

107TH CONGRESS
1ST SESSION

H. R. 169

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2001

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

AN ACT

To require that Federal agencies be accountable for violations of antidiscrimination 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.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Notification and Federal Employee Antidiscrimination
 6 and Retaliation Act of 2001”.

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

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.

Sec. 102. Definitions.

Sec. 103. 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.

Sec. 205. Clarification of remedies.

Sec. 206. Study by General Accounting Office regarding exhaustion of adminis-
 trative remedies.

**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 Commis-
 sion.

Sec. 303. Rules.

9 **TITLE I—GENERAL PROVISIONS**

10 **SEC. 101. FINDINGS.**

11 The Congress finds that—

12 (1) Federal agencies cannot be run effectively if
 13 they practice or tolerate discrimination,

1 (2) the Committee on the Judiciary of the
2 House of Representatives has heard testimony from
3 individuals, including representatives of the National
4 Association for the Advancement of Colored People
5 and the American Federation of Government Em-
6 ployees that point to chronic problems of discrimina-
7 tion and retaliation against Federal employees,

8 (3) in August 2000, a jury found that the Envi-
9 ronmental Protection Agency had discriminated
10 against a senior social scientist, and awarded that
11 scientist \$600,000,

12 (4) in October 2000, an Occupational Safety
13 and Health Administration investigation found that
14 the Environmental Protection Agency had retaliated
15 against a senior scientist for disagreeing with that
16 agency on a matter of science and for helping Con-
17 gress to carry out its oversight responsibilities,

18 (5) there have been several recent class action
19 suits based on discrimination brought against Fed-
20 eral agencies, including the Federal Bureau of Inves-
21 tigation, the Bureau of Alcohol, Tobacco, and Fire-
22 arms, the Drug Enforcement Administration, the
23 Immigration and Naturalization Service, and the
24 United States Marshals Service,

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

4 (7) requiring annual reports to Congress on the
5 number and severity of discrimination and whistle-
6 blower cases brought against each Federal agency
7 should enable Congress to improve its oversight over
8 agencies' compliance with the law, and

9 (8) penalizing Federal agencies by requiring
10 them to pay for any discrimination or whistleblower
11 judgments, awards, and settlements should improve
12 agency accountability with respect to discrimination
13 and whistleblower laws.

14 **SEC. 102. DEFINITIONS.**

15 For purposes of this Act—

16 (1) the term “applicant for Federal employ-
17 ment” means an individual applying for employment
18 in or under a Federal agency,

19 (2) the term “basis of alleged discrimination”
20 shall have the meaning given such term under sec-
21 tion 303,

22 (3) the term “Federal agency” means an Exec-
23 utive agency (as defined in section 105 of title 5,
24 United States Code), the United States Postal Serv-
25 ice, or the Postal Rate Commission,

1 (4) the term “Federal employee” means an in-
2 dividual employed in or under a Federal agency,

3 (5) the term “former Federal employee” means
4 an individual formerly employed in or under a Fed-
5 eral agency, and

6 (6) the term “issue of alleged discrimination”
7 shall have the meaning given such term under sec-
8 tion 303.

9 **SEC. 103. EFFECTIVE DATE.**

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

14 **TITLE II—FEDERAL EMPLOYEE**
15 **DISCRIMINATION AND RETAL-**
16 **IATION**

17 **SEC. 201. REIMBURSEMENT REQUIREMENT.**

18 (a) **APPLICABILITY.**—This section applies with re-
19 spect to any payment made in accordance with section
20 2414, 2517, 2672, or 2677 of title 28, United States
21 Code, and under section 1304 of title 31, United States
22 Code (relating to judgments, awards, and compromise set-
23 tlements) to any Federal employee, former Federal em-
24 ployee, or applicant for Federal employment, in connection

1 with any proceeding brought by or on behalf of such em-
2 ployee, former employee, or applicant under—

3 (1) any provision of law cited in subsection (c),

4 or

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

8 (b) REQUIREMENT.—An amount equal to the amount
9 of each payment described in subsection (a) shall be reim-
10 bursed to the fund described in section 1304 of title 31,
11 United States Code, out of any appropriation, fund, or
12 other account (excluding any part of such appropriation,
13 of such fund, or of such account available for the enforce-
14 ment of any Federal law) available for operating expenses
15 of the Federal agency to which the discriminatory conduct
16 involved is attributable as determined under section 204.

17 (c) SCOPE.—The provisions of law cited in this sub-
18 section are the following:

19 (1) Section 2302(b) of title 5 of the United
20 States Code, as applied to discriminatory conduct
21 described in paragraphs (1) and (8), or described in
22 paragraph (9) of such section as applied to discrimi-
23 natory conduct described in paragraphs (1) and (8),
24 of such section.

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

3 (3) The Whistleblower Protection Act of 1986
4 and the amendments made by such Act.

5 **SEC. 202. NOTIFICATION REQUIREMENT.**

6 (a) **IN GENERAL.**—Written notification of the rights
7 and protections available to Federal employees, former
8 Federal employees, and applicants for Federal employ-
9 ment (as the case may be) in connection with the respec-
10 tive provisions of law covered by paragraphs (1) and (2)
11 of section 201(a) shall be provided to such employees,
12 former employees, and applicants—

13 (1) in accordance with otherwise applicable pro-
14 visions of law, or

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

19 (b) **POSTING ON THE INTERNET.**—Any written noti-
20 fication under this section shall include, but not be limited
21 to, the posting of the information required under para-
22 graph (1) or (2) (as applicable) of subsection (a) on the
23 Internet site of the Federal agency involved.

24 (c) **EMPLOYEE TRAINING.**—Each Federal agency
25 shall provide to the employees of such agency training re-

1 guarding the rights and remedies applicable to such employ-
2 ees under the laws cited in section 201(c).

3 **SEC. 203. REPORTING REQUIREMENT.**

4 (a) ANNUAL REPORT.—Subject to subsection (b), not
5 later than 180 days after the end of each fiscal year, each
6 Federal agency shall submit to the Speaker of the House
7 of Representatives, the President pro tempore of the Sen-
8 ate, the Equal Employment Opportunity Commission, and
9 the Attorney General an annual report which shall include,
10 with respect to the fiscal year—

11 (1) the number of cases arising under each of
12 the respective provisions of law covered by para-
13 graphs (1) and (2) of section 201(a) in which dis-
14 crimination on the part of such agency was alleged,

15 (2) the status or disposition of cases described
16 in paragraph (1),

17 (3) the amount of money required to be reim-
18 bursed by such agency under section 201 in connec-
19 tion with each of such cases, separately identifying
20 the aggregate amount of such reimbursements at-
21 tributable to the payment of attorneys' fees, if any,

22 (4) the number of employees disciplined for dis-
23 crimination, retaliation, harassment, or any other in-
24 fraction of any provision of law referred to in para-
25 graph (1),

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

4 (6) a detailed description of—

5 (A) the policy implemented by such agency
6 to discipline employees who are determined in
7 any judicial or administrative proceeding to
8 have discriminated against any individual in
9 violation of any of the laws cited in section
10 201(c), and

11 (B) with respect to each of such laws, the
12 number of employees who are disciplined in ac-
13 cordance with such policy and the specific na-
14 ture of the disciplinary action taken.

15 (b) FIRST REPORT.—The 1st report submitted under
16 subsection (a) shall include for each item under subsection
17 (a) data for each of the 5 immediately preceding fiscal
18 years (or, if not available for all 5 fiscal years, for however
19 many of those 5 fiscal years for which data are available).

20 **SEC. 204. RULES AND GUIDELINES.**

21 (a) ISSUANCE OF RULES AND GUIDELINES.—The
22 President (or the designee of the President) shall issue—

23 (1) rules to carry out this title,

24 (2) rules to require that a comprehensive study
25 be conducted in the Executive Branch to determine

1 the best practices for Federal agencies to take ap-
2 propriate disciplinary actions against Federal em-
3 ployees who are determined in any judicial or admin-
4 istrative proceeding to have discriminated against
5 any individual in violation of any of the laws cited
6 in section 201(c), and

7 (3) based on the results of such study, advisory
8 guidelines incorporating best practices that Federal
9 agencies may follow to take such actions against
10 such employees.

11 (b) AGENCY NOTIFICATION REGARDING IMPLEMEN-
12 TATION OF GUIDELINES.—Not later than 30 days after
13 the issuance of guidelines under subsection (a), each Fed-
14 eral agency shall submit to the Speaker of the House of
15 Representatives, the President pro tempore of the Senate,
16 the Equal Employment Opportunity Commission, and the
17 Attorney General a written statement specifying in
18 detail—

19 (1) whether such agency has adopted and will
20 fully follow such guidelines,

21 (2) if such agency has not adopted such guide-
22 lines, the reasons for the failure to adopt such guide-
23 lines, and

24 (3) if such agency will not fully follow such
25 guidelines, the reasons for the decision not to fully

1 follow such guidelines and an explanation of the ex-
2 tent to which such agency will not follow such guide-
3 lines.

4 **SEC. 205. CLARIFICATION OF REMEDIES.**

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

10 **SEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE RE-**
11 **GARDING EXHAUSTION OF ADMINISTRATIVE**
12 **REMEDIES.**

13 (a) STUDY.—Not later than 180 days after the date
14 of the enactment of this Act, the General Accounting Of-
15 fice shall conduct a study relating to the effects of elimi-
16 nating the requirement that Federal employees aggrieved
17 by violations of any of the laws specified in paragraphs
18 (7) and (8) of section 201(c) exhaust administrative rem-
19 edies before filing complaints with the Equal Employment
20 Opportunity Commission. Such study shall include a de-
21 tailed summary of matters investigated, of information
22 collected, and of conclusions formulated that lead to deter-
23 minations of how the elimination of such requirement
24 will—

1 (1) expedite handling of allegations of such vio-
2 lations within Federal agencies and will streamline
3 the complaint-filing process,

4 (2) affect the workload of the Commission,

5 (3) affect established alternative dispute resolu-
6 tion procedures in such agencies, and

7 (4) affect any other matters determined by the
8 General Accounting Office to be appropriate for con-
9 sideration.

10 (b) REPORT.—Not later than 90 days after comple-
11 tion of the study required by subsection (a), the General
12 Accounting Office shall submit to the Speaker of the
13 House of Representatives, the President pro tempore of
14 the Senate, the Equal Employment Opportunity Commis-
15 sion, and the Attorney General a report containing the in-
16 formation required to be included in such study.

17 **TITLE III—EQUAL EMPLOYMENT**
18 **OPPORTUNITY COMPLAINT**
19 **DATA DISCLOSURE**

20 **SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL**
21 **AGENCIES.**

22 (a) IN GENERAL.—Each Federal agency shall post
23 on its public Web site, in the time, form, and manner pre-
24 scribed under section 303 (in conformance with the re-
25 quirements of this section), summary statistical data relat-

1 ing to equal employment opportunity complaints filed with
2 such agency by employees or former employees of, or ap-
3 plicants for employment with, such agency.

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

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

9 (2) The number of individuals filing those com-
10 plaints (including as the agent of a class).

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

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

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

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

25 (A) for all such complaints,

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

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

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

12 (A) the number and percentage that were
13 rendered without a hearing before an adminis-
14 trative judge of the Equal Employment Oppor-
15 tunity Commission, and

16 (B) the number and percentage that were
17 rendered after a hearing before an administra-
18 tive judge of the Equal Employment Oppor-
19 tunity Commission.

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

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

1 (B) of the number specified under sub-
2 paragraph (A) for each of the respective bases
3 of alleged discrimination—

4 (i) the number and percentage that
5 were rendered without a hearing before an
6 administrative judge of the Equal Employ-
7 ment Opportunity Commission, and

8 (ii) the number and percentage that
9 were rendered after a hearing before an
10 administrative judge of the Equal Employ-
11 ment Opportunity Commission.

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

15 (A) the number and percentage involving a
16 finding of discrimination in connection with
17 each of the respective issues of alleged discrimi-
18 nation, and

19 (B) of the number specified under sub-
20 paragraph (A) for each of the respective issues
21 of alleged discrimination—

22 (i) the number and percentage that
23 were rendered without a hearing before an
24 administrative judge of the Equal Employ-
25 ment Opportunity Commission, and

1 (ii) the number and percentage that
2 were rendered after a hearing before an
3 administrative judge of the Equal Employ-
4 ment Opportunity Commission.

5 (10)(A) Of the total number of complaints
6 pending in such fiscal year (as described in the par-
7 enthetical matter in paragraph (6)), the number that
8 were first filed before the start of the then current
9 fiscal year.

10 (B) With respect to those pending complaints
11 that were first filed before the start of the then cur-
12 rent fiscal year—

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

15 (ii) the number of those complaints which
16 are at the various steps of the complaint proc-
17 ess.

18 (C) Of the total number of complaints pending
19 in such fiscal year (as described in the parenthetical
20 matter in paragraph (6)), the total number of com-
21 plaints with respect to which the agency violated the
22 requirements of section 1614.106(e)(2) of title 29 of
23 the Code of Federal Regulations (as in effect on
24 July 1, 2000, and amended from time to time) by
25 failing to conduct within 180 days of the filing of

1 such complaints an impartial and appropriate inves-
2 tigation of such complaints.

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

4 (1) **CURRENT YEAR DATA.**—Data posted under
5 this section for the then current fiscal year shall in-
6 clude both—

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

9 (B) final year-end data.

10 (2) **DATA FOR PRIOR YEARS.**—The data posted
11 by a Federal agency under this section for a fiscal
12 year (both interim and final) shall include, for each
13 item under subsection (b), such agency’s cor-
14 responding year-end data for each of the 5 imme-
15 diately preceding fiscal years (or, if not available for
16 all 5 fiscal years, for however many of those 5 fiscal
17 years for which data are available).

18 **SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOY-**
19 **MENT OPPORTUNITY COMMISSION.**

20 (a) **IN GENERAL.**—The Equal Employment Oppor-
21 tunity Commission shall post on its public Web site, in
22 the time, form, and manner prescribed under section 303
23 for purposes of this section, summary statistical data re-
24 lating to—

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

4 (2) appeals filed with the Commission from
5 final agency actions on complaints described in sec-
6 tion 301.

7 (b) SPECIFIC REQUIREMENTS.—The data posted
8 under this section shall, with respect to the hearings and
9 appeals described in subsection (a), include summary sta-
10 tistical data corresponding to that described in paragraphs
11 (1) through (10) of section 301(b), and shall be subject
12 to the same timing and other requirements as set forth
13 in section 301(c).

14 (c) COORDINATION.—The data required under this
15 section shall be in addition to the data the Commission
16 is required to post under section 301 as an employing Fed-
17 eral agency.

18 **SEC. 303. RULES.**

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

 Passed the House of Representatives October 2,
2001.

Attest:

JEFF TRANDAHL,

Clerk.