

Calendar No. 330

116TH CONGRESS
1ST SESSION**H. R. 135****[Report No. 116–176]**

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2019

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

DECEMBER 16, 2019

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

AN ACT

To amend the Notification and Federal Employee Anti-discrimination 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 2019”.~~

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 graph (1) or (2) of section 201(a), as applicable, the
2 head of the agency subject to the finding shall pro-
3 vide notice for at least 1 year on the agency's inter-
4 net website in a clear and prominent location linked
5 directly from the agency's internet home page stat-
6 ing 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 paragraph (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—

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

24 (B) by inserting “Oversight and” before
25 “Government Reform”; and

1 (C) by inserting “(in an electronic format
2 prescribed by the Office of Personnel Manage-
3 ment)” after “an annual report”.

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

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

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

20 “(e) DISCIPLINARY ACTION REPORT.—Not later
21 than 60 days after the date on which a Federal agency
22 takes final action or a Federal agency receives an appel-
23 late decision issued by the Equal Employment Oppor-
24 tunity Commission involving a finding of discrimination
25 or retaliation in violation of a provision of law covered by

1 paragraph (1) or (2) of section 201(a), as applicable, the
2 employing Federal agency shall submit to the Commission
3 a report stating whether disciplinary action has been initi-
4 ated against a Federal employee as a result of the viola-
5 tion.”.

6 **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**
7 **AGENCIES.**

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

11 (1) in paragraph (9)—

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

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

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

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

20 “(i) the date of the finding;

21 “(ii) the affected agency;

22 “(iii) the law violated; and

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

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

2 “~~(11)~~ Data regarding each class action com-
3 plaint filed against the agency alleging discrimina-
4 tion or retaliation, including—

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

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

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

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

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

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

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

1 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
2 **DISCRIMINATION AND RETALIATION ACT**
3 **AMENDMENTS.**

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

8 **“SEC. 207. COMPLAINT TRACKING.**

9 “Not later than 1 year after the date of enactment
10 of the Federal Employee Antidiscrimination Act of 2019,
11 each Federal agency shall establish a system to track each
12 complaint of discrimination arising under section
13 2302(b)(1) of title 5, United States Code, and adjudicated
14 through the Equal Employment Opportunity process from
15 inception to resolution of the complaint, including whether
16 a decision has been made regarding necessary disciplinary
17 action as the result of a finding of discrimination.

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

19 “If a Federal agency takes an adverse action covered
20 under section 7512 of title 5, United States Code, against
21 a Federal employee for an act of discrimination or retalia-
22 tion prohibited by a provision of law covered by paragraph
23 (1) or (2) of section 201(a), the agency shall, after all
24 appeals relating to such action have been exhausted, in-
25 clude a notation of the adverse action and the reason for
26 the action in the employee’s personnel record.”.

1 (b) ~~PROCESSING AND REFERRAL.~~—The Notification
 2 and Federal Employee Antidiscrimination and Retaliation
 3 Act of 2002 (~~5 U.S.C. 2301~~ note) is amended by adding
 4 at the end the following:

5 **~~“TITLE IV—PROCESSING AND~~**
 6 **~~REFERRAL~~**

7 **~~“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.~~**

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

13 ~~“(1) is not under the control, either structurally~~
 14 ~~or practically, of a Human Capital or General Coun-~~
 15 ~~sel office;~~

16 ~~“(2) is devoid of internal conflicts of interest~~
 17 ~~and ensures fairness and inclusiveness within the or-~~
 18 ~~ganization; and~~

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

21 **~~“SEC. 402. NO LIMITATION ON HUMAN CAPITAL OR GEN-~~**
 22 **~~ERAL COUNSEL ADVICE.~~**

23 ~~“Nothing in this title shall prevent a Federal agency’s~~
 24 ~~Human Capital or General Counsel office from providing~~
 25 ~~advice or counsel to Federal agency personnel on the proc-~~

1 essing and resolution of a complaint, including providing
2 legal representation to a Federal agency in any pro-
3 ceeding.

4 **“SEC. 403. HEAD OF PROGRAM REPORTS TO HEAD OF**
5 **AGENCY.**

6 “The head of each Federal agency’s Equal Employ-
7 ment Opportunity Program shall report directly to the
8 head of the agency.

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

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

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

22 “(c) **NOTIFICATION.**—The Office of Special Counsel
23 shall notify the Commission in a case in which the Office
24 of Special Counsel initiates disciplinary action.

