciplinary ac-
20 tion as a result of the finding.”; and

21 (2) by adding at the end the following:

22 “(11) Data regarding each class action com-
23 plaint filed against the agency alleging discrimina-
24 tion or retaliation, including—

25 “(A) information regarding the date on
26 which each complaint was filed,

1 “(B) a general summary of the allegations
2 alleged in the complaint,

3 “(C) an estimate of the total number of
4 plaintiffs joined in the complaint if known,

5 “(D) the current status of the complaint,
6 including whether the class has been certified,
7 and

8 “(E) the case numbers for the civil actions
9 in which discrimination or retaliation has been
10 found.”.

11 **SEC. 6. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT**
12 **OPPORTUNITY COMMISSION.**

13 Section 302(b) of the Notification and Federal Em-
14 ployee Antidiscrimination and Retaliation Act of 2002 (5
15 U.S.C. 2301 note) is amended by striking “(10)” and in-
16 serting “(11)”.

17 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
18 **DISCRIMINATION AND RETALIATION ACT**
19 **AMENDMENTS.**

20 (a) NOTIFICATION REQUIREMENTS.—The Notifica-
21 tion and Federal Employee Antidiscrimination and Retal-
22 iation Act of 2002 (5 U.S.C. 2301 note) is amended by
23 adding after section 206 the following:

1 **“SEC. 207. COMPLAINT TRACKING.**

2 “Not later than 1 year after the date of enactment
3 of the Federal Employee Antidiscrimination Act of 2015,
4 each Federal agency shall establish a system to track each
5 complaint of discrimination arising under section
6 2302(b)(1) of title 5, United States Code, and adjudicated
7 through the Equal Employment Opportunity process from
8 inception to resolution of the complaint, including whether
9 a decision has been made regarding necessary disciplinary
10 action as the result of a finding of discrimination.

11 **“SEC. 208. NOTATION IN PERSONNEL RECORD.**

12 “If an agency takes an adverse action covered under
13 section 7512 of title 5, United States Code, against an
14 employee for an act of discrimination or retaliation prohib-
15 ited by a provision of law covered by paragraphs (1) or
16 (2) of section 201(a), the agency shall, after all appeals
17 relating to such action have been exhausted, include a no-
18 tation of the adverse action and the reason for the action
19 in the employee’s personnel record.”.

20 (b) PROCESSING AND REFERRAL.—The Notification
21 and Federal Employee Antidiscrimination and Retaliation
22 Act of 2002 (5 U.S.C. 2301 note) is amended by adding
23 at the end the following:

1 **“TITLE IV—PROCESSING AND**
2 **REFERRAL**

3 **“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.**

4 “Each Federal agency is responsible for the fair, im-
5 partial, processing and resolution of complaints of employ-
6 ment discrimination and retaliation arising in the Federal
7 administrative process and shall establish a model Equal
8 Employment Opportunity Program that—

9 “(1) is not under the control, either structurally
10 or practically, of a Human Capital or General Coun-
11 sel office;

12 “(2) is devoid of internal conflicts of interest
13 and ensures fairness and inclusiveness within the or-
14 ganization; and

15 “(3) ensures the efficient and fair resolution of
16 complaints alleging discrimination or retaliation.

17 **“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GEN-**
18 **ERAL COUNSEL ADVICE.**

19 “Nothing in this title shall prevent a Federal agency’s
20 Human Capital or General Counsel office from providing
21 advice or counsel to agency personnel on the processing
22 and resolution of a complaint, including providing legal
23 representation to an agency in any proceeding.

1 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**
2 **AGENCY.**

3 “The head of each Federal agency’s Equal Employ-
4 ment Opportunity Program shall report directly to the
5 head of the agency.

6 **“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.**

7 “(a) EEOC FINDINGS OF DISCRIMINATION.—Not
8 later than 30 days after the Equal Employment Oppor-
9 tunity Commission issues an appellate decision involving
10 a finding of discrimination or retaliation within a Federal
11 agency the Commission shall refer the matter to the Office
12 of Special Counsel.

13 “(b) REFERRALS TO SPECIAL COUNSEL.—The Office
14 of Special Counsel shall accept and review a referral from
15 the Commission under subsection (a) for purposes of seek-
16 ing disciplinary action under its authority against an Fed-
17 eral employee who commits an act of discrimination or re-
18 taliation.

19 “(c) NOTIFICATION.—The Office of Special Counsel
20 shall notify the Commission in a case in which the Office
21 of Special Counsel initiates disciplinary action.

22 “(d) SPECIAL COUNSEL APPROVAL.—An agency may
23 not take disciplinary action against a Federal employee
24 for an alleged act of discrimination or retaliation referred
25 by the Commission under this section except in accordance

1 with the requirements of section 1214(f) of title 5, United
2 States Code.”.

3 (c) CONFORMING AMENDMENTS.—The table of con-
4 tents in section 1(b) of the Notification and Federal Em-
5 ployee Antidiscrimination and Retaliation Act of 2002 (5
6 U.S.C. 2301 note) is amended—

7 (1) by inserting after the item relating to sec-
8 tion 206 the following:

“Sec. 207. Complaint tracking.

“Sec. 208. Notation in personnel record.”; and

9 (2) by adding at the end the following:

“TITLE IV—PROCESSING AND REFERRAL

“Sec. 401. Processing and resolution of complaints.

“Sec. 402. No limitation on Human Capital or General Counsel advice.

“Sec. 403. Head of Program reports to head of agency.

“Sec. 404. Referrals of findings of discrimination.”.

10 **SEC. 8. NON-DISCLOSURE AGREEMENT LIMITATION.**

11 Section 2302(b) of title 5, United States Code is
12 amended—

13 (1) in paragraph (13)—

14 (A) by inserting “or the Office of Special
15 Counsel” after “Inspector General”;

16 (B) by striking “implement” and inserting
17 “(A) implement”; and

18 (C) by striking the period that follows the
19 quoted material and inserting “; or”;

1 (2) by adding after subparagraph (A), as added
2 by paragraph (1)(B), and preceding the flush left
3 matter that follows paragraph (13), the following:

4 “(B) implement or enforce any nondisclo-
5 sure policy, form, or agreement, if such policy,
6 form, or agreement prohibits or restricts an em-
7 ployee from disclosing to Congress, the Office of
8 Special Counsel, or an Office of the Inspector
9 General any information that relates to any vio-
10 lation of any law, rule, or regulation, or mis-
11 management, a gross waste of funds, an abuse
12 of authority, or a substantial, and specific dan-
13 ger to public health or safety, or any other
14 whistleblower protection.”.