116TH 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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Employee Antidiscrimination Act of 2019”.

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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 Antidiscrimination Act of 2019”.

SEC. 2. SENSE OF CONGRESS.

Section 102 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended—

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

“(4) accountability in the enforcement of Federal employee rights is furthered when Federal agencies take appropriate disciplinary action against Federal employees who have been found to have committed discriminatory or retaliatory acts;”; and

(2) in paragraph (5)(A)—

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

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

SEC. 3. NOTIFICATION OF VIOLATION.

Section 202 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding at the end the following:

“(d) NOTIFICATION OF FINAL AGENCY ACTION.—

“(1) Not later than 30 days after a Federal agency takes final action or the Equal Employment Opportunity Commission issues an appellate decision involving a finding of discrimination or retaliation prohibited by a provision of law covered by para-
graph (1) or (2) of section 201(a), as applicable, the head of the agency subject to the finding shall provide notice for at least 1 year on the agency’s Internet Web site in a clear and prominent location linked directly from the agency’s Internet home page stating that a finding of discrimination or retaliation has been made.

“(2) The notification shall identify the date the finding was made, the date or dates on which the discriminatory or retaliatory act or acts occurred, and the law or laws violated by the discriminatory or retaliatory act or acts. The notification shall also advise Federal employees of the rights and protections available under the respective provisions of law covered by paragraph (1) or (2) of section 201(a).”.

SEC. 4. REPORTING REQUIREMENTS.

(a) ELECTRONIC FORMAT REQUIREMENT.—

(1) IN GENERAL.—Section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended—

(A) by inserting “Homeland Security and” before “Governmental Affairs”; and

(B) by inserting “Oversight and” before “Government Reform”; and
(C) by inserting “(in an electronic format prescribed by the Office of Personnel Management)” after “an annual report”.

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

(3) TRANSITION PERIOD.—Notwithstanding the requirements of section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note), the report required under such section may be submitted in an electronic format, as prescribed by the Office of Personnel Management, during the period beginning on the date of enactment of this Act and ending on the effective date in paragraph (2).

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

“(c) DISCIPLINARY ACTION REPORT.—Not later than 60 days after the date on which a Federal agency takes final action or a Federal agency receives an appellate decision issued by the Equal Employment Opportunity Commission involving a finding of discrimination or retaliation in violation of a provision of law covered by
paragraph (1) or (2) of section 201(a), as applicable, the employing Federal agency shall submit to the Commission a report stating whether disciplinary action has been initiated against a Federal employee as a result of the violation.”.

SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

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

(1) in paragraph (9)—

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

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

and

(C) by adding at the end the following:

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

“(i) the date of the finding;

“(ii) the affected agency;

“(iii) the law violated; and

“(iv) whether a decision has been made regarding necessary disciplinary action as a result of the finding.”; and
(2) by adding at the end the following:

“(11) Data regarding each class action complaint filed against the agency alleging discrimination or retaliation, including—

“(A) information regarding the date on which each complaint was filed;

“(B) a general summary of the allegations alleged in the complaint;

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

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

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

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

Section 302(b) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by striking “(10)” and inserting “(11)”.
SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-DISCRIMINATION AND RETALIATION ACT AMENDMENTS.

(a) NOTIFICATION REQUIREMENTS.—The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding after section 206 the following:

“SEC. 207. COMPLAINT TRACKING.

“Not later than 1 year after the date of enactment of the Federal Employee Antidiscrimination Act of 2019, each Federal agency shall establish a system to track each complaint of discrimination arising under section 2302(b)(1) of title 5, United States Code, and adjudicated through the Equal Employment Opportunity process from inception to resolution of the complaint, including whether a decision has been made regarding necessary disciplinary action as the result of a finding of discrimination.

“SEC. 208. NOTATION IN PERSONNEL RECORD.

“If a Federal agency takes an adverse action covered under section 7512 of title 5, United States Code, against a Federal employee for an act of discrimination or retaliation prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a), the agency shall, after all appeals relating to such action have been exhausted, include a notation of the adverse action and the reason for the action in the employee’s personnel record.”.
(b) PROCESSING AND REFERRAL.—The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended by adding at the end the following:

“TITLE IV—PROCESSING AND REFERRAL

“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.

“Each Federal agency is responsible for the fair, impartial processing and resolution of complaints of employment discrimination and retaliation arising in the Federal administrative process and shall establish a model Equal Employment Opportunity Program that—

“(1) is not under the control, either structurally or practically, of a Human Capital or General Counsel office;

“(2) is devoid of internal conflicts of interest and ensures fairness and inclusiveness within the organization; and

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

“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GENERAL COUNSEL ADVICE.

“Nothing in this title shall prevent a Federal agency’s Human Capital or General Counsel office from providing advice or counsel to Federal agency personnel on the proc-
essing and resolution of a complaint, including providing legal representation to a Federal agency in any proceeding.

“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF AGENCY.

“The head of each Federal agency’s Equal Employment Opportunity Program shall report directly to the head of the agency.

“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.

“(a) EEOC FINDINGS OF DISCRIMINATION.—Not later than 30 days after the Equal Employment Opportunity Commission issues an appellate decision involving a finding of discrimination or retaliation within a Federal agency, the Commission shall refer the matter to the Office of Special Counsel.

“(b) REFERRALS TO SPECIAL COUNSEL.—The Office of Special Counsel shall accept and review a referral from the Commission under subsection (a) for purposes of seeking disciplinary action under its authority against a Federal employee who commits an act of discrimination or retaliation.

“(c) NOTIFICATION.—The Office of Special Counsel shall notify the Commission in a case in which the Office of Special Counsel initiates disciplinary action.
“(d) SPECIAL COUNSEL APPROVAL.—A Federal agency may not take disciplinary action against a Federal employee for an alleged act of discrimination or retaliation referred by the Commission under this section except in accordance with the requirements of section 1214(f) of title 5, United States Code.”.

(e) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended—

(1) by inserting after the item relating to section 206 the following:

“Sec. 207. Complaint tracking.
Sec. 208. Notation in personnel record.”;

and

(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.”.

SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.

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

(1) in paragraph (13)—

(A) by inserting “or the Office of Special Counsel” after “Inspector General”;
(B) by striking “implement” and inserting “(A) implement”; and

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

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

“(B) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement prohibits or restricts an employee from disclosing to Congress, the Office of Special Counsel, or an Office of the Inspector General any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial, and specific danger to public health or safety, or any other whistleblower protection.”.