1 “(d) SPECIAL COUNSEL APPROVAL.—A Federal
2 agency may not take disciplinary action against a Federal
3 employee for an alleged act of discrimination or retaliation
4 referred by the Commission under this section except in
5 accordance with the requirements of section 1214(f) of
6 title 5, United States Code.”.

7 (e) CONFORMING AMENDMENTS.—The table of con-
8 tents in section 1(b) of the Notification and Federal Em-
9 ployee Antidiscrimination and Retaliation Act of 2002 (5
10 U.S.C. 2301 note) is amended—

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

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

13 and

14 (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.”.

15 **SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.**

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

18 (1) in paragraph (13)—

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

1 (B) by striking “implement” and inserting
2 “(A) implement”; and

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

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

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

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Elijah E. Cummings*
21 *Federal Employee Antidiscrimination Act of 2019”.*

22 **SEC. 2. SENSE OF CONGRESS.**

23 *Section 102 of the Notification and Federal Employee*
24 *Antidiscrimination and Retaliation Act of 2002 (5 U.S.C.*
25 *2301 note) is amended—*

1 (1) *by striking paragraph (4) and inserting the*
2 *following:*

3 “*(4) accountability in the enforcement of the*
4 *rights of Federal employees is furthered when Federal*
5 *agencies agree to take appropriate disciplinary action*
6 *against Federal employees who are found to have in-*
7 *tentionally committed discriminatory (including re-*
8 *taliatory) acts;”*; and

9 (2) *in paragraph (5)(A)—*

10 (A) *by striking “nor is accountability” and*
11 *inserting “accountability is not”; and*

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

14 **SEC. 3. NOTIFICATION OF VIOLATION.**

15 *Section 202 of the Notification and Federal Employee*
16 *Antidiscrimination and Retaliation Act of 2002 (5 U.S.C.*
17 *2301 note) is amended by adding at the end the following:*

18 “*(d) NOTIFICATION OF FINAL AGENCY ACTION.—*

19 “*(1) IN GENERAL.—Not later than 90 days after*
20 *the date on which an event described in paragraph*
21 *(2) occurs with respect to a finding of discrimination*
22 *(including retaliation), the head of the Federal agency*
23 *subject to the finding shall provide notice—*

1 “(A) on the public internet website of the
2 agency, in a clear and prominent location linked
3 directly from the home page of that website;

4 “(B) stating that a finding of discrimina-
5 tion (including retaliation) has been made; and

6 “(C) which shall remain posted for not less
7 than 1 year.

8 “(2) *EVENTS DESCRIBED.*—An event described in
9 this paragraph is any of the following:

10 “(A) All appeals of a final action by a Fed-
11 eral agency involving a finding of discrimina-
12 tion (including retaliation) prohibited by a pro-
13 vision of law covered by paragraph (1) or (2) of
14 section 201(a) have been exhausted.

15 “(B) All appeals of a final decision by the
16 Equal Employment Opportunity Commission
17 involving a finding of discrimination (including
18 if the finding included a finding of retaliation)
19 prohibited by a provision of law covered by
20 paragraph (1) or (2) of section 201(a) have been
21 exhausted.

22 “(C) A court of jurisdiction issues a final
23 judgment involving a finding of discrimination
24 (including retaliation) prohibited by a provision

1 of law covered by paragraph (1) or (2) of section
2 201(a).

3 “(3) CONTENTS.—A notification provided under
4 paragraph (1) with respect to a finding of discrimi-
5 nation (including retaliation) shall—

6 “(A) identify the date on which the finding
7 was made, the date on which each discrimina-
8 tory act occurred, and the law violated by each
9 such discriminatory act; and

10 “(B) advise Federal employees of the rights
11 and protections available under the provisions of
12 law covered by paragraphs (1) and (2) of section
13 201(a).”.

14 **SEC. 4. REPORTING REQUIREMENTS.**

15 (a) *ELECTRONIC FORMAT REQUIREMENT.*—

16 (1) *IN GENERAL.*—Section 203(a) of the *Notifica-*
17 *tion and Federal Employee Antidiscrimination and*
18 *Retaliation Act of 2002 (5 U.S.C. 2301 note)* is
19 amended, in the matter preceding paragraph (1)—

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

22 (B) by striking “on Government Reform”
23 and inserting “on Oversight and Reform”; and

1 (C) by inserting “(in an electronic format
2 prescribed by the Director of the Office of Per-
3 sonnel Management),” after “an annual report”.

4 (2) *EFFECTIVE DATE.*—The amendment made by
5 paragraph (1)(C) shall take effect on the date that is
6 1 year after the date of enactment of this Act.

