Public Law 104–331
104th Congress

An Act

To make certain laws applicable to the Executive Office of the President, and for other purposes.

Oct. 26, 1996
[H.R. 3452]

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

Presidential and Executive Office Accountability Act.
3 USC 401 note.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Presidential and Executive Office Accountability Act".

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

Sec. 1. Short title and table of contents.
Sec. 2. Extension of certain rights and protections to presidential offices.
Sec. 3. Amendments to title 28, United States Code.
Sec. 4. Applicability of future employment laws.
Sec. 5. Repeal of section 303 of the Government Employee Rights Act of 1991.

SEC. 2. EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES.

(a) IN GENERAL.—Title 3, United States Code, is amended by adding at the end the following:

"CHAPTER 5—EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES

"SUBCHAPTER I—GENERAL PROVISIONS

"Sec.
"401. Definitions.
"402. Application of laws.

"SUBCHAPTER II—EXTENSION OF RIGHTS AND PROTECTIONS

"PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

"411. Rights and protections under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990.
"412. Rights and protections under the Family and Medical Leave Act of 1993.
"413. Rights and protections under the Fair Labor Standards Act of 1938.
"414. Rights and protections under the Employee Polygraph Protection Act of 1988.
"415. Rights and protections under the Worker Adjustment and Retraining Notification Act.
"416. Rights and protections relating to veterans' employment and reemployment.
"417. Prohibition of intimidation or reprisal.

"PART B—PUBLIC ACCESS PROVISIONS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990

"421. Rights and protections under the Americans With Disabilities Act of 1990.

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"PART C—OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

"425. Rights and protections under the Occupational Safety and Health Act of 1970; procedures for remedy of violations.

"PART D—LABOR-MANAGEMENT RELATIONS

"431. Application of chapter 71 of title 5, relating to Federal service labor-management relations; procedures for remedy of violations.

"PART E—GENERAL

"435. Generally applicable remedies and limitations.

"SUBCHAPTER III—ADMINISTRATIVE AND JUDICIAL DISPUTE RESOLUTION PROCEDURES

"451. Procedure for consideration of alleged violations.
"452. Counseling and mediation.
"453. Election of proceeding.
"454. Appropriate agencies.
"455. Effect of failure to issue regulations.
"456. Confidentiality.

"SUBCHAPTER IV—EFFECTIVE DATE

"471. Effective date.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 401. Definitions.

"(a) IN GENERAL.—Except as otherwise specifically provided in this chapter, as used in this chapter:

"(1) BOARD.—The term 'Board' means the Merit Systems Protection Board under chapter 12 of title 5.

"(2) COVERED EMPLOYEE.—The term 'covered employee' means any employee of an employing office.

"(3) EMPLOYEE.—The term 'employee' includes an applicant for employment and a former employee.

"(4) EMPLOYING OFFICE.—The term 'employing office' means—

"(A) each office, agency, or other component of the Executive Office of the President;

"(B) the Executive Residence at the White House; and

"(C) the official residence (temporary or otherwise) of the Vice President.

"(b) DEFINITIONS RELATING TO CERTAIN MATTERS.—For purposes of applying this chapter with respect to any practice or other matter—

"(1) to which section 411 relates, the terms 'employing office' and 'covered employee' shall each be considered to have the meaning given to the term by such section;

"(2) to which section 412 relates, the term 'covered employee' means a covered employee described in section 412(a)(2)(B);

"(3) to which section 413 relates, the term 'covered employee' excludes interns and volunteers, as described in section 413(a)(2); and

"(4) to which section 416 relates, the term 'covered employee' means a covered employee described in section 416(a)(2).

"§ 402. Application of laws

"The following laws shall apply, as prescribed by this chapter, to all employing offices (including employing offices within the meaning of section 411, to the extent prescribed therein):

"(1) The Fair Labor Standards Act of 1938.

"(2) Title VII of the Civil Rights Act of 1964.

"(3) The Americans with Disabilities Act of 1990.

"(4) The Age Discrimination in Employment Act of 1967.

"(5) The Family and Medical Leave Act of 1993.

"(6) The Occupational Safety and Health Act of 1970.

"(7) Chapter 71 (relating to Federal service labor-management relations) of title 5.

"(8) The Employee Polygraph Protection Act of 1988.

"(9) The Worker Adjustment and Retraining Notification Act.

"(10) The Rehabilitation Act of 1973.

"(11) Chapter 43 (relating to veterans' employment and reemployment) of title 38.

"SUBCHAPTER II—EXTENSION OF RIGHTS AND PROTECTIONS

"PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

"§ 411. Rights and protections under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and title I of the Americans with Disabilities Act of 1990

"(a) DISCRIMINATORY PRACTICES PROHIBITED.—All personnel actions affecting covered employees shall be made free from any discrimination based on—

"(1) race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964;

"(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967; or

"(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 and sections 102 through 104 of the Americans with Disabilities Act of 1990.

