

**NOTIFICATION AND FEDERAL EMPLOYEE
ANTIDISCRIMINATION AND RETALIATION ACT OF 2002**

[Public Law 107–174, 116 Stat. 566]

[As Amended Through P.L. 116–283, Enacted January 1, 2021]

【Currency: This publication is a compilation of Public Law 107-174. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To require that Federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws; to require that each Federal agency post quarterly on its public Web site, certain statistical data relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002”.

【5 U.S.C. 2301 note】

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

- Sec. 101. Findings.
- Sec. 102. Sense of Congress.
- Sec. 103. Definitions.
- Sec. 104. Effective date.

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

- Sec. 201. Reimbursement requirement.
- Sec. 202. Notification requirement.
- Sec. 203. Reporting requirement.
- Sec. 204. Rules and guidelines.
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- Sec. 206. Studies by General Accounting Office on exhaustion of remedies and certain Department of Justice costs.
- Sec. 207. Complaint tracking.
- Sec. 208. Notation in personnel record.

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TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

- Sec. 301. Data to be posted by employing Federal agencies.
- Sec. 302. Data to be posted by the Equal Employment Opportunity Commission.
- Sec. 303. Rules.

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.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

Congress finds that—

(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist \$600,000;

(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

[5 U.S.C. 2301 note]

SEC. 102. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

(4) accountability in the enforcement of the rights of Federal employees is furthered when Federal agencies agree to take appropriate disciplinary action against Federal employees who are found to have intentionally committed discriminatory (including retaliatory) acts;

(5)(A) accountability is not furthered if Federal agencies react to the increased accountability under this Act for what, by law, the agency is responsible by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

(i) reductions in force;

(ii) furloughs;

(iii) other reductions in compensation or benefits for the workforce of the agency; or

(iv) an adverse effect on the mission of the agency.

【5 U.S.C. 2301 note】

SEC. 103. DEFINITIONS.

For purposes of this Act—

(1) the term “applicant for Federal employment” means an individual applying for employment in or under a Federal agency;

(2) the term “basis of alleged discrimination” shall have the meaning given such term under section 303;

(3) the term “Federal agency” means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Rate Commission;

(4) the term “Federal employee” means an individual employed in or under a Federal agency;

(5) the term “former Federal employee” means an individual formerly employed in or under a Federal agency; and

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(6) the term “issue of alleged discrimination” shall have the meaning given such term under section 303.

[5 U.S.C. 2301 note]

SEC. 104. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning more than 180 days after the date of the enactment of this Act.

[5 U.S.C. 2301 note]

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

SEC. 201. REIMBURSEMENT REQUIREMENT.

(a) **APPLICABILITY.**—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—

(1) any provision of law cited in subsection (c); or

(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

(b) **REQUIREMENT.**—An amount equal to the amount of each payment described in subsection (a) shall be reimbursed to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, of such fund, or of such account available for the enforcement of any Federal law) available for operating expenses of the Federal agency to which the discriminatory conduct involved is attributable as determined under section 204.

(c) **SCOPE.**—The provisions of law cited in this subsection are the following:

(1) Section 2302(b) of title 5, United States Code, as applied to discriminatory conduct described in paragraphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.

(2) The provisions of law specified in section 2302(d) of title 5, United States Code.

[5 U.S.C. 2301 note]

SEC. 202. NOTIFICATION REQUIREMENT.

(a) **IN GENERAL.**—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—

(1) in accordance with otherwise applicable provisions of law; or

(2) if, or to the extent that, no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

(b) **POSTING ON THE INTERNET.**—Any written notification under this section shall include, but not be limited to, the posting of the information required under paragraph (1) or (2) (as applicable) of subsection (a) on the Internet site of the Federal agency involved.

(c) **EMPLOYEE TRAINING.**—Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

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

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

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

(B) stating that a finding of discrimination (including retaliation) has been made; and

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

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

(A) All appeals of a final action by a Federal agency involving a finding of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) have been exhausted.

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

(C) A court of jurisdiction issues a final judgment involving a finding of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a).

(3) **CONTENTS.**—A notification provided under paragraph (1) with respect to a finding of discrimination (including retaliation) shall—

(A) identify the date on which the finding was made, the date on which each discriminatory act occurred, and the law violated by each such discriminatory act; and

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

[5 U.S.C. 2301 note]

SEC. 203. REPORTING REQUIREMENT.

(a) ANNUAL REPORT.—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit 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 Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report¹ which shall include, with respect to the fiscal year—

(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;

(2) the status or disposition of cases described in paragraph (1);

(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any;

(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);

(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));

(6) a detailed description of—

(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

(i) discriminated against any individual in violation of any of the laws cited under section 201(a) (1) or (2); or

(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a) (1) or (2); and

(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

(A) an examination of trends;

(B) causal analysis;

¹ Section 1134(a)(1)(C) of Public Law 116-283 amends section 203(a) in the matter preceding paragraph (1) by inserting "(in an electronic format prescribed by the Director of the Office of Personnel Management)," after "an annual report". Section 1134(a)(2) of such Public Law states: "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." The amendment takes effect on January 1, 2022.