7 (3) *TRANSITION PERIOD.*—Notwithstanding the
8 requirements of section 203(a) of the Notification and
9 Federal Employee Antidiscrimination and Retalia-
10 tion Act of 2002 (5 U.S.C. 2301 note), the report re-
11 quired under such section 203(a) may be submitted in
12 an electronic format, as prescribed by the Director of
13 the Office of Personnel Management, during the pe-
14 riod beginning on the date of enactment of this Act
15 and ending on the effective date in paragraph (2).

16 (b) *REPORTING REQUIREMENT FOR DISCIPLINARY AC-*
17 *TION.*—Section 203 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 fol-
20 lowing:

21 “(c) *DISCIPLINARY ACTION REPORT.*—Not later than
22 120 days after the date on which a Federal agency takes
23 final action, or a Federal agency receives a final decision
24 issued by the Equal Employment Opportunity Commission,
25 involving a finding of discrimination (including retalia-

1 *tion) in violation of a provision of law covered by para-*
 2 *graph (1) or (2) of section 201(a), as applicable, the appli-*
 3 *cable Federal agency shall submit to the Commission a re-*
 4 *port stating—*

5 “(1) *whether disciplinary action has been pro-*
 6 *posed against a Federal employee as a result of the*
 7 *violation; and*

8 “(2) *the reasons for any disciplinary action pro-*
 9 *posed under paragraph (1).”.*

10 **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**
 11 **AGENCIES.**

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

15 (1) *in paragraph (9)—*

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

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

20 (C) *by adding at the end the following:*

21 “(C) *with respect to each finding described*
 22 *in subparagraph (A)—*

23 “(i) *the date of the finding,*

24 “(ii) *the affected Federal agency,*

25 “(iii) *the law violated, and*

1 “(iv) whether a decision has been made
2 regarding disciplinary action as a result of
3 the finding.”; and

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

5 “(11) Data regarding each class action com-
6 plaint filed against the agency alleging discrimina-
7 tion (including retaliation), including—

8 “(A) information regarding the date on
9 which each complaint was filed,

10 “(B) a general summary of the allegations
11 alleged in the complaint,

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

14 “(D) the current status of the complaint, in-
15 cluding whether the class has been certified, and

16 “(E) the case numbers for the civil actions
17 in which discrimination (including retaliation)
18 has been found.”.

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

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

1 **SEC. 7. NOTIFICATION AND FEDERAL EMPLOYEE ANTI-**
2 **DISCRIMINATION AND RETALIATION ACT OF**
3 **2002 AMENDMENTS.**

4 (a) *NOTIFICATION REQUIREMENTS.*—*Title II of the*
5 *Notification and Federal Employee Antidiscrimination and*
6 *Retaliation Act of 2002 (5 U.S.C. 2301 note) is amended*
7 *by adding at the end the following:*

8 **“SEC. 207. COMPLAINT TRACKING.**

9 “*Not later than 1 year after the date of enactment of*
10 *the Elijah E. Cummings Federal Employee Antidiscrimi-*
11 *nation Act of 2019, each Federal agency shall establish a*
12 *system to track each complaint of discrimination arising*
13 *under section 2302(b)(1) of title 5, United States Code, and*
14 *adjudicated through the Equal Employment Opportunity*
15 *process from the filing of a complaint with the Federal*
16 *agency to resolution of the complaint, including whether a*
17 *decision has been made regarding disciplinary action as the*
18 *result of a finding of discrimination.*

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

20 “*If a Federal agency takes an adverse action covered*
21 *under section 7512 of title 5, United States Code, against*
22 *a Federal employee for an act of discrimination (including*
23 *retaliation) prohibited by a provision of law covered by*
24 *paragraph (1) or (2) of section 201(a), the agency shall,*
25 *after all appeals relating to that action have been exhausted,*

1 *include a notation of the adverse action and the reason for*
2 *the action in the personnel record of the employee.”.*

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

7 **“TITLE IV—PROCESSING AND**
8 **REFERRAL**

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

10 *“Each Federal agency shall—*

11 *“(1) be responsible for the fair and impartial*
12 *processing and resolution of complaints of employ-*
13 *ment discrimination (including retaliation) prohib-*
14 *ited by a provision of law covered by paragraph (1)*
15 *or (2) of section 201(a); and*

16 *“(2) establish a model Equal Employment Op-*
17 *portunity Program that—*

18 *“(A) is not under the control, either struc-*
19 *turally or practically, of the agency’s Office of*
20 *Human Capital or Office of the General Counsel*
21 *(or the equivalent);*

22 *“(B) is devoid of internal conflicts of inter-*
23 *est and ensures fairness and inclusiveness within*
24 *the agency; and*

1 “(C) ensures the efficient and fair resolution
2 of complaints alleging discrimination (including
3 retaliation).