"(b) REMEDY.—

"(1) CIVIL RIGHTS.—The remedy for a violation of subsection (a)(1) shall be—

"(A) such damages as would be appropriate if awarded under section 706(g) of the Civil Rights Act of 1964; and

"(B) such compensatory damages as would be appropriate if awarded under section 1977 of the Revised Statutes, or as would be appropriate if awarded under sections 1977A(a)(1), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes.

"(2) AGE DISCRIMINATION.—The remedy for a violation of subsection (a)(2) shall be—

"(A) such damages as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967; and

"(B) such liquidated damages as would be appropriate if awarded under section 7(b) of such Act.

"In addition, the waiver provisions of section 7(f) of such Act shall apply to covered employees.

"(3) DISABILITIES DISCRIMINATION.—The remedy for a violation of subsection (a)(3) shall be—

"(A) such damages as would be appropriate if awarded under section 505(a)(1) of the Rehabilitation Act of 1973 or section 107(a) of the Americans with Disabilities Act of 1990; and

"(B) such compensatory damages as would be appropriate if awarded under sections 1977A(a)(2), 1977A(a)(3), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes.

"(c) DEFINITIONS.—Except as otherwise specifically provided in this section, as used in this section:

"(1) COVERED EMPLOYEE.—The term 'covered employee' means any employee of a unit of the executive branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the executive branch, who is not otherwise entitled to bring an action under any of the statutes referred to in subsection (a), but does not include any individual—

"(A) whose appointment is made by and with the advice and consent of the Senate;

"(B) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act; or

"(C) who is a member of the uniformed services.

"(2) EMPLOYING OFFICE.—The term 'employing office', with respect to a covered employee, means the office, agency, or other entity in which the covered employee is employed (or sought employment or was employed in the case of an applicant or former employee, respectively).

"(d) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement paragraphs (1) and (3) of subsection (a) and paragraphs (1) and (3) of subsection (b).

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the appropriate officer of an executive agency to implement the statutory provisions referred to in paragraphs (1) and (3) of subsection (a) and paragraphs (1) and (3) of subsection (b)—

"(A) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

"(B) except that the President or designee may, at the discretion of the President or designee, issue regulations to implement a provision of section 717 of the Civil Rights Act of 1964 or section 501 of the Rehabilitation Act of 1973 that applies to employees in the executive branch of the Federal Government in lieu of an analogous statutory provision referred to in paragraph (1) or (3) of subsection (a) or paragraph (1) or (3) of subsection (b), if the issuance of such regulations—

"(i) would be equally effective for the implementation of the rights and protections under this section; and

"(ii) would promote uniformity in the application of Federal law to employees in the executive branch of the Federal Government.

"(e) APPLICABILITY.—Subsections (a) through (c), and section 417 (to the extent that it relates to any matter under this section), shall apply with respect to violations occurring on or after the effective date of this chapter.

"(f) EFFECTIVE DATE.—This section shall take effect on October 1, 1997.

"§ 412. Rights and protections under the Family and Medical Leave Act of 1993

"(a) FAMILY AND MEDICAL LEAVE RIGHTS AND PROTECTIONS PROVIDED.—

"(1) IN GENERAL.—The rights and protections established by sections 101 through 105 of the Family and Medical Leave Act of 1993 shall apply to covered employees.

"(2) DEFINITIONS.—For purposes of the application described in paragraph (1)—

"(A) the term 'employer' as used in the Family and Medical Leave Act of 1993 means any employing office; and

"(B) the term 'eligible employee' as used in the Family and Medical Leave Act of 1993 means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such remedy, including liquidated damages, as would be appropriate if awarded under paragraph (1) of section 107(a) of the Family and Medical Leave Act of 1993.

"(c) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b)—

"(A) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

"(B) except that the President or designee may, at the discretion of the President or designee, issue regulations to implement a provision of subchapter V of chapter 63 of title 5, United States Code, that applies to employees in the executive branch of the Federal Government in lieu of an analogous statutory provision referred to in subsection (a) or (b), if the issuance of such regulations—

"(i) would be equally effective for the implementation of the rights and protections under this section; and

"(ii) would promote uniformity in the application of Federal law to employees in the executive branch of the Federal Government.

"(d) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (c); or

"(2) October 1, 1998.

"§ 413. Rights and protections under the Fair Labor Standards Act of 1938

"(a) FAIR LABOR STANDARDS.—

"(1) IN GENERAL.—The rights and protections established by subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 shall apply to covered employees.

"(2) INTERNS AND VOLUNTEERS.—For the purposes of this section, the term 'covered employee' does not include an intern or a volunteer as defined in regulations under subsection (c).

"(3) COMPENSATORY TIME.—Except as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938.

"(c) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—Except as provided in paragraph (3), the regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

"(3) IRREGULAR WORK SCHEDULES.—The President or designee shall issue regulations for covered employees whose work schedules directly depend on the schedule of the President or the Vice President that shall be comparable to the provisions in the Fair Labor Standards Act of 1938 that apply to employees who have irregular work schedules.

"(d) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (c); or

"(2) October 1, 1998.

"§ 414. Rights and protections under the Employee Polygraph Protection Act of 1988

"(a) POLYGRAPH PRACTICES PROHIBITED.—No employing office may require a covered employee to take a lie detector test where such a test would be prohibited if required by an employer under paragraph (1), (2), or (3) of section 3 of the Employee Polygraph

Protection Act of 1988. In addition, the waiver provisions of section 6(d) of such Act shall apply to covered employees.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under section 6(c)(1) of the Employee Polygraph Protection Act of 1988.

"(c) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

"(d) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (c); or

"(2) October 1, 1998.

"§ 415. Rights and protections under the Worker Adjustment and Retraining Notification Act

"(a) WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no employing office shall be closed or mass layoff ordered within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees.

"(2) EXCEPTION.—

"(A) IN GENERAL.—In the event that a President (hereinafter in this paragraph referred to as the 'previous President') is not elected to a successive term in office as a result of the election of a new President—

"(i) no notice or waiting period shall be required under paragraph (1) with respect to the separation of any individual described in subparagraph (B), if such separation occurs pursuant to a closure or mass layoff ordered after the term of the new President commences; and

"(ii) if any individual is separated from service, or begins a period of leave under the Family and Medical Leave Act of 1993, before such term commences, nothing in this chapter shall require reinstatement or restoration to employment of the individual after such term commences.

"(B) DESCRIPTION OF INDIVIDUALS.—An individual described in this subparagraph is any covered employee serving pursuant to an appointment made during—

"(i) the term of office of the previous President; or

"(ii) any term, earlier than the term referred to in clause (i), during which such previous President served as President or Vice President.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under paragraphs (1), (2), and (4) of section 5(a) of the Worker Adjustment and Retraining Notification Act.

"(c) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

"(d) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (c); or

"(2) October 1, 1998.

"§ 416. Rights and protections relating to veterans' employment and reemployment

"(a) EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES.—

"(1) IN GENERAL.—It shall be unlawful for an employing office to—

"(A) discriminate, within the meaning of subsections (a) and (b) of section 4311 of title 38, against an eligible employee;

"(B) deny to an eligible employee reemployment rights within the meaning of sections 4312 and 4313 of title 38; or

"(C) deny to an eligible employee benefits within the meaning of sections 4316, 4317, and 4318 of title 38.

"(2) DEFINITION.—For purposes of this section, the term 'eligible employee' means a covered employee performing service in the uniformed services, within the meaning of section 4303(13) of title 38, whose service has not been terminated upon the occurrence of any of the events enumerated in section 4304 of such title.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under paragraphs (1) and (2)(A) of section 4323(c) of title 38.

"(c) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b)—

"(A) except to the extent that the President or designee may determine, for good cause shown and stated together

with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

"(B) except that the President or designee may, at the discretion of the President or designee, issue regulations to implement a provision of section 4314 or 4324 of title 38, United States Code, that applies to employees in the executive branch of the Federal Government in lieu of an analogous statutory provision referred to in subsection (a) or (b), if the issuance of such regulations—

"(i) would be equally effective for the implementation of the rights and protections under this section; and

"(ii) would promote uniformity in the application of Federal law to employees in the executive branch of the Federal Government.

"(d) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (c); or

"(2) October 1, 1998.

"§ 417. Prohibition of intimidation or reprisal

"(a) IN GENERAL.—It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this chapter.

"(b) REMEDY.—A violation of subsection (a) may be remedied by any legal remedy available to redress the practice opposed by the covered employee or other violation of law as to which the covered employee initiated proceedings, made a charge, or engaged in other conduct protected under subsection (a).

"PART B—PUBLIC ACCESS PROVISIONS UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990

"§ 421. Rights and protections under the Americans with Disabilities Act of 1990

"(a) RIGHTS AND PROTECTIONS.—The rights and protections against discrimination in the provision of public services and accommodations established by sections 201, 202, and 204, and sections 302, 303, and 309, of the Americans with Disabilities Act of 1990 shall apply, to the extent that public services, programs, or activities are provided, with respect to the White House and its appurtenant grounds and gardens, