

Calendar No. 556

114TH CONGRESS
2D SESSION

H. R. 1557

[Report No. 114–300]

IN THE SENATE OF THE UNITED STATES

JULY 22, 2015

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

JULY 12, 2016

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Employee
3 Antidiscrimination Act of 2015”.

4 **SEC. 2. SENSE OF CONGRESS.**

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

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

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

14 (2) in paragraph (5)(A)—

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

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

19 **SEC. 3. NOTIFICATION OF VIOLATION.**

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

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

25 “(1) Not later than 30 days after a Federal
26 agency takes final action or the Equal Employment

1 Opportunity Commission issues an appellate decision
 2 involving a finding of discrimination or retaliation
 3 prohibited by a provision of law covered by para-
 4 graphs (1) or (2) of section 201(a), as applicable;
 5 the head of the agency subject to the finding shall
 6 provide notice for at least 1 year on the agency's
 7 Internet Web site in a clear and prominent location
 8 linked directly from the agency's Internet home page
 9 stating that a finding of discrimination or retaliation
 10 has been made.

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

19 **SEC. 4. REPORTING REQUIREMENTS.**

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

21 (1) **IN GENERAL.**—Section 203(a) of the Notifi-
 22 cation and Federal Employee Antidiscrimination and
 23 Retaliation Act of 2002 (5 U.S.C. 2301 note) is
 24 amended by inserting “(in an electronic format pre-

1 scribed by the Office of Personnel Management)”
 2 after “an annual report”.

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

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

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

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

1 stating whether disciplinary action has been initiated
 2 against a Federal employee as a result of the violation.”.

3 **SEC. 5. DATA TO BE POSTED BY EMPLOYING FEDERAL**
 4 **AGENCIES.**

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

8 (1) in paragraph (9)—

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

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

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

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

17 “(i) the date of the finding;

18 “(ii) the affected agency;

19 “(iii) the law violated; and

20 “(iv) whether a decision has been

21 made regarding necessary disciplinary ac-

22 tion as a result of the finding.”; and

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

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

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

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

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

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

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

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

18 Section 302(b) of the Notification and Federal Em-
 19 ployee Antidiscrimination and Retaliation Act of 2002 (5
 20 U.S.C. 2301 note) is amended by striking “(10)” and in-
 21 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 2015,
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 an agency takes an adverse action covered under
20 section 7512 of title 5, United States Code, against an
21 employee for an act of discrimination or retaliation prohib-
22 ited by a provision of law covered by paragraphs (1) or
23 (2) of section 201(a), the agency shall, after all appeals
24 relating to such action have been exhausted, include a no-
25 tation of the adverse action and the reason for the action
26 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 agency personnel on the processing~~

1 and resolution of a complaint, including providing legal
2 representation to an agency in any proceeding.

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

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

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

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

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) for purposes of seek-
18 ing disciplinary action under its authority against an Fed-
19 eral employee who commits an act of discrimination or re-
20 taliation.

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

24 “(d) **SPECIAL COUNSEL APPROVAL.**—An agency may
25 not take disciplinary action against a Federal employee

1 for an alleged act of discrimination or retaliation referred
 2 by the Commission under this section except in accordance
 3 with the requirements of section 1214(f) of title 5, United
 4 States Code.”.

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

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

“Sec. 207. Complaint tracking.

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

11 and

12 (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.”.

13 **SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.**

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

16 (1) in paragraph (13)—

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

19 (B) by striking “implement” and inserting
 20 “(A) implement”; and

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

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

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

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Federal Employee Anti-*
19 *discrimination Act of 2015”.*

20 **SEC. 2. SENSE OF CONGRESS.**

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

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

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

6 (2) in paragraph (5)(A)—

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

9 (B) by inserting “for what by law the Fed-
 10 eral agency is responsible” after “under this
 11 Act”.

12 **SEC. 3. NOTIFICATION OF VIOLATION.**

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

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

17 “(1) Not later than 30 days after a Federal
 18 agency takes final action or the Equal Employment
 19 Opportunity Commission issues an appellate decision
 20 involving a finding of discrimination or retaliation
 21 prohibited by a provision of law covered by para-
 22 graph (1) or (2) of section 201(a), as applicable, the
 23 head of the Federal agency subject to the finding shall
 24 provide notice for at least 1 year on the Federal agen-
 25 cy’s Internet Web site in a clear and prominent loca-

tion linked directly from the Federal 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”;

(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”.