4 **“SEC. 402. NO LIMITATION ON ADVICE OR COUNSEL.**

5 “Nothing in this title shall prevent a Federal agency
6 or a subcomponent of a Federal agency, or the Department
7 of Justice, from providing advice or counsel to employees
8 of that agency (or subcomponent, as applicable) in the reso-
9 lution of a complaint.

10 **“SEC. 403. HEAD OF PROGRAM SUPERVISED BY HEAD OF**
11 **AGENCY.**

12 “The head of each Federal agency’s Equal Employ-
13 ment Opportunity Program shall report directly to the head
14 of the agency.

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

16 “(a) EEOC FINDINGS OF DISCRIMINATION.—

17 “(1) IN GENERAL.—Not later than 30 days after
18 the date on which the Equal Employment Oppor-
19 tunity Commission (referred to in this section as the
20 ‘Commission’) receives, or should have received, a
21 Federal agency report required under section 203(c),
22 the Commission may refer the matter to which the re-
23 port relates to the Office of Special Counsel if the
24 Commission determines that the Federal agency did

1 *not take appropriate action with respect to the find-*
2 *ing that is the subject of the report.*

3 “(2) *NOTIFICATIONS.*—*The Commission shall—*

4 “(A) *notify the applicable Federal agency if*
5 *the Commission refers a matter to the Office of*
6 *Special Counsel under paragraph (1); and*

7 “(B) *with respect to a fiscal year, include*
8 *in the Annual Report of the Federal Workforce*
9 *of the Commission covering that fiscal year—*

10 “(i) *the number of referrals made*
11 *under paragraph (1) during that fiscal*
12 *year; and*

13 “(ii) *a brief summary of each referral*
14 *described in clause (i).*

15 “(b) *REFERRALS TO SPECIAL COUNSEL.*—*The Office*
16 *of Special Counsel shall accept and review a referral from*
17 *the Commission under subsection (a)(1) for purposes of pur-*
18 *suing disciplinary action under the authority of the Office*
19 *against a Federal employee who commits an act of dis-*
20 *crimination (including retaliation).*

21 “(c) *NOTIFICATION.*—*The Office of Special Counsel*
22 *shall notify the Commission and the applicable Federal*
23 *agency in a case in which—*

24 “(1) *the Office of Special Counsel pursues dis-*
25 *ciplinary action under subsection (b); and*

1 “(2) the Federal agency imposes some form of
2 disciplinary action against a Federal employee who
3 commits an act of discrimination (including retaliation).
4 tion).

5 “(d) *SPECIAL COUNSEL APPROVAL*.—A Federal agen-
6 cy may not take disciplinary action against a Federal em-
7 ployee for an alleged act of discrimination (including retal-
8 iation) referred by the Commission under this section, ex-
9 cept in accordance with the requirements of section 1214(f)
10 of title 5, United States Code.”.

11 (c) *CONFORMING AMENDMENTS*.—The table of contents
12 in section 1(b) of the Notification and Federal Employee
13 Antidiscrimination and Retaliation Act of 2002 (5 U.S.C.
14 2301 note) is amended—

15 (1) by inserting after the item relating to section
16 206 the following:

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

17 (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 advice or counsel.
“Sec. 403. Head of Program supervised by head of agency.
“Sec. 404. Referrals of findings of discrimination.”.

18 **SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.**

19 Section 2302(b)(13) of title 5, United States Code, is
20 amended—

1 (1) by striking “agreement does not” and insert-
2 ing the following: “agreement—

3 “(A) does not”;

4 (2) in subparagraph (A), as so designated, by in-
5 serting “or the Office of Special Counsel” after “In-
6 spector General”; and

7 (3) by adding at the end the following:

8 “(B) prohibits or restricts an employee or
9 applicant for employment from disclosing to
10 Congress, the Special Counsel, the Inspector Gen-
11 eral of an agency, or any other agency compo-
12 nent responsible for internal investigation or re-
13 view any information that relates to any viola-
14 tion of any law, rule, or regulation, or mis-
15 management, a gross waste of funds, an abuse of
16 authority, or a substantial and specific danger
17 to public health or safety, or any other whistle-
18 blower protection; or”.

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1ST Session

H. R. 135

[Report No. 116-176]

AN ACT

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.

DECEMBER 16, 2019

Reported with an amendment