- (C) practical knowledge gained through experience; and
 - (D) any actions planned or taken to improve complaint or civil rights programs of the agency; and
 - (8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.
- (b) **FIRST REPORT.**—The 1st report submitted under subsection (a) shall include for each item under subsection (a) data for each of the 5 immediately preceding fiscal years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).
- (c) **DISCIPLINARY ACTION REPORT.**—Not later than 120 days after the date on which a Federal agency takes final action, or a Federal agency receives a final decision issued by the Equal Employment Opportunity Commission, involving a finding of discrimination (including retaliation) in violation of a provision of law covered by paragraph (1) or (2) of section 201(a), as applicable, the applicable Federal agency shall submit to the Commission a report stating—
- (1) whether disciplinary action has been proposed against a Federal employee as a result of the violation; and
 - (2) the reasons for any disciplinary action proposed under paragraph (1).

【5 U.S.C. 2301 note】

SEC. 204. RULES AND GUIDELINES.

- (a) **ISSUANCE OF RULES AND GUIDELINES.**—The President (or the designee of the President) shall issue—
- (1) rules to carry out this title;
 - (2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and
 - (3) based on the results of such study, advisory guidelines incorporating best practices that Federal agencies may follow to take such actions against such employees.
- (b) **AGENCY NOTIFICATION REGARDING IMPLEMENTATION OF GUIDELINES.**—Not later than 30 days after the issuance of guidelines under subsection (a), each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a written statement specifying in detail—
- (1) whether such agency has adopted and will fully follow such guidelines;
 - (2) if such agency has not adopted such guidelines; the reasons for the failure to adopt such guidelines; and
 - (3) if such agency will not fully follow such guidelines, the reasons for the decision not to fully follow such guidelines and an explanation of the extent to which such agency will not follow such guidelines.

【5 U.S.C. 2301 note】

SEC. 205. CLARIFICATION OF REMEDIES.

Consistent with Federal law, nothing in this title shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States.

[5 U.S.C. 2301 note]

SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.**(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—****(1) STUDY.—**

(A) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

(B) **CONTENTS.**—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

(ii) affect the workload of the Commission;

(iii) affect established alternative dispute resolution procedures in such agencies; and

(iv) affect any other matters determined by the General Accounting Office to be appropriate for consideration.

(2) **REPORT.**—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

(b) STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.—

(1) **STUDY.**—Not later than 180 days after the date of enactment of this Act, the General Accounting Office shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a) (1) and (2).

(2) **REPORT.**—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office shall submit to the Speaker of the House of Representa-

tives and the President pro tempore of the Senate a report containing the information required to be included in the study.

(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall conduct—

(A) a study on the effects of section 201 on the operations of Federal agencies; and

(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) on the operations of Federal agencies.

(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

(i) the operations of Federal agencies;

(ii) funds appropriated on an annual basis;

(iii) employee relations and other human capital matters;

(iv) settlements; and

(v) any other matter determined by the General Accounting Office to be appropriate for consideration.

(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office shall submit a report on each study, respectively, 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, and the Attorney General.

(d) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

(A) this Act; and

(B) the Contracts Dispute Act of 1978 (41 U.S.C. 601 note; Public Law 95–563).

(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs of the Senate,

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the Committee on Government Reform of the House of Representatives, and the Attorney General.

[5 U.S.C. 2301 note]

SEC. 207. COMPLAINT TRACKING.

Not later than 1 year after the date of enactment of the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, 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 the filing of a complaint with the Federal agency to resolution of the complaint, including whether a decision has been made regarding disciplinary action as the result of a finding of discrimination.

[5 U.S.C. 2301 note]

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 (including 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 that action have been exhausted, include a notation of the adverse action and the reason for the action in the personnel record of the employee.

[5 U.S.C. 2301 note]

TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

(a) **IN GENERAL.**—Each Federal agency shall post on its public Web site, in the time, form, and manner prescribed under section 303 (in conformance with the requirements of this section), summary statistical data relating to equal employment opportunity complaints filed with such agency by employees or former employees of, or applicants for employment with, such agency.

(b) **CONTENT REQUIREMENTS.**—The data posted by a Federal agency under this section shall include, for the then current fiscal year, the following:

(1) The number of complaints filed with such agency in such fiscal year.

(2) The number of individuals filing those complaints (including as the agent of a class).

(3) The number of individuals who filed 2 or more of those complaints.

(4) The number of complaints (described in paragraph (1)) in which each of the various bases of alleged discrimination is alleged.

(5) The number of complaints (described in paragraph (1)) in which each of the various issues of alleged discrimination is alleged.