1 (2) *EFFECTIVE DATE.*—*The amendment made by*
2 *paragraph (1)(C) shall take effect on the date that is*
3 *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 and*
6 *Federal Employee Antidiscrimination and Retalia-*
7 *tion Act of 2002 (5 U.S.C. 2301 note), the report re-*
8 *quired 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 AC-*
14 *TION.*—*Section 203 of such Act is amended by adding at*
15 *the end the following:*

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

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

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

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

15 *“(i) the date of the finding,*

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

17 *“(iii) the law violated, and*

18 *“(iv) whether a decision has been made*
 19 *regarding necessary disciplinary action as*
 20 *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 Federal agency alleging dis-*
 24 *crimination 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, in-
6 cluding whether the class has been certified, and

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

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

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

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

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

23 **“SEC. 207. COMPLAINT TRACKING.**

24 “Not later than 1 year after the date of enactment of
25 the Federal Employee Antidiscrimination Act of 2015, each

1 *Federal agency shall establish a system to track each com-*
 2 *plaint of discrimination arising under section 2302(b)(1)*
 3 *of title 5, United States Code, and adjudicated through the*
 4 *Equal Employment Opportunity process from inception to*
 5 *resolution of the complaint, including whether a decision*
 6 *has been made regarding necessary disciplinary action as*
 7 *the result of a finding of discrimination.*

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

9 *“If a Federal agency takes an adverse action covered*
 10 *under section 7512 of title 5, United States Code, against*
 11 *an employee for an act of discrimination or retaliation pro-*
 12 *hibited by a provision of law covered by paragraph (1) or*
 13 *(2) of section 201(a), the Federal agency shall, after all ap-*
 14 *peals relating to such action have been exhausted, include*
 15 *a notation of the adverse action and the reason for the ac-*
 16 *tion in the employee’s personnel record.”.*

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

21 **“TITLE IV—PROCESSING AND**
 22 **REFERRAL**

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

24 *“Each Federal agency is responsible for the fair, im-*
 25 *partial processing and resolution of complaints of employ-*

1 *ment discrimination and retaliation arising in the Federal*
 2 *administrative process and shall establish a model Equal*
 3 *Employment Opportunity Program that—*

4 “(1) *is not under the control, either structurally*
 5 *or practically, of a Human Capital or General Coun-*
 6 *sel office;*

7 “(2) *is devoid of internal conflicts of interest and*
 8 *ensures fairness and inclusiveness within the organi-*
 9 *zation; and*

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

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

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

19 **“SEC. 403. REFERRALS OF FINDINGS OF DISCRIMINATION.**

20 “(a) *EEOC FINDINGS OF DISCRIMINATION.—Not later*
 21 *than 30 days after the Equal Employment Opportunity*
 22 *Commission issues an appellate decision involving a find-*
 23 *ing of discrimination or retaliation within a Federal agen-*
 24 *cy, the Commission may refer the matter to the Office of*
 25 *Special Counsel, if the Commission determines that the Fed-*

1 eral agency did not take appropriate action. The Commis-
 2 sion shall include the number and a brief summary of such
 3 referrals in the Annual Report on the Federal Work Force
 4 of the Commission.

5 “(b) *REFERRALS TO SPECIAL COUNSEL.*—The Office
 6 of Special Counsel shall accept and review a referral from
 7 the Commission under subsection (a) for purposes of seeking
 8 disciplinary action under its authority against a Federal
 9 employee who commits an act of discrimination or retalia-
 10 tion.

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

14 “(d) *SPECIAL COUNSEL APPROVAL.*—A Federal agen-
 15 cy may not take disciplinary action against a Federal em-
 16 ployee for an alleged act of discrimination or retaliation
 17 referred by the Commission under this section except in ac-
 18 cordance with the requirements of section 1214(f) of title
 19 5, United States Code.”.

20 (c) *CONFORMING AMENDMENTS.*—The table of contents
 21 in section 1(b) of the Notification and Federal Employee
 22 Antidiscrimination and Retaliation Act of 2002 (5 U.S.C.
 23 2301 note) is amended—

24 (1) by inserting after the item relating to section
 25 206 the following:

“Sec. 207. Complaint tracking.

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

1 *and*

2 *(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. Referrals of findings of discrimination.”.

