107TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 107–101 Part 1

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2001

JUNE 14, 2001.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 169]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 169) to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

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 2001".

(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. 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 administrative 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 Commission.
Sec. 303. Rules.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

The Congress finds that—

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

(2) the Committee on the Judiciary of the House of Representatives 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, and the United States Marshals Service,

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

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

SEC. 102. 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 or a military department (both as defined by 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

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

SEC. 103. 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.

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 the laws cited in subsection (c) or laws relating to the environment, to civil rights, to employment rights, to labor relations, or to consumer protection) 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 322(a) of the Clean Air Act (42 U.S.C. 7622(a)).

(2) Section 110(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9610(a)).

(3) Section 507(a) of the Federal Water Pollution Control Act (33 U.S.C. 1367(a)).

(4) Section 1450(i)(1) of the Safe Drinking Water Act (42 U.S.C. 300j–9(i)(1)).

(5) Section 7001(a) of the Solid Waste Disposal Act (42 U.S.C. 6971(a)).

(6) Section 23(a) of the Toxic Substances Control Act (15 U.S.C. 2622(a)).

(7) Section 2302(b) of title 5 of the 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.

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

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 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).

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 Equal Employment Opportunity Commission, and the Attorney General an annual report 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)), and

(6) a detailed description of—

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

(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 not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

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 for Federal agencies to take appropriate disciplinary actions against Federal employees who are determined in any judicial or administrative proceeding to have discriminated against any individual in violation of any of the laws cited in section 201(c), 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.

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.

SEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES.

(a) STUDY.—Not later than 180 days after the date of the 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 in paragraphs (7) and (8) of section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission. Such study shall include a detailed summary of matters investigated, of information collected, and of conclusions formulated that lead to determinations of how the elimination of such requirement will—

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

(2) affect the workload of the Commission,

(3) affect established alternative dispute resolution procedures in such agencies, and

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

(b) REPORT.—Not later than 90 days after completion of the study required by subsection (a), 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.

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, and

(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.

(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.

(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).

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 (10) 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.

SEC. 303. RULES.

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

Amend the title so as to read:

A bill 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.

PURPOSE AND SUMMARY

H.R. 169, the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001," (No FEAR Act) requires that Federal agencies be accountable for violations of discrimination and whistleblower protection laws. H.R. 169 provides Federal employees throughout the Federal Government with additional on-the-job protection from illegal discrimination, retaliation, and other mistreatment by deterring and punishing government misconduct toward them.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 169, the No FEAR Act, is in response to a year-long congressional investigation under the direction of Chairman Sensenbrenner as the Chairman of the Committee on Science. In 1999, the Science Committee began to receive complaints that a particular Federal agency illegally discriminated and/or retaliated against a number of its employees. The Committee on Science held a hearing in March 2000, and a hearing in October 2000, on the issue of discrimination at the agency. The evidence developed during the course of the investigation and hearings substantiated some of the allegations and suggested that the agency's apparent culture of intolerance stemmed from a lack of accountability, an absence of awareness of the depth of the problem, and a lack of knowledge of the whistleblower and discrimination laws protecting employees. In fact, the Department of Labor found the agency had retaliated against one employee for helping the Science Committee with an oversight hearing on the issue.

When the agency was questioned on its behavior, the agency responded that it had a great diversity record. When questioned about notifying employees of their rights under the various whistleblower provisions, the agency responded that it was only required to notify the employees under one of the laws, not the others. When asked how the agency pays for judgments and settlements for discriminating or retaliating, the agency responded such payments were made out of the general treasury—not by the Federal agencies. Following the hearings and the investigation, Federal employees in other agencies began contacting the Committee on Science with allegations of similar problems.

Immediately after the October 2000 hearing, Chairman Sensenbrenner and Representatives Sheila Jackson Lee and Connie Morella introduced the No FEAR Act to rectify the three problems highlighted in the investigation. The bill was reintroduced on the first day of the 107th Congress.

On May 9, 2001, the Committee on the Judiciary held a legislative hearing on H.R. 169, the NO FEAR Act. At the hearing, Dr. Marsha Coleman-Adebayo, a social scientist, who won a jury decision in August 2000 against the Environmental Protection Agency for discrimination, testified that "retaliation is an ever-present aspect of one's life once you file a complaint of discrimination or when you win a jury verdict." Dr. Coleman-Adebayo concluded that "with the passage of the N[o] FEAR bill the government will no longer be able to abdicate its responsibility to seriously deal with the problems of discrimination in the [F]ederal sector."

Kweisi Mfume, President and Chief Executive Officer of the National Advancement of Colored People, testified that "[F]ederal employees today are often subjected to racial and gender discrimination with little or no recourse. . . . Discrimination, and retaliation against people who complain about it and their supporters, is rampant in [F]ederal departments and agencies across the nation." Mr. Mfume concluded that:

> [b]y requiring that [F]ederal agencies be held accountable for violations of anti-discrimination and whistleblower protection laws, H.R. 169 renews efforts to address a problem that has been allowed to fester far too long. Furthermore,

> by requiring that [F]ederal agencies notify their employees of their rights under discrimination and whistleblower statutes, H.R. 169 would require the [F]ederal government to send an important message to all its employees that we are serious about ensuring that peoples' rights are protected. The portion of H.R. 169 that requires that [F]ederal agencies report to Congress each year on the number of discrimination complaints lodged against it, as well as the disposition of such cases would also let employees know that their rights are being monitored, and that Congress is watching out for them. Finally, the language in H.R. 169 requiring that [F]ederal agencies pay out of their own budgets any discrimination or whistleblower judgments, awards or settlements against the agency, would clearly help make agency administrators as well as Department Secretaries more aware of what is happening and more interested in taking steps to prevent these discriminatory practices.

The President of the American Federation of Government Employees, Bobby L. Harnage, Sr., testified that "the practice of discrimination is invidious and pernicious. The toleration of discrimination in the [F]ederal workplace is equally invidious and pernicious and yet more harmful. Continued complacency paves the way for continued evil and has a great cost to our citizens, to our government and to the fabric of our country." Mr. Harnage concluded that "[t]his bill would require that [F]ederal agencies be held accountable for violations of employment discrimination and whistleblower protection laws."

All the witnesses testified that this bill would make Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. The need for this bill has garnered wide and diverse support. The National Taxpayers Union (NTU) sent testimony to the May 9, 2001 hearing which provided that NTU and "its 300,000 members strongly support the passage of H.R. 169. . . ." The President, Dr. John E. Berthoud, stated that:

> [t]he No FEAR Act will hold individual government agencies financially responsible for judgments they lose by requiring financial settlements be taken from a particular agency's budget, rather than using a slush fund of taxpayer's money. By attacking the purse strings of these offending government agencies, the No FEAR Act can create a more fiscally responsible [F]ederal government. Agencies will now have to act more responsibly or else risk serious financial consequences. The No FEAR Act will not only make agencies more financially accountable, but it will create incentives to improve relations with workers. This is good news for the workers as they shouldn't have to tolerate discrimination or face retribution for whistle-blowing. This is also good news for taxpayers. An unhappy [F]ederal workforce makes for less efficient and more expensive government. And [F]ederal employees should never feel intimidated to step forward and expose waste, fraud or abuse where they see it occurring.

The National Whistleblower Center also provided written testimony to the Committee regarding the need for the bill to protect whistleblowers. The Executive Director, Kris Kolesnik, testified that "[d]espite the major contributions whistleblowers make on behalf of the public, management invariably retaliates." He went on to state that the National Whistleblower Center supports the legislation because it would require employees to be fully informed of their rights and require reporting that is needed because there "are very few statistics on discrimination and whistleblower cases [and] [t]his data is important because, for Congress, it can be a warning system as to whether protections are working properly." He also identified accountability as "the one true deterrent against discrimination and retaliation. Without it, managers feel it is open season on employees. Whistleblowers often need to bring not just one case, but two or three."

In a series of GAO reports prior to the hearing, GAO found that the number of Federal employee discrimination complaints grew during the 1990's, overwhelming both the Equal Employment Opportunity Commission (EEOC) and the Federal agencies.[1] In 1999, EEOC hearing requests increased by about 120 percent over the number of requests in 1991.[2] GAO also reported that there "has been an increase in the number of complaints alleging reprisal, which, for the most part, involve claims of retaliation by employees who have previously participated in the complaint process."[3] At the May 9, 2001 hearing, GAO testified that there is a need for accountability, reporting, and notification in regard to discrimination and retaliation against Federal employees. H.R. 169 addresses these needs.

HEARINGS

The Committee on the Judiciary held one hearing on H.R. 169, the "Notification and Federal Employee Antidiscriminaiton and Retaliation Act of 2001," on May 9, 2001. Testimony was received from four witnesses, representing three organizations and one private citizen. The witnesses were: Kweisi Mfume, President & CEO of the National Association for the Advancement of Colored People; J. Christopher Mihm, Director of Strategic Issues for the General Accounting Office; Bobby L. Harnage, Sr., National President of the American Federation of Government Employees, AFL-CIO; and Marsha Coleman-Adebayo, Ph.D, private citizen.

COMMITTEE CONSIDERATION

On May 23, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 169, as amended, by a voice vote, a quorum being present.

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[1] The United States General Accounting Office, Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC's Sustained Attention, GGD-00–104 p. 1.

[2] The United States General Accounting Office, Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC's Sustained Attention, GGD-00–104 p. 3.

[3] The United States General Accounting Office, Equal Employment Opportunity: Data Shortcomings Hinder Assessment of Conflicts in the Federal Workplace, GGD-99–75 p. 6.

VOTE OF THE COMMITTEE

No recorded votes were taken on the bill H.R. 169 during Committee consideration. However, an amendment in the nature of a substitute offered by Chairman Sensenbrenner, on behalf of himself, and Ranking Member John Conyers and Representative Sheila Jackson Lee passed by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

The bill is intended to require Federal agencies to prevent and reduce discrimination and retaliation by notifying its employees of their rights and responsibilities with regard to antidiscrimination and whistleblower laws; by providing a better assessment of the problem through the reporting of adequate, consistent and reliable data; by making Federal agencies and Federal employees accountable for their actions.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 169, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 8, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 169, the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 169—Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001.

H.R. 169 would require Federal agencies to train employees and notify them of their rights and responsibilities in an attempt to reduce incidents of discrimination and retaliation in the Federal Government. Subject to the availability of appropriated funds, CBO estimates that implementing H.R. 169 would cost up to $5 million each year. Enacting the bill could slightly increase offsetting receipts (a form of direct spending), so pay-as-you-go procedures would apply. This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Under current law, court-ordered monetary settlements in favor of employees who sue Federal agencies in discrimination or reprisal complaints are paid out of the judgment fund of the Treasury. H.R. 169 would require agencies to reimburse the Treasury for any such payments. Payments by most agencies to the Treasury would be intragovernmental transfers and would have no net effect on the Federal budget. However, agencies that are not funded through annual appropriations, such as the Bonneville Power Administration and the Tennessee Valley Authority, would reimburse the Treasury by increasing collections from the private sector. This could result in a small net decrease in direct spending, so pay-as-you-go procedures would apply; but CBO estimates that any such decreases in direct spending would be less than $500,000 a year.

The bill also would require agencies to notify and train employees about their rights and protections under discrimination law and to prepare annual statistical summaries of the discrimination actions and equal employment opportunity (EEO) complaints they face. H.R. 169 would direct the Administration to conduct a study to determine the best ways to discipline employees who engage in discriminatory actions. The bill also would require the Equal Employment Opportunity Commission (EEOC) to post on its Internet web site certain statistics regarding EEO complaints. Finally, the legislation would direct the General Accounting Office (GAO) to prepare a report on the effects of eliminating the current requirement that Federal employees exhaust administrative remedies before filing complaints with the EEOC.

CBO estimates that it would cost the EEOC up to $500,000 in each fiscal year to collect and post on its Internet web site the statistics relating to EEO complaints. Based on information from GAO, CBO estimates that it would cost that agency about $300,000 over the 2002–2003 period to prepare the report required by the bill. We estimate that it would cost about $150,000 in fiscal year 2003 for the Administration, probably led by the Office of Personnel Management (OPM), to complete the study mandated by H.R. 169.

CBO expects that most agencies would meet the bill's requirements to provide notification and training to employees through their Internet web sites and would not incur significant costs to do so. We expect that the cost to prepare annual reports and statistical summaries for discrimination and EEO cases would be minimal because much of this information is already maintained, according to OPM and GAO. CBO estimates that the total costs for

the 100 or so Federal agencies to comply with the bill's requirements would be no more than about $5 million annually.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title; Table of Contents

Section 1 of the bill states the short title of the bill as the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001." This section also includes a table of contents.

TITLE I. GENERAL PROVISIONS

Section 101. Findings

Section 101 provides the following congressional findings:

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

(2) the Committee on the Judiciary of the House of Representatives 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; Alcohol, Tobacco, and Firearms; the Drug Enforcement Administration; the Immigration and Naturalization Service; and the U.S. Marshals Service;

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

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

Section 102. Definitions.

Section 102 defines "Federal agency," "Federal employee," "former Federal employee," and "applicant for Federal employment." The section also directs the Equal Employment Opportunity Commission to define the terms "basis of alleged discrimination" and "issue of alleged discrimination."

Section 103. Effective date.

Section 103 provides that this act and the amendments made by this act shall go into effect on the 1st day of the 1st fiscal year beginning 180 days after the date of enactment of the act.

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

Section 201. Reimbursement Requirement

Section 201 would change current law that allows a Federal agency to be held financially harmless when it loses court judgments, awards or compromise settlements for retaliating or discriminating. Under current law, Federal employment discrimination complaints are handled at two levels: the administrative process and the courts.[4] If the complaint is resolved in the administrative process and the corrective action includes monetary relief, the money is paid from the offending agency's funds.[5] When a complaint is resolved in the courts, that same agency does not have to pay for the monetary relief to the complainant.[6] The money is paid from the Judgment Fund,[7] which is a general treasury account that provides a permanent indefinite appropriation to pay certain settlements and judgments.[8]

The Committee finds that allowing Federal agencies to use the general treasury as a slush fund to pay court judgments and settlements for discriminating and retaliating, has created: (1) a lack of accountability among some of the Federal agencies; and (2) a perverse incentive for agencies to prolong the cases until they reach court. The Committee believes the solution, in part, is to hold the agencies fiscally responsible in both the administrative and court processes. This will help promote agency accountability and remove the incentive to prolong the cases. The Committee understands that there are two ways to remove the incentive to prolong and delay these cases. Congress could change the current system, which requires agencies to pay for settlements in the administrative process, to allow agencies to go to the general treasury for administrative decisions as well as court decisions. However, this alternative fails to promote accountability by the offending agencies to prevent discrimination or retaliation in the first place. The Committee's view is that requiring the agencies themselves to pay for discrimination and retaliation judgments and settlements in both the administrative and court processes is necessary to encourage the agencies to work to improve their dispute resolution procedures

[4] The United States General Accounting Office, Discrimination Compalints: Monetary Wards in the Federal EEO Cases, GGD-95–23FS p. 2.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] The United States General Accounting Office, Discrimination Compalints: Monetary Wards in the Federal EEO Cases, GGD-95–23FS p. 1.

and promote policies that encourage a fair and equitable workplace.

The Committee understands the concern that those agencies that have shown a lack of interest to prevent discrimination or retaliation may retaliate for court judgments by targeting the claimant employee or employees with reductions in compensation or benefits or workforce to pay for such judgments. The Committee would remind Federal agencies that "[s]alaries and wages, [with the exception of the Postal Service and the Tennessee Valley Authority], are paid under statutory systems, such as the General Schedule, Foreign Service, Department of Veterans Affairs Health Administration, Senior Executive Service, and the Federal Wage System (blue collar). Agency heads do not have the authority to reduce salary rates or to refuse to compensate employees with pay raises which affect the entire system under which the employees are paid. Nor do the agency heads have the authority to reduce other statutory benefits which are not direct compensation, such as health and retirement benefits."[9]

It is also the intent of the Committee that the mission of an agency, and the jobs of its other employees, who are blameless in the incident, not be compromised. For this reason, the Committee does not intend for this legislation to permit an agency to use a Reduction in Force (RIF) or furloughs, as a means for funding a payment due under this legislation. The Committee does not believe that accountability in the enforcement of employee rights is furthered by taking away the jobs of other employees, or by taking away the benefits to which those employees are already entitled by statute or contract. The Committee does not intend, by this legislation, to authorize it. Such actions are also plainly unnecessary. A Federal agency has many ways other than RIFs or furloughs to make such payments. First, the Federal agencies may seek appropriations to reimburse the general treasury. Second, the amounts paid by the general treasury for the Federal agencies do not appear to be exorbitant amounts. In fact, the amounts paid out of the general treasury for fiscal year 2000 was $42.7 million compared to the $1.8 trillion in Federal spending for the same year. Additionally, agency heads have other cost-saving management tools available to help offset any potential judgment; tools that do not implicate RIFs or reductions in salaries or benefits. Finally, H.R. 169 does not require the agency to immediately reimburse the general treasury. The Committee does expect an agency to reimburse the general treasury within a reasonable time, but understands that a Federal agency, particularly a smaller agency, may need to spread out the reimbursement over a number of years if the amount is large compared to an agency's annual appropriation. Congress will be able to determine if an agency is reimbursing the general treasury within a reasonable time through the reporting requirements under the No FEAR Act.

The Committee believes the proposed amendment to prohibit agencies from using their budgets allocated for salaries and expenses could have proved over broad. While it is the Committee's intent to protect the salaries, benefits and jobs of agency employ-

[9] Congressional Research Service, Memorandum on the Source of Reimbursement Funds under Proposed H.R. 169, (May 2001).

ees, the salaries and expenses account is generally the primary account that funds most agencies, there is no uniform definition of the account.[10] Moreover, although salaries and expenses accounts are often associated with personnel compensation and benefits, such accounts include monies for other purposes.[11] Without a standard definition Federal agencies may fund all their activities under the salaries and expenses accounts and avoid reimbursing the general treasury for discrimination and whistleblower judgments. Accordingly, the Committee finds that the best alternative to ensure the Federal agencies do not retaliate is through the reporting requirements of this act and congressional oversight.

Section 201(b) excludes any part of such appropriation of such fund, or of such account available for the enforcement of the laws cited in subsection (c) or the enforcement of laws relating to the environment, civil rights, employment, labor relations and consumer protection. The appropriation or account must designate the funding purpose as enforcement. It is the Committee's view that a bill that is designed to protect civil rights and whistleblower rights would be undercut if funds used to enforce civil rights and whistleblower laws would be affected. It is also the Committee's view that funds used to enforce environmental and consumer protection laws should not be affected. As a result, under the act, an agency cannot use any funds designated for the enforcement of the civil rights, whistleblower, employer, labor relations and consumer protection laws to pay for judgments that arise under this act.

Section 202. Notification Requirement

Section 202(a) requires that Federal agencies notify their employees in writing about any applicable discrimination and whistleblower protection laws. It is not the Committee's intention that agencies provide written notification to former employees, web notification should suffice in that area. Section 202(b) requires that such notifications include postings on the Internet. Section 202(c) requires that each Federal agency shall provide their respective employees training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

It is the view of the Committee that existing requirements must be reinforced and additional requirements included to ensure that Federal employees are aware of their rights against discrimination and reprisal. The Committee is concerned that employees may not come forward without sufficient understanding of their rights. The Committee believes that workforce relations should improve if managers are more aware of their responsibilities and employees of their rights. With regard to training, it is the Committee's view that on-line training would be an efficient and effective mechanism for the agencies to use. The on-line training could provide the agencies with the ability to monitor who is and is not participating in the training and could provide a more affordable method.

Section 203. Reporting Requirement

Section 203(a) requires that each Federal agency send an annual report to the Speaker of the House of Representatives and the

[10] Congressional Research Service, Memorandum on the Breakout of Compensation and Benefit Costs for Selected Federal Law Enforcement Agencies, (May 2001) 2.
[11] *Id.*

President pro tempore of the Senate (this language allows each committee of jurisdiction to receive a copy), the Equal Employment Opportunity Commission, and the Attorney General listing:

(1) the number of cases in which an agency was alleged to have violated any of the discrimination or whistleblower statutes;
(2) the disposition of each of these cases;
(3) the total of all monetary awards charged against the agency from these cases;
(4) the number of employees disciplined for discrimination, retaliation or harassment;
(5) the final-year end data of title III; and
(6) a detailed description of the disciplinary policy of the reporting agency and the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken.

It is the view of the Committee that this new reporting is required in addition to existing reporting requirements. The Committee believes that the lack of consistent reliable data has made it difficult to understand the extent to which Federal agencies are discriminating and retaliating against whistleblowers. Agencies should view this reporting as an opportunity to understand whether a problem exists within its organization or to demonstrate that a problem does not exist.

In testimony at the May 9, 2001, hearing, General Accounting Office concluded that "[t]o help ensure economical, efficient, and effective delivery of services for the benefit of the American people, allegations of discrimination and reprisal for whistleblowing in the [F]ederal workplace must be dealt with in a fair, equitable, and timely manner. Doing so requires, first, reliable and complete reporting of data as a starting point to understand the nature and scope of issues in the workplace involving discrimination, reprisal, and other conflicts and problems, and to help develop strategies for dealing with the issues."

Section 203(b) requires that the first annual report include data for each of the 5 immediately preceding fiscal years or, if data are not available for all fiscal years, for however many of those fiscal years for which data are available. This is a one-time requirement to provide a baseline of the situation at each reporting agency.

Section 204. Rules

Section 204 requires that any rules necessary to carry out this act shall be prescribed by the President or his designee. The section includes a requirement that the administration conduct a study to determine a standard code of conduct and establish government-wide guidelines for Federal agencies. In addition, the section requires each Federal agency to notify Congress as to whether it has adopted or will adopt the guidelines, and if not, why.

Section 205. Clarification of Remedies

Section 205 clarifies that making a claim under this bill does not affect remedies or rights under current law.

Section 206. Study by General Accounting Office Regarding Exhaustion of Administrative Remedies

Section 206(a) requires the General Accounting Office to conduct a study to determine the effects of eliminating the requirement that Federal employees exhaust administrative remedies within the Federal agency before filing complaints with the Equal Employment Opportunity Commission (EEOC). The exhaustion of administrative remedies under this section refers only to the administrative remedies before filing with the EEOC. Federal agencies must decide whether to dismiss or accept complaints employees file with them and investigate accepted complaints.[12] After this investigation, a complainant may then go to the EEOC.[13] Agencies must decide whether to accept a complaint, investigate it, and report the investigation results within 180 days from the complaint's filing.[14] The average time to process a complaint at agencies, however, was 384 days in fiscal year 1998.[15] A case that goes through the entire complaint process including the EEOC hearing and appeal could be expected to take 1,186 days or about 3 years and 2 months.[16] The Committee believes this length of time is too long and alternatives for improving this process need to be investigated. Section 206(a) requires the General Accounting Office to review how eliminating the administrative process at the agencies would: (1) expedite the handling of allegations of such violations within Federal agencies and streamline the complaint-filing process; (2) affect the workload of the EEOC; (3) affect the established alternative dispute resolution procedures in such agencies; and (4) affect any other matters determined by the GAO to be appropriate.

Section 206(b) requires the GAO to report the Speaker of the House, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General 90 days after the study is complete.

TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

Section 301. Data to be Posted by Employing Federal Agencies

Section 301(a) requires that the following equal employment opportunity complaint data filed with such agency by employees, former employees and applicants for employment with such agency be disclosed on each Federal agency's web site.

Section 301(b) list the contents to be included on the posting of data for the then current fiscal year. The contents include the following data:

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

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[12] The United States General Accounting Office, Equal Employment Opportunity: Complaint Caseloads Rising with Effects of New Regulations on Future Trends Unclear, GGD-99–128 p. 3.

[13] *Ibid.*

[14] The United States General Accounting Office, Equal Employment Opportunity: Complaint Caseloads Rising with Effects of New Regulations on Future Trends Unclear, GGD-99–128 p. 30.

[15] The United States General Accounting Office, Equal Employment Opportunity: Complaint Caseloads Rising with Effects of New Regulations on Future Trends Unclear, GGD-99–128 p. 2.

[16] *Id.*

(2) The number of individuals filing those complaints (including class actions).

(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 statutory 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 EEOC complaints. The 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 EEOC is not requested; and

(C) for all such complaints in which a hearing before an administrative judge of the EEOC 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 EEOC; and

(B) the number and percentage that were rendered after a hearing before an administrative judge of the EEOC.

(8) 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,

(B) of the number specified under paragraph (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 EEOC, and

(ii) the number and percentage that rendered after a hearing before an administrative judge of the EEOC.

(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, and

(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 EEOC, and

(ii) the number and percentage that were rendered after a hearing before an administrative judge of the EEOC.

(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.

Section 301(c) provides the timing and other requirements for the Federal agencies to post the data for the then current fiscal year. Section 301(c)(1) requires interim year-to-date data to be posted quarterly and final year-end data to be posted. Section 301(c)(2) requires that the data include year-end data for each of the 5 immediately preceding fiscal years.

It is the view of the Committee that this additional information will assist Congress and the agencies in assessing the extent of the problem throughout the Federal Government, and will allow particular agencies to better understand if a problem exists within their organization that needs to be corrected. GAO testified at the May 9, 2001, hearing "because data are not readily available, there is no clear picture of the number of complaints of workplace discrimination and reprisal for whistleblowing at agencies or governmentwide and the outcome of these cases. Data of this nature are important because they can be a starting point for agency managers to understand the nature and scope of issues in the workplace involving discrimination, reprisal, and other conflicts and problems, and can help in developing strategies for dealing with those issues." The Committee agrees with the General Accounting Office's assessment of the need for accurate accounting. The lack of a complete accounting in the complex EEOC process makes it impossible for the Congress, the Federal agencies and the American public to have a clear picture of the volume and nature of discrimination and retaliation that exists within the Federal work place.

Section 302. Data to be Posted by the Equal Employment Opportunity Commission

Section 302(a) requires that the Equal Employment Opportunity Commission shall post on its Web site:

(1) the hearings requested before an EEOC administrative judge on the complaints described in section 301.

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

Section 302(b) requires that the data with respect to the hearings and appeals at the EEOC shall include summary statistical data corresponding to that described in paragraphs (1) through (10) of section 301(b) and shall be subject to the same timing and other requirements as set forth in section 301(c).

Section 302(c) requires that the data under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

Section 303. Rules

Section 303 requires that the Equal Employment Opportunity Commission issue any rules necessary to carry out this title.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MAY 23, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

I'd like to recognize the gentleman from Michigan for a couple of housekeeping matters first before we go to the markup. The gentleman from Michigan?

Mr. CONYERS. Thank you, Mr. Chairman.

In connection with the Democratic side of the Judiciary Committee, I ask unanimous consent that Representative Weiner be made a Member of the Subcommittee on Courts, the Internet, and Intellectual Property, and that Representative Schiff be made a Member of the Subcommittee on Crime.

Chairman SENSENBRENNER. Without objection. Without objection, with the understanding that Mr. Weiner comes off the Crime Subcommittee. Without objection, so ordered.

The gentleman from Michigan, is that all?

Mr. CONYERS. Well, I'd like to make my other statement during—when we come to order.

Chairman SENSENBRENNER. Pursuant to notice, the first item on the agenda is H.R. 169, the Notification and Federal Act of 2001, and I move its favorable recommendation to the full House.

[H.R. 169 follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 169

To require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2001

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, 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.

This Act may be cited as the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2001".

SEC. 2. FINDINGS.

The Congress finds that—

1 (1) good science requires a tolerance of oppos-
2 ing viewpoints;
3 (2) Federal agencies cannot be run effectively if
4 they practice or tolerate discrimination;
5 (3) the Committee on Science of the House of
6 Representatives has heard testimony from individ-
7 uals, including representatives of the National Asso-
8 ciation for the Advancement of Colored People and
9 the National Whistleblower Center, that point to
10 chronic problems of discrimination and retaliation
11 against Federal employees at the Environmental
12 Protection Agency;
13 (4) in August 2000, a jury found that the Envi-
14 ronmental Protection Agency had discriminated
15 against a senior social scientist, and awarded that
16 scientist $600,000;
17 (5) in October 2000, an Occupational Safety
18 and Health Administration investigation found that
19 the Environmental Protection Agency had retaliated
20 against a senior scientist for disagreeing with that
21 agency on a matter of science and for helping Con-
22 gress to carry out its oversight responsibilities;
23 (6) notifying Federal employees of their rights
24 under discrimination and whistleblower statutes
25 should increase agency compliance with the law;

1 (7) requiring annual reports to Congress on the
2 number and severity of discrimination and whistle-
3 blower cases brought against each Federal agency
4 should enable Congress to improve its oversight over
5 agencies' compliance with the law; and
6 (8) penalizing Federal agencies by requiring
7 them to pay for any discrimination or whistleblower
8 judgment, award, or settlement should improve
9 agency accountability with respect to whistleblower
10 and discrimination laws.

11 **SEC. 3. REIMBURSEMENT REQUIREMENT.**

12 (a) APPLICABILITY.—This section applies with re-
13 spect to any payment made in accordance with section
14 2414, 2517, 2672, or 2677 of title 28, United States
15 Code, and under section 1304 of title 31, United States
16 Code (relating to judgments, awards, and compromise set-
17 tlements) to any Federal employee, former Federal em-
18 ployee, or applicant for Federal employment, in connection
19 with any proceeding brought by or on behalf of such em-
20 ployee, former employee, or applicant under—
21 (1) any provision of law cited in subsection (c);
22 or
23 (2) any other provision of law which prohibits
24 any form of discrimination, as identified under regu-
25 lations prescribed under section 6.

1 (b) REQUIREMENT.—An amount equal to the amount
2 of each payment described in subsection (a) shall be reim-
3 bursed to the fund described in section 1304 of title 31,
4 United States Code, out of any appropriation, fund, or
5 other account available for operating expenses of the Fed-
6 eral agency to which the discriminatory conduct involved
7 is attributable, as determined under section 6.

8 (c) SCOPE.—The provisions of law cited in this sub-
9 section are section 322(a) of the Clean Air Act (42 U.S.C.
10 7622(a)), section 110(a) of the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act (42
12 U.S.C. 9610(a)), section 507(a) of the Federal Water Pol-
13 lution Control Act (33 U.S.C. 1367(a)), section 1450(i)(1)
14 of the Safe Drinking Water Act (42 U.S.C. 300j–9(i)(1)),
15 section 7001(a) of the Solid Waste Disposal Act (42
16 U.S.C. 6971(a)), and section 23(a) of the Toxic Sub-
17 stances Control Act (15 U.S.C. 2622(a)).

18 **SEC. 4. NOTIFICATION REQUIREMENT.**

19 (a) IN GENERAL.—Written notification of the rights
20 and protections available to Federal employees, former
21 Federal employees, and applicants for Federal employ-
22 ment (as the case may be) in connection with the respec-
23 tive provisions of law covered by paragraphs (1) and (2)
24 of section 3(a) shall be provided to such employees, former
25 employees, and applicants—

1 (1) in accordance with otherwise applicable pro-
2 visions of law; or
3 (2) if to the extent that no such notification
4 would otherwise be required, in such time, form, and
5 manner as shall under section 6 be required in order
6 to carry out the purposes of this section.
7 (b) POSTING ON THE INTERNET.—Any written noti-
8 fication under this section shall include, but not be limited
9 to, the posting of the information required under para-
10 graph (1) or (2) (as applicable) of subsection (a) on the
11 Internet site of the Federal agency involved.
12 **SEC. 5. REPORTING REQUIREMENT.**
13 Each Federal agency shall submit to the Congress
14 and the Attorney General an annual report which shall
15 include, with respect to the prior calendar year—
16 (1) the number of cases arising under each of
17 the respective provisions of law covered by para-
18 graphs (1) and (2) of section 3(a) in which discrimi-
19 nation on the part of such agency was alleged;
20 (2) the status or disposition of cases described
21 in paragraph (1);
22 (3) the amount of money required to be reim-
23 bursed by such agency under section 3 in connection
24 with each of those cases, if any; and

1 (4) the number of employees disciplined for dis-
2 crimination, retaliation, harassment, or any other in-
3 fraction of any provision of law referred to in para-
4 graph (1).

5 **SEC. 6. REGULATIONS.**

6 Any regulations necessary to carry out this Act shall
7 be prescribed by the President or his designee.

8 **SEC. 7. CLARIFICATION OF REMEDIES.**

9 Consistent with Federal law, nothing in this Act shall
10 prevent any Federal employee, former Federal employee,
11 or applicant for Federal employment from exercising any
12 right otherwise available under the United States Code.

13 **SEC. 8. DEFINITIONS.**

14 For purposes of this Act—

15 (1) the term "Federal agency" means an Exec-
16 utive agency, as defined by section 105 of title 5,
17 United States Code;

18 (2) the term "Federal employee" means an in-
19 dividual employed in or under a Federal agency;

20 (3) the term "former Federal employee" means
21 an individual formerly employed in or under a Fed-
22 eral agency; and

1 (4) the term "applicant for Federal employ-
2 ment" means an individual applying for employment
3 in or under a Federal agency.

○

Without objection, the bill will be considered as read and open for amendment at any point, and the amendment in the nature of a substitute, which the Members have before them, will be considered as read and considered as the original text for purposes of amendment.

[The amendment in the nature of a substitute follows:]

Amendment in the Nature of a Substitute

To H.R. 169

Offered by Mr. Sensenbrenner

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Notification and Federal Employee Antidiscrimination
4 and Retaliation Act of 2001".

5 (b) TABLE OF CONTENTS.—The table of contents of
6 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 administrative 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 Commission.
Sec. 303. Rules.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

The Congress finds that—

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

(2) the Committee on the Judiciary of the House of Representatives has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the National 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 Inves-

1 tigation, the Bureau of Alcohol, Tobacco, and Fire-
2 arms, the Drug Enforcement Administration, the
3 Immigration and Naturalization Service, and the
4 United States Marshals Service,
5 (6) notifying Federal employees of their rights
6 under discrimination and whistleblower laws should
7 increase agency compliance with the law,
8 (7) requiring annual reports to Congress on the
9 number and severity of discrimination and whistle-
10 blower cases brought against each Federal agency
11 should enable Congress to improve its oversight over
12 agencies' compliance with the law, and
13 (8) penalizing Federal agencies by requiring
14 them to pay for any discrimination or whistleblower
15 judgments, awards, and settlements should improve
16 agency accountability with respect to discrimination
17 and whistleblower laws.
18 **SEC. 102. DEFINITIONS.**
19 For purposes of this Act—
20 (1) the term "applicant for Federal employ-
21 ment" means an individual applying for employment
22 in or under a Federal agency,
23 (2) the term "basis of alleged discrimination"
24 shall have the meaning given such term under sec-
25 tion 303,

1 (3) the term "Federal agency" means an Exec-
2 utive agency or a military department (both as de-
3 fined by section 105 of title 5, United States Code),
4 the United States Postal Service, or the Postal Rate
5 Commission,
6 (4) the term "Federal employee" means an in-
7 dividual employed in or under a Federal agency,
8 (5) the term "former Federal employee" means
9 an individual formerly employed in or under a Fed-
10 eral agency, and
11 (6) the term "issue of alleged discrimination"
12 shall have the meaning given such term under sec-
13 tion 303.

14 **SEC. 103. EFFECTIVE DATE.**

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

19 TITLE II—FEDERAL EMPLOYEE 20 DISCRIMINATION AND RETAL- 21 IATION

22 **SEC. 201. REIMBURSEMENT REQUIREMENT.**

23 (a) APPLICABILITY.—This section applies with re-
24 spect to any payment made in accordance with section
25 2414, 2517, 2672, or 2677 of title 28, United States

1 Code, and under section 1304 of title 31, United States
2 Code (relating to judgments, awards, and compromise set-
3 tlements) to any Federal employee, former Federal em-
4 ployee, or applicant for Federal employment, in connection
5 with any proceeding brought by or on behalf of such em-
6 ployee, former employee, or applicant under—
7 (1) any provision of law cited in subsection (c),
8 or
9 (2) any other provision of law which prohibits
10 any form of discrimination, as identified under rules
11 issued under section 204.
12 (b) REQUIREMENT.—An amount equal to the amount
13 of each payment described in subsection (a) shall be reim-
14 bursed to the fund described in section 1304 of title 31,
15 United States Code, out of any appropriation, fund, or
16 other account (excluding any part of such appropriation,
17 of such fund, or of such account available for the enforce-
18 ment of the laws cited in subsection (c) or laws relating
19 to the environment, to civil rights, to employment rights,
20 to labor relations, or to consumer protection) available for
21 operating expenses of the Federal agency to which the dis-
22 criminatory conduct involved is attributable, as deter-
23 mined under section 204.
24 (c) SCOPE.—The provisions of law cited in this sub-
25 section are the following:

1 (1) Section 322(a) of the Clean Air Act (42
2 U.S.C. 7622(a)).
3 (2) Section 110(a) of the Comprehensive Envi-
4 ronmental Response, Compensation, and Liability
5 Act (42 U.S.C. 9610(a)).
6 (3) section 507(a) of the Federal Water Pollu-
7 tion Control Act (33 U.S.C. 1367(a)).
8 (4) Section 1450(i)(1) of the Safe Drinking
9 Water Act (42 U.S.C. 300j–9(i)(1)).
10 (5) Section 7001(a) of the Solid Waste Disposal
11 Act (42 U.S.C. 6971(a)).
12 (6) Section 23(a) of the Toxic Substances Con-
13 trol Act (15 U.S.C. 2622(a)).
14 (7) Section 2302(b) of title 5 of the United
15 States Code, as applied to discriminatory conduct
16 described in paragraphs (1) and (8), or described in
17 paragraph (9) of such section as applied to discrimi-
18 natory conduct described in paragraphs (1) and (8),
19 of such section.
20 (8) The provisions of law specified in section
21 2302(d) of title 5 of the United States Code.
22 **SEC. 202. NOTIFICATION REQUIREMENT.**
23 (a) IN GENERAL.—Written notification of the rights
24 and protections available to Federal employees, former
25 Federal employees, and applicants for Federal employ-

1 ment (as the case may be) in connection with the respec-
2 tive provisions of law covered by paragraphs (1) and (2)
3 of section 201(a) shall be provided to such employees,
4 former employees, and applicants—

5 (1) in accordance with otherwise applicable pro-
6 visions of law, or

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

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

16 (c) EMPLOYEE TRAINING.—Each Federal agency
17 shall provide to the employees of such agency training re-
18 garding the rights and remedies applicable to such employ-
19 ees under the laws cited in section 201(c).

20 **SEC. 203. REPORTING REQUIREMENT.**

21 (a) ANNUAL REPORT.—Subject the subsection (b),
22 not later than 180 days after the end of each fiscal year,
23 each Federal agency shall submit to the Speaker of the
24 House of Representatives, the President pro tempore of
25 the Senate, the Equal Employment Opportunity Commis-

1 sion, and the Attorney General an annual report which
2 shall include, with respect to the fiscal year—
3 (1) the number of cases arising under each of
4 the respective provisions of law covered by para-
5 graphs (1) and (2) of section 201(a) in which dis-
6 crimination on the part of such agency was alleged,
7 (2) the status or disposition of cases described
8 in paragraph (1),
9 (3) the amount of money required to be reim-
10 bursed by such agency under section 201 in connec-
11 tion with each of such cases, separately identifying
12 the aggregate amount of such reimbursements at-
13 tributable to the payment of attorneys' fees, if any,
14 (4) the number of employees disciplined for dis-
15 crimination, retaliation, harassment, or any other in-
16 fraction of any provision of law referred to in para-
17 graph (1),
18 (5) the final year-end data posted under section
19 301(c)(1)(B) for such fiscal year (without regard to
20 section 301(c)(2)), and
21 (6) a detailed description of—
22 (A) the policy implemented by such agency
23 to discipline employees who are determined in
24 any judicial or administrative proceeding to
25 have discriminated against any individual in

1 violation of any of the laws cited in section
2 201(c), and
3 (B) with respect to each of such laws, the
4 number of employees who are disciplined in ac-
5 cordance with such policy and the specific na-
6 ture of the disciplinary action taken.
7 (b) FIRST REPORT.—The 1st report submitted under
8 subsection (a) shall include for each item under subsection
9 (a) data for each of the 5 immediately preceding fiscal
10 years (or, if not available for all 5 fiscal years, for however
11 many of those 5 fiscal years for which data are available).
12 **SEC. 204. RULES AND GUIDELINES.**
13 (a) ISSUANCE OF RULES AND GUIDELINES.—The
14 President (or the designee of the President) shall issue—
15 (1) rules to carry out this title,
16 (2) rules to require that a comprehensive study
17 be conducted in the Executive Branch to determine
18 the best practices for Federal agencies to take ap-
19 propriate disciplinary actions against Federal em-
20 ployees who are determined in any judicial or admin-
21 istrative proceeding to have discriminated against
22 any individual in violation of any of the laws cited
23 in section 201(c), and
24 (3) based on the results of such study, advisory
25 guidelines incorporating best practices that Federal

1 agencies may follow to take such actions against
2 such employees.
3 (b) AGENCY NOTIFICATION REGARDING IMPLEMEN-
4 TATION OF GUIDELINES.—Not later than 30 days after
5 the issuance of guidelines under subsection (a), each Fed-
6 eral agency shall submit to the Speaker of the House of
7 Representatives, the President pro tempore of the Senate,
8 the Equal Employment Opportunity Commission, and the
9 Attorney General a written statement specifying in
10 detail—
11 (1) whether such agency has adopted and will
12 fully follow such guidelines,
13 (2) if such agency has not adopted such guide-
14 lines, the reasons for the failure to adopt such guide-
15 lines, and
16 (3) if such agency will not fully follow such
17 guidelines, the reasons for the decision not to fully
18 follow such guidelines and an explanation of the ex-
19 tent to which such agency will not follow such guide-
20 lines.
21 **SEC. 205. CLARIFICATION OF REMEDIES.**
22 Consistent with Federal law, nothing in this title shall
23 prevent any Federal employee, former Federal employee,
24 or applicant for Federal employment from exercising any

1 right otherwise available under the laws of the United
2 States.

3 **SEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE RE-**
4 **GARDING EXHAUSTION OF ADMINISTRATIVE**
5 **REMEDIES.**

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

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

21 (2) affect the workload of the Commission,

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

1 (4) affect any other matters determined by the
2 General Accounting Office to be appropriate for con-
3 sideration.
4 (b) REPORT.—Not later than 90 days after comple-
5 tion of the study required by subsection (a), the General
6 Accounting Office shall submit to the Speaker of the
7 House of Representatives, the President pro tempore of
8 the Senate, the Equal Employment Opportunity Commis-
9 sion, and the Attorney General a report containing the in-
10 formation required to be included in such study.

11 TITLE III—EQUAL EMPLOYMENT 12 OPPORTUNITY COMPLAINT 13 DATA DISCLOSURE

14 SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL 15 AGENCIES.

16 (a) IN GENERAL.—Each Federal agency shall post
17 on its public Web site, in the time, form, and manner pre-
18 scribed under section 303 (in conformance with the re-
19 quirements of this section), summary statistical data relat-
20 ing to equal employment opportunity complaints filed with
21 such agency by employees or former employees of, or ap-
22 plicants for employment with, such agency.
23 (b) CONTENT REQUIREMENTS.—The data posted by
24 a Federal agency under this section shall include, for the
25 then current fiscal year, the following:

1 (1) The number of complaints filed with such
2 agency in such fiscal year.
3 (2) The number of individuals filing those com-
4 plaints (including as the agent of a class).
5 (3) The number of individuals who filed 2 or
6 more of those complaints.
7 (4) The number of complaints (described in
8 paragraph (1)) in which each of the various bases of
9 alleged discrimination is alleged.
10 (5) The number of complaints (described in
11 paragraph (1)) in which each of the various issues
12 of alleged discrimination is alleged.
13 (6) The average length of time, for each step of
14 the process, it is taking such agency to process com-
15 plaints (taking into account all complaints pending
16 for any length of time in such fiscal year, whether
17 first filed in such fiscal year or earlier). Average
18 times under this paragraph shall be posted—
19 (A) for all such complaints,
20 (B) for all such complaints in which a
21 hearing before an administrative judge of the
22 Equal Employment Opportunity Commission is
23 not requested, and
24 (C) for all such complaints in which a
25 hearing before an administrative judge of the

1 Equal Employment Opportunity Commission is
2 requested.
3 (7) The total number of final agency actions
4 rendered in such fiscal year involving a finding of
5 discrimination and, of that number—
6 (A) the number and percentage that were
7 rendered without a hearing before an adminis-
8 trative judge of the Equal Employment Oppor-
9 tunity Commission, and
10 (B) the number and percentage that were
11 rendered after a hearing before an administra-
12 tive judge of the Equal Employment Oppor-
13 tunity Commission.
14 (8) Of the total number of final agency actions
15 rendered in such fiscal year involving a finding of
16 discrimination—
17 (A) the number and percentage involving a
18 finding of discrimination based on each of the
19 respective bases of alleged discrimination, and
20 (B) of the number specified under sub-
21 paragraph (A) for each of the respective bases
22 of alleged discrimination—
23 (i) the number and percentage that
24 were rendered without a hearing before an

1 administrative judge of the Equal Employ-
2 ment Opportunity Commission, and
3 (ii) the number and percentage that
4 were rendered after a hearing before an
5 administrative judge of the Equal Employ-
6 ment Opportunity Commission.
7 (9) Of the total number of final agency actions
8 rendered in such fiscal year involving a finding of
9 discrimination—
10 (A) the number and percentage involving a
11 finding of discrimination in connection with
12 each of the respective issues of alleged discrimi-
13 nation, and
14 (B) of the number specified under sub-
15 paragraph (A) for each of the respective issues
16 of alleged discrimination—
17 (i) the number and percentage that
18 were rendered without a hearing before an
19 administrative judge of the Equal Employ-
20 ment Opportunity Commission, and
21 (ii) the number and percentage that
22 were rendered after a hearing before an
23 administrative judge of the Equal Employ-
24 ment Opportunity Commission.

1 (10)(A) Of the total number of complaints
2 pending in such fiscal year (as described in the par-
3 enthetical matter in paragraph (6)), the number that
4 were first filed before the start of the then current
5 fiscal year.
6 (B) With respect to those pending complaints
7 that were first filed before the start of the then cur-
8 rent fiscal year—
9 (i) the number of individuals who filed
10 those complaints, and
11 (ii) the number of those complaints which
12 are at the various steps of the complaint proc-
13 ess.
14 (C) Of the total number of complaints pending
15 in such fiscal year (as described in the parenthetical
16 matter in paragraph (6)), the total number of com-
17 plaints with respect to which the agency violated the
18 requirements of section 1614.106(e)(2) of title 29 of
19 the Code of Federal Regulations (as in effect on
20 July 1, 2000, and amended from time to time) by
21 failing to conduct within 180 days of the filing of
22 such complaints an impartial and appropriate inves-
23 tigation of such complaints.
24 (c) TIMING AND OTHER REQUIREMENTS.—

1 (1) CURRENT YEAR DATA.—Data posted under
2 this section for the then current fiscal year shall in-
3 clude both—
4 (A) interim year-to-date data, updated
5 quarterly, and
6 (B) final year-end data.
7 (2) DATA FOR PRIOR YEARS.—The data posted
8 by a Federal agency under this section for a fiscal
9 year (both interim and final) shall include, for each
10 item under subsection (b), such agency's cor-
11 responding year-end data for each of the 5 imme-
12 diately preceding fiscal years (or, if not available for
13 all 5 fiscal years, for however many of those 5 fiscal
14 years for which data are available).

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

17 (a) IN GENERAL.—The Equal Employment Oppor-
18 tunity Commission shall post on its public Web site, in
19 the time, form, and manner prescribed under section 303
20 for purposes of this section, summary statistical data re-
21 lating to—
22 (1) hearings requested before an administrative
23 judge of the Commission on complaints described in
24 section 301, and

1 (2) appeals filed with the Commission from
2 final agency actions on complaints described in sec-
3 tion 301.
4 (b) SPECIFIC REQUIREMENTS.—The data posted
5 under this section shall, with respect to the hearings and
6 appeals described in subsection (a), include summary sta-
7 tistical data corresponding to that described in paragraphs
8 (1) through (10) of section 301(b), and shall be subject
9 to the same timing and other requirements as set forth
10 in section 301(c).
11 (c) COORDINATION.—The data required under this
12 section shall be in addition to the data the Commission
13 is required to post under section 301 as an employing Fed-
14 eral agency.
15 **SEC. 303. RULES.**
16 The Equal Employment Opportunity Commission
17 shall issue any rules necessary to carry out this title.

Amend the title of the bill so as to read: "A bill 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.".

Chairman SENSENBRENNER. The Chair recognizes himself to strike the last word.

Along with Representative Jackson Lee, I introduced H.R. 169, the "Notification and Federal Employees Antidiscrimination and Retaliation Act of 2001," to address an outrage in the Federal Government. Federal agencies today are not being held accountable for acts of discrimination and retaliation against their employees. Because Federal agencies do not have to pay for judgments and settlements if the case goes to court, they are not accountable for the misdeeds of their employees.

Because of inadequate notification requirements, many employees are not aware of their rights and managers are not aware of their responsibilities. Because of inadequate reporting, Federal agencies and Congress cannot assess the extent of the problem.

As the President of the NAACP, Mr. Kweisi Mfume, testified on May 9th before this Committee, "The problem is especially disconcerting as the Federal Government should serve as a model of best practices for fair employment and equal opportunity to national and international companies."

This bill requires notification, reporting, and accountability from Federal agencies. The No FEAR Act would require agencies to pay for all settlements or judgments against them in whistleblower and discrimination cases. This will make the agency more accountable for its actions. The bill would also require notification to employees of their rights under the various whistleblower and discrimination laws to prevent discrimination and harassment in the first place. The act would also require Federal agencies to report to Congress on the number of cases alleging discrimination and retaliation, the disposition of those cases, and the cost of judgments to the American taxpayer and the number of employees disciplined for discrimination, harassment, or retaliation. This information will help determine if there is a pattern of misconduct and whether an agency is disciplining those employees or managers involved in that behavior.

As the GAO testified on May 9th, such tracking of complaints, cases, and costs are not occurring. I am offering a manager's amendment on behalf of myself, Mr. Conyers, the Ranking Member, and Ms. Jackson Lee, the gentlewoman from Texas. It is the result of close cooperation between the majority and minority staffs. The amendment makes a number of discrete changes to the bill that are designed to ensure that all the discrimination and retaliation laws are covered and that Congress receives complete information to assess the full extent of the problem.

The most important of these changes are the following: first, the amendment expands the scope of the bill to ensure that all discrimination and retaliation laws for Federal employees are covered; and, second, the amendment requires additional reporting regarding claims before the Equal Employment Opportunity Commission and agencies to increase understanding of logjams of cases.

In summation, this bill will remind Federal agencies of a fundamental principle some apparently have forgotten, that one of the first priorities of our democracy is to respect individuals and to protect their rights.

And with that I yield back the balance of my time and recognize the gentleman from Michigan for an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman. You have covered it very effectively, and so I want to merely say that we're all in accord. And I think that we ought to say in addition that, to the legislative matter that's before us, that we want to compliment you as Chairman of Judiciary and your staff for the efforts that you've engaged in in reaching out to all of us to bring a bipartisan spirit to this Committee in a new way.

To be honest, I was inclined to vote against both the spam and the No FEAR bills. I believe that technology can really solve the spam problem, and I felt that simply making the agencies pay the bill in whistleblower and discrimination suits perhaps was not sufficient reform for discrimination in the agencies. But because of you and the men and women on your staff who have worked with us and with Sheila Jackson Lee on both these measures to address our concerns, we've all been together able to craft a sincere compromise on these matters. And I appreciate your leadership and your friendship in regard to this matter.

I ask that the rest of my statement be included in the record.

Chairman SENSENBRENNER. Without objection.

[The statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I am glad we were able to work together in a bipartisan fashion to resolve many of the Minority's concerns with the underlying bill, and I commend Chairman Sensenbrenner and Congresswoman Jackson Lee for their leadership on this matter.

One does not have to look very hard to find examples of government misconduct. From the late 1980's until today, pervasive patterns of discrimination have been found to exist in numerous federal agencies, including *(1) the Federal Bureau of Investigation; (2) the Bureau of Alcohol, Tobacco and Firearms; (3) the Drug Enforcement Administration; and (4) the Immigration and Naturalization Service.*

Last year alone, federal employees filed more than 24,000 discrimination complaints against their agencies. And they were forced to pay a total of $26 million for discrimination complaint settlements and judgments. The complaint process is so backlogged that on average it takes more than 1,100 days to process.

I would have liked to think that our *federal agencies would be the models for the treatment of employees in America. But these figures indicate beyond a shadow of a doubt that the agencies are miserably falling short of this responsibility.*

At the May 9th hearing on this bill, I made several suggestions as to how it could be strengthened. Since then, I have worked with Chairman Sensenbrenner on a number of additional provisions which we both agree will create even more success in combating discrimination and retaliation within our federal agencies. These additions include:

- a requirement that the President create a uniform model standard for disciplining managers who have discriminated or retaliated;
- a requirement that federal agencies train all employees and managers in their rights and responsibilities under the Civil Rights and Whistle blower laws;
- a GAO study examining possible benefits of allowing federal employees to seek remedy directly in the EEOC; and
- insuring that discrimination and legal judgments do not impair the agency's ability to enforce the Civil Rights laws, Whistle blower laws, environmental laws, labor laws or consumer protection laws.

The bill is still not perfect. However it does represent a good starting point in my judgment, and I look forward to working with the Chairman in making further improvement on this legislation as it moves on to the floor.

Chairman SENSENBRENNER. Are there amendments?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. I'd like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman's recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much, and let me thank you again for what is a persistent commitment to this issue. If I can recall for my colleagues very briefly—and, Mr. Chairman, I'd like to put my entire statement—ask to put my—ask unanimous consent to put my entire statement into the record.

Chairman SENSENBRENNER. Without objection.

[The statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman.

Mr. Chairman, I support this Manager's Amendment because it improves the original bill, H.R. 169. The amendment corrects an error in the original draft of H.R. 169 that limited the scope of the bill to only six environmental laws with whistleblower protection provisions. Under this amendment, the bill's scope is expanded to include civil rights laws as well as the six environmental laws with whistleblower protections—a greatly needed fix.

The amendment also adds a new title to the bill (Title III) which mandates the collection and disclosure by agencies of statistical data relevant to hiring and employment practices. This Title includes: (1) the requirement that federal agencies to post on their websites data on equal employment complaints filed against the agencies; and (2) the requirement that the EEOC also post on its website statistical data on equal employment complaints filed against federal agencies. Such disclosure is necessary in order to facilitate regular overview of the agencies, and is crucial in being able to identify the precise extent and nature of the problem. As stated by J. Christopher Mihm of the GAO "data fosters transparency, which in turn provides an incentive to improve performance and enhance the image of the agency in the eyes of both employees and the public." Finally, the Title requires the EEOC to promulgate any rules necessary to carry out the Title.

I would also like to note the reaffirmation of both Congressman Nadler and myself to seek to protect employees benefits and saleries, and I look forward to working together towards this end.

Mr. Chairman, these corrections to the original bill that this amendment provides are necessary to ensure accountability and swift consequences for discrimination and retaliation in the federal government.

Thank you.

Ms. JACKSON LEE. If I can just recall very briefly for my colleagues the history of this matter, it was, again, at the call of Chairman Sensenbrenner when we both served together on the Science Committee that this issue was first brought to light dealing with the fair legislation, and now we have bridged this legislation from the Science Committee and our concern there having oversight over the EPA to the Judiciary Committee. And I think this is a very vital piece of legislation. As I listened to the hearing a couple of weeks ago, Mr. Chairman, it was as much as what we heard in the Committee room as what we heard afterward, which was the tragic loss of one of the employees of the EPA who lost his life because of the enormous stress and burden that he faced in certain employment circumstances.

So this is a life-saving piece of legislation, and I'm gratified that my colleagues have viewed it not as being redundant because it is very important to have a law that would require Federal agencies to notify employees about any applicable discrimination and whistleblower protection laws and to report to Congress and the Attorney General the number of discrimination and whistleblower cases within each agency. It gives an extra leverage and an extra, if you will, pressure point for the agency individually to not hide under

the arm or under the cover of the Federal Government and hold the individual agency responsible for how it treats its employees.

And all of us, of course, realize that none of us are perfect, and we realize there will be interactions between employers and employees. But we do know that it is important to address those cases that have resulted in Dr. Coleman's situation and others.

So, Mr. Chairman, we've come a long way in eliminating the culture of discrimination and harassment that exists in our Federal workplace, and I hope that as we support the manager's amendment and clarify certain issues, particularly noting the fact that the salaries and benefits are protected, that we would have the full support of this Committee. And, again, I am delighted to have been able to work with you and thank you for working with us on this legislation.

I yield back the balance of my time.

Chairman SENSENBRENNER. Are there amendments?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. For the purpose of asking a couple of questions. I have reviewed the bill and certainly think the notification requirements are important. I'm concerned, though, that by taking monies away from agencies that enforce various laws and regulations we may be visiting on the beneficiaries or intended beneficiaries of those laws the bad actions of people who within the agency—

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. And I wanted to see what the response was to that.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. Yes, I'm happy to yield.

Chairman SENSENBRENNER. First of all, if an agency under this bill is stuck with a huge judgment as a result of a whistleblower or an EEO—if an agency is stuck with a big judgment as a result of a whistleblower or an EEO campaign, this has absolutely no effect on the salaries and benefits of the employees of that agency. Those salaries and benefits are statutory, and the managers, including all the way up to the top, whether it's the Secretary of the Department or the Administrator of the Department, has no authority to change the salaries or benefits of the employees.

The Postal Service, since postal reorganization, has had to pay for claims and judgments for these types of cases out of its own account, and the General Accounting Office specifically testified last week when—or 2 weeks ago, when we had the hearing on this, that the requirement that they have to pay for the judgments out of their own account have not affected salaries and benefits of employees, and as a matter of fact, have reduced the number of EEO complaints dramatically because of that fact and because they do have an alternative dispute resolution mechanism. If you're—

Mr. WATT. Mr. Chairman, I—

Chairman SENSENBRENNER. If you're concerned about salaries and expenses—or benefits of employees being hit, the answer is have no fear because those are statutory and the managers can't affect that. Only Congress can.

Mr. WATT. That is not my concern.

Mr. BACHUS. Would the gentleman yield?

Mr. WATT. Let me clarify my concern. I know that civil service employees' and employees' salaries and benefits are protected. I'm more concerned about the delivery of services to the public and what impact this might have on the delivery of services to the public, and in the postal context that you used as an example, what implications that might have for the cost of—cost of those services to the public.

I'll yield to Mr.—

Mr. BACHUS. Bachus.

Mr. WATT. Bachus from Alabama.

Mr. BACHUS. Presently, under present law, which this bill would change, but presently, if a discrimination complaint is settled at the administrative level, the agency pays that monetary relief now. So there would be no change at the administrative level.

What happens today, if that case is appealed to the courts, then the agency, if there's monetary relief granted by the courts, then the agency does not pay that judgment. So there's really a disincentive today for legitimate discrimination complaints to be settled at the administrative level. The agency can actually not settle, allow it to go to the courts, and then the judgment fund, which is from the general fund, pays it.

So a good agency today, I'd say to the gentleman from North Carolina, would be settling these meritorious cases at the administrative level. It's only the agencies which have not settled meritorious claims and allowed them to go to the courts and shifted that financial burden onto the general fund, and from the general fund that money is taken away from all the agencies.

Mr. WATT. Okay. Then I understand that rationale a lot more than I understood the Chairman's rationale. But if this is such a great idea, why are we limiting it to certain particular acts and agencies as opposed to applying it in the general context? I mean, isn't that the effect of the language on page 4, lines 8 through 17, to limit it to specific—the Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act—

Mr. BACHUS. I would think the manager's amendment took some of those restrictions out.

Chairman SENSENBRENNER. Well, first of all, let me ask unanimous consent the gentleman have 2 additional minutes. And will the gentleman yield? Would the gentleman from North Carolina yield?

Mr. WATT. Yes, I will.

Chairman SENSENBRENNER. Those provisions that you're referring to in the original bill were taken out by the manager's amendment. So they're no longer—

Mr. WATT. Okay. I see. Okay. I'm sorry. I'm—I'm satisfied. I will yield back the balance of my time.

Chairman SENSENBRENNER. Are there amendments?

Mr. WATT. Thank you very much.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York.

Mr. NADLER. I do have an amendment, but I'd like to ask if the Chairman will yield for a question. I'm really undecided on—

Chairman SENSENBRENNER. Would the gentleman strike the last word? Because I've already been recognized.

Mr. NADLER. I will strike the last word, so long—

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. NADLER. So long as I can offer my amendment in a separate striking of the last word.

Chairman SENSENBRENNER. Yes, you—you're protected on that.

Mr. NADLER. Thank you.

Mr. Chairman, the question I have on this bill is, granting its good intent, I have two questions and I'd like to hear, you know—one, if an agency is found guilty of either discrimination or being against whistleblowers or whatever it is, and let's say it's the—whatever agency it is, Social Security agency or whatever, if the funds come from their budget, wouldn't that jeopardize sending out the Social Security checks or the agriculture assistance checks or the workmen's comp checks? In other words, they don't have funds to provide for this, and obviously you don't want to give them special funds to provide for this. So wouldn't it of necessity come out of the money that is supposed to go out in aid of various things?

Chairman SENSENBRENNER. Well, if the gentleman would yield, first of all, Social Security is an entitlement, so there the money, it comes out of the Social Security trust fund to process and send out the Social Security payments. So I don't think—

Mr. NADLER. Some other program, then. I was just using that as an example. Let's say agriculture assistance or OSHA. Wouldn't it come out—let's say OSHA, you would have less labor, less factories inspected to make sure they're safe? I mean—

Chairman SENSENBRENNER. That is protected also in the manager's amendment, and I would refer the gentleman specifically to page 5, lines 12 through 23 in the manager's amendment. So that is all protected.

Mr. NADLER. And what about—let's assume the Securities and Exchange Commission. Is every agency protected? And if every agency's protected, what's the point of the bill?

Chairman SENSENBRENNER. If the gentleman would yield further, it is just the enforcement that is protected. It is not the non-enforcement functions that are protected. So the thing is that if they are fined as a result of illegal behavior, either by the EEOC or through judicial action, they will have to pay for it out of their budget. But the enforcement parts are protected. And hopefully this bill will act as a deterrent so that no fines will be paid, which I think is the goal that we all—

Mr. NADLER. Which brings up my second question. During a past administration, which will go unnamed so no one can think the question is partisan in nature, many members of one party which didn't have the Presidency accused the then-President of appointing people to enforcement and other positions who didn't believe in the law they wanted to enforce.

Let's assume some future President were to do this. Wouldn't it be an easy way, if you wanted to destroy the effectiveness of the agency that you were appointed to lead because you didn't believe in its purpose, to deliberately incur large fines so that there was no money to do what you didn't want to do in the first place?

Chairman SENSENBRENNER. I would submit that's probably an impeachable offense, and we'd have to take care of that here in a different context.

If the gentleman will yield, the total number of fines or amount of fines that were paid out of the Justice Department's fine budget was $42 million out of a budget of a trillion 800 billion dollars. So even as it stands today, we're not talking about a huge amount of money that is being paid in fines and judgments and settlements. The fact is that if you get a ticket for speeding or running a stop sign and you can send the fine to somebody else to pay, I don't think that's going to be the deterrent to illegal behavior that you're having to pay for it yourself would have.

Mr. BACHUS. Would the Chairman yield?

Chairman SENSENBRENNER. The gentleman from New York has the time.

Mr. NADLER. I'll yield.

Mr. BACHUS. Let me stress again to the Members that at the—under present law, under administrative settlement, it comes out of the agency funds today. So the scenario you set up would—if they actually wanted to incur fines to slow down enforcement, they could do that under present law.

What this changes is if these discrimination claims are appealed to the courts, it doesn't—presently, the agencies pay administrative—claims that are settled at the administrative level today. There's a two-level system today.

Mr. NADLER. Reclaiming my time, I understand that and I understand the perverse incentive on the agencies not to settle. And, obviously, there are two ways to rectify that, and the question is which is the least harmful or most beneficial way to settle that. And I wonder if it wouldn't be a better idea to simply say that, whether it's a settlement or a judgment, it should go to the special fund rather than the agencies.

But I have taken enough time on this. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Mr. Nadler to the amendment in the nature of a substitute to H.R. 169. Page 5, line 12, insert "excluding any part of such appropriation of such fund or of such account available for salaries and expenses of employees" after "expenses."

[The amendment follows:]

Amendment Offered by Nadler

To the Amendment in the Nature of a Substitute

To H.R. 169

Page 5, line 12, insert "(excluding any part of such appropriation, of such fund, or of such account available for salaries and expenses of employees)" after "expenses".

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, first of all, I ask unanimous consent that it say "page 5, line 21," instead of "line 12," because—

Chairman SENSENBRENNER. Without objection, the modification is—

Mr. NADLER. Thank you. It's changed in the manager's amendment.

Mr. Chairman, you have stated that that's the—that this is the intent of the bill, that the bill, in fact, would not affect employees' salaries. This would simply make it explicit.

During the—and I would hope you would accept the amendment, therefore. This would simply make it very clear what the Chairman has said already this morning.

During this Committee's hearing on this bill, the representatives of the people who work for Federal agencies, workers who would not be in any way implicated with the types of abuses targeted in this bill, expressed the concern that by taking funds from the agency's account, jobs might be lost or employee benefits compromised. This concern was echoed by our former colleague, Kweisi Mfume, President and CEO of the NAACP, who testified in support of the bill.

It is often the case that employee benefits or jobs are the first target of any cuts. That's just—that's true not just in Congress but in the private sector. When the Republican revolution was declared in 1995, one of the first targets was the House day-care center which served congressional staff.

If the real target of the bill is discrimination and retaliation and the institutionalized indifference or hostility to the victims and re-

porters of that outrageous conduct, then we should ensure that the employees of the agencies do not end up paying a personal price for the indifference or venality of their management.

This amendment would simply exclude that part of the agency's appropriation called salaries and expenses of employees from the funds available to pay a judgment. It would protect Federal workers from the consequences of the misdeeds of their superiors and ensure that an agency does not reduce staffing by eliminating FTEs, full-time equivalents, and thereby undermine its ability to carry out its mission assigned to it by Congress on behalf of the American people.

The stated purpose of this bill is to provide swift justice for Federal employees who have been victimized. It eliminates—it eliminates the perverse incentive to drag out a proceeding in court rather than settle it expeditiously. While there are many things we should be doing to eliminate employment discrimination in both the public and private workplace that the people who represent victims of discrimination tell us need to be done, such as allowing an employee to go directly to the EEOC without exhausting the many administrative hoops set out by an agency, we are not doing that today.

It's my hope that we can provide a measure of justice without undermining the lawful and beneficial mission of Federal agencies, whether they supervise the fairness of our markets or the soundness of our financial system. I am grateful to the Chairman and Mr. Armey for their interest in this, in civil rights and employment discrimination. And, again, as I said, this amendment would simply make very explicit what the Chairman has already said is—is, in fact, part of this bill, so I hope that this amendment can be adopted without any problems.

I yield back.

Chairman SENSENBRENNER. I rise in opposition to the amendment. This amendment is unnecessary and will have the effect of delaying consideration of this bill on the floor of the House. And I would ask the gentleman from New York to think twice about proceeding with this amendment.

First, it is unnecessary because salaries and wages, in all but a few Federal organizations, are paid under statutory systems, such as the General Schedule, Foreign Service, Department of Veterans Affairs, Health Administration, Senior Executive Service, and Federal Wage System.

Agency heads do not have the authority to reduce salary rates or to refuse to compensate employees with pay raises which affect the entire system under which the employees are paid. Nor do the agency heads have the authority to reduce other statutory benefits which are not direct compensation, such as health benefits and retirement benefits.

So the types of benefits that are included in the amendment of the gentleman from New York are already protected by other laws which are not amended or affected in any respect by the legislation that is in front of us.

Ms. JACKSON LEE. Would the gentleman yield?

Chairman SENSENBRENNER. I am going to—let me finish. I would be very happy to include in the Committee report language that expressly reiterates what I have just stated on the record so that any-

body who looks at what the intent of Congress is is absolutely clear that these types of benefits are protected.

Now, from a practical matter, if this amendment is adopted, I do not think we will be able to persuade Chairman Burton in the Government Reform Committee to waive its opportunity for a sequential referral or a joint referral. I think I can bring this bill up on the floor of the House of Representatives without this amendment sometime in the month of June. If it leaves our Committee and goes off to another committee, it may very well stay there forever and ever, and as a result, we do not get an important bill brought up in the House of Representatives and passed.

Ms. JACKSON LEE. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the gentleman very much.

I think we're discussing two very important points. I thank the Chairman, as I mentioned to you this possibility of report language, and I appreciate your willingness to do that.

We obviously can just state the point that this will be in the report language and refer to the existing law. Or if the gentleman from New York would accept a substitute to his amendment that indicates that the report language would include such caveat or such clarification, we would certainly have on record in this Committee that we have confirmed that we do not want the salaries and expenses to be utilized.

But I would say to the Chairman and say to my colleagues, it has been so difficult moving this legislation, that if we could have that clarification—I am equally sensitive to violating anyone's salary or benefits, and I believe if we can do it in a manner that ensures that this important piece of legislation moves, we could do so.

So I offer a substitute to Mr. Nadler's to focus on including such language in the report language. And I yield back to the Chairman.

Chairman SENSENBRENNER. Well—

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. I yield to the gentleman from New York.

Mr. NADLER. Thank you. Two things.

First of all, Mr. Chairman, what is not covered in the current bill or by any other law which would directly affect and does directly affect employees' salaries and jobs are RIFs, reductions in force. If an agency loses money, they may have to cut staff.

Now, that is—that is included in the amendment because any part of the appropriation that goes for salaries and expenses of employees would preclude a RIF. So that's—that's a very substantive difference and what really worries me.

My second question, sir, is I don't understand why adoption of this amendment would necessitate referral to another committee if the bill doesn't have to go to that committee in any event.

Chairman SENSENBRENNER. If the gentleman will yield further, if you look at the reference clause of the bill, it is in the jurisdiction of Government Reform and Oversight, and we've been negotiating with that committee to get them to waive jurisdiction so we could bring the bill up—up on the floor.

Now, you know, the thing is that we're not talking about a huge amount of money out of agency budgets. And I've got some figures

here that indicate that during fiscal year 2000 there were 3 million plus payments. There was one for a million point seven in Justice and two in the State Department for one a little bit more—two for a little bit more than a million. There were 23 settlements of 300,000 plus, and there was an analysis of the data that indicates that there were approximately 24 settlements of 100,000 to 299,000 dollars. We're talking about agencies that have billions and billions of dollars appropriation, and, you know, to think that if they—that these judgments, if they have to pay for them out of their own appropriation would end up decimating the agency has simply been not borne out in fact. But even if the history was to that extent, having it come out of their own budget rather than the slush fund over in the Justice Department would act as a deterrent for illegal behavior, as it has in the Postal Service, where they've had to do this for the last 30 years out of their own budget.

Mr. NADLER. Mr. Chairman, reclaiming—reclaiming my time, in asking this question—in other words, what you're saying, as I understand it, is that for some reason you think that you can negotiate with the Government Reform Committee to give up their jurisdiction as long as we don't put in language protecting employees, but that the Government Reform leadership or maybe the Republican leadership of the House or somebody would be so opposed to making explicit the protection of employees' salaries that then they wouldn't give up jurisdiction? I don't understand that. But let—

Chairman SENSENBRENNER. Well, if the—

Mr. NADLER. Let me suggest one other thing.

Chairman SENSENBRENNER. If the gentleman would yield further—

Mr. NADLER. Not just yet. I'll yield in a moment because I want to add one thing. I would pull back the amendment—I would pull back the amendment, Mr. Chairman, if—I think the gentlelady from—from Texas made a good point about report language, if you would agree to ask—to include in report language that the bill does not authorize and—as a result of these—of anything it does, a reduction in force caused by any of these judgments. Then we would have real protection for the employees.

Chairman SENSENBRENNER. If the gentleman would yield?

Mr. NADLER. I will yield.

Chairman SENSENBRENNER. I'll be happy to put that in the Committee report because it's not the intention that people be RIF'd.

Mr. NADLER. In that case, I thank the Chairman and I withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Ms. JACKSON LEE. I thank the gentleman.

Chairman SENSENBRENNER. Hearing none, the question is on the amendment in the nature of a substitute. Those in favor will say aye. Opposed, no. The ayes appear to have it. The ayes have it.

The question now occurs on the motion to report the bill H.R. 169, favorably, as amended by the amendment in the nature of a substitute. The Chair notes the presence of a reporting quorum. Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the bill is favorably reported.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. And pursuant to the rule, all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting supplemental or minority views.

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