(6) The average length of time, for each step of the process, it is taking such agency to process complaints (taking into account all complaints pending for any length of time in such fiscal year, whether first filed in such fiscal year or earlier). Average times under this paragraph shall be posted—

(A) for all such complaints,

(B) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested, and

(C) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested.

(7) The total number of final agency actions rendered in such fiscal year involving a finding of discrimination and, of that number—

(A) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(B) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(8) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

(A) the number and percentage involving a finding of discrimination based on each of the respective bases of alleged discrimination, and

(B) of the number specified under subparagraph (A) for each of the respective bases of alleged discrimination—

(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

(9) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

(A) the number and percentage involving a finding of discrimination in connection with each of the respective issues of alleged discrimination,

(B) of the number specified under subparagraph (A) for each of the respective issues of alleged discrimination—

(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

(C) with respect to each finding described in subparagraph (A)—

(i) the date of the finding,

(ii) the affected Federal agency,

(iii) the law violated, and

(iv) whether a decision has been made regarding disciplinary action as a result of the finding.

(10)(A) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the number that were first filed before the start of the then current fiscal year.

(B) With respect to those pending complaints that were first filed before the start of the then current fiscal year—

(i) the number of individuals who filed those complaints, and

(ii) the number of those complaints which are at the various steps of the complaint process.

(C) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the total number of complaints with respect to which the agency violated the requirements of section 1614.106(e)(2) of title 29 of the Code of Federal Regulations (as in effect on July 1, 2000, and amended from time to time) by failing to conduct within 180 days of the filing of such complaints an impartial and appropriate investigation of such complaints.

(11) Data regarding each class action complaint filed against the agency alleging discrimination (including 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 (including retaliation) has been found.

(c) **TIMING AND OTHER REQUIREMENTS.**—

(1) **CURRENT YEAR DATA.**—Data posted under this section for the then current fiscal year shall include both—

(A) interim year-to-date data, updated quarterly, and

(B) final year-end data.

(2) **DATA FOR PRIOR YEARS.**—The data posted by a Federal agency under this section for a fiscal year (both interim and final) shall include, for each item under subsection (b), such agency's corresponding year-end data for each of the 5 immediately preceding fiscal years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

[5 U.S.C. 2301 note]

SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

(a) **IN GENERAL.**—The Equal Employment Opportunity Commission shall post on its public Web site, in the time, form, and manner prescribed under section 303 for purposes of this section, summary statistical data relating to—

(1) hearings requested before an administrative judge of the Commission on complaints described in section 301, and

(2) appeals filed with the Commission from final agency actions on complaints described in section 301.

(b) **SPECIFIC REQUIREMENTS.**—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (11) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

(c) **COORDINATION.**—The data required under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

【5 U.S.C. 2301 note】

SEC. 303. RULES.

The Equal Employment Opportunity Commission shall issue any rules necessary to carry out this title.

【5 U.S.C. 2301 note】

TITLE IV—PROCESSING AND REFERRAL

SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.

Each Federal agency shall—

(1) be responsible for the fair and impartial processing and resolution of complaints of employment discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a); and

(2) establish a model Equal Employment Opportunity Program that—

(A) is not under the control, either structurally or practically, of the agency's Office of Human Capital or Office of the General Counsel (or the equivalent);

(B) is devoid of internal conflicts of interest and ensures fairness and inclusiveness within the agency; and

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

【5 U.S.C. 2301 note】

SEC. 402. NO LIMITATION ON ADVICE OR COUNSEL.

Nothing in this title shall prevent a Federal agency or a subcomponent of a Federal agency, or the Department of Justice, from providing advice or counsel to employees of that agency (or subcomponent, as applicable) in the resolution of a complaint.

【5 U.S.C. 2301 note】

SEC. 403. HEAD OF PROGRAM SUPERVISED BY HEAD OF AGENCY.

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

【5 U.S.C. 2301 note】

SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.

(a) **EEOC FINDINGS OF DISCRIMINATION.**—

(1) **IN GENERAL.**—Not later than 30 days after the date on which the Equal Employment Opportunity Commission (referred to in this section as the "Commission") receives, or

should have received, a Federal agency report required under section 203(c), the Commission may refer the matter to which the report relates to the Office of Special Counsel if the Commission determines that the Federal agency did not take appropriate action with respect to the finding that is the subject of the report.

(2) NOTIFICATIONS.—The Commission shall—

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

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

(i) the number of referrals made under paragraph

(1) during that fiscal year; and

(ii) a brief summary of each referral described in clause (i).

(b) REFERRALS TO SPECIAL COUNSEL.—The Office of Special Counsel shall accept and review a referral from the Commission under subsection (a)(1) for purposes of pursuing disciplinary action under the authority of the Office against a Federal employee who commits an act of discrimination (including retaliation).

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

(1) the Office of Special Counsel pursues disciplinary action under subsection (b); and

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

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

[5 U.S.C. 2301 note]