3 ***SEC. 8. NONDISCLOSURE AGREEMENT LIMITATION.***

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

6 *(1) in paragraph (13)—*

7 *(A) by inserting “or the Office of Special*
8 *Counsel” after “Inspector General”;*

9 *(B) by striking “implement” and inserting*
10 *“(A) implement”; and*

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

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

16 *“(B) implement or enforce any nondisclosure*
17 *policy, form, or agreement, if such policy, form, or*
18 *agreement prohibits or restricts an employee from dis-*
19 *closing to Congress, the Office of Special Counsel, or*
20 *an Office of the Inspector General any information*
21 *that relates to any violation of any law, rule, or regu-*
22 *lation, or mismanagement, a gross waste of funds, an*

1 *abuse of authority, or a substantial, and specific dan-*
 2 *ger to public health or safety, or any other whistle-*
 3 *blower protection.”.*

4 **SEC. 9. DISCIPLINE OF SUPERVISORS BASED ON RETALIA-**
 5 **TION AGAINST WHISTLEBLOWERS OR DIS-**
 6 **CRIMINATION.**

7 *(a) IN GENERAL.—Subchapter II of chapter 75 of title*
 8 *5, United States Code, is amended by adding at the end*
 9 *the following:*

10 **“§ 7515. Discipline of supervisors based on retaliation**
 11 **against whistleblowers or discrimination**

12 *“(a) DEFINITIONS.—In this section—*

13 *“(1) the term ‘agency’ has the meaning given*
 14 *that term under section 2302;*

15 *“(2) the term ‘prohibited personnel action’*
 16 *means—*

17 *“(A) taking or failing to take an action in*
 18 *violation of paragraph (1), (8), or (9) of section*
 19 *2302(b) against an employee of an agency; or*

20 *“(B) accessing the medical record of another*
 21 *employee for the purpose of retaliation for a dis-*
 22 *closure or activity protected under paragraph (8)*
 23 *or (9) of section 2302(b); and*

24 *“(3) the term ‘supervisor’ means a supervisor, as*
 25 *defined under section 7103(a), who is employed by an*

1 agency, as defined under paragraph (1) of this sub-
2 section.

3 “(b) *PROPOSED ADVERSE ACTIONS.*—

4 “(1) *IN GENERAL.*—In accordance with para-
5 graph (2), the head of an agency shall propose
6 against a supervisor whom the head of that agency,
7 an administrative law judge, the Merit Systems Pro-
8 tection Board, the Office of Special Counsel, the
9 Equal Employment Opportunity Commission, an ad-
10 judicating body provided under a union contract, a
11 Federal judge, or the Inspector General of the agency
12 determines committed a prohibited personnel action
13 the following adverse actions:

14 “(A) With respect to the first prohibited
15 personnel action, an adverse action that is not
16 less than a 12-day suspension.

17 “(B) With respect to the second prohibited
18 personnel action, removal.

19 “(2) *PROCEDURES.*—

20 “(A) *NOTICE.*—A supervisor against whom
21 an adverse action under paragraph (1) is pro-
22 posed is entitled to written notice.

23 “(B) *ANSWER AND EVIDENCE.*—

24 “(i) *IN GENERAL.*—A supervisor who
25 is notified under subparagraph (A) that the

1 supervisor is the subject of a proposed ad-
2 verse action under paragraph (1) is entitled
3 to 14 days following such notification to an-
4 swer and furnish evidence in support of the
5 answer.

6 “(ii) *NO EVIDENCE.*—After the end of
7 the 14-day period described in clause (i), if
8 a supervisor does not furnish evidence as
9 described in clause (i) or if the head of the
10 agency determines that such evidence is not
11 sufficient to reverse the proposed adverse ac-
12 tion, the head of the agency shall carry out
13 the adverse action.

14 “(C) *SCOPE OF PROCEDURES.*—Paragraphs
15 (1) and (2) of subsection (b) of section 7513, sub-
16 section (c) of such section, paragraphs (1) and
17 (2) of subsection (b) of section 7543, and sub-
18 section (c) of such section shall not apply with
19 respect to an adverse action carried out under
20 this subsection.

21 “(c) *LIMITATION ON OTHER ADVERSE ACTIONS.*—
22 With respect to a prohibited personnel action, if the head
23 of the agency carries out an adverse action against a super-
24 visor under another provision of law, the head of the agency

1 *may carry out an additional adverse action under this sec-*
2 *tion based on the same prohibited personnel action.”.*

3 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
4 *table of sections for subchapter II of chapter 75 of title 5,*
5 *United States Code, is amended by adding at the end the*
6 *following:*

“7515. Discipline of supervisors based on retaliation against whistleblowers or dis-
crimination.”.

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114TH CONGRESS
2^D Session

H. R. 1557

[Report No. 114-300]

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.

JULY 12, 2016

Reported with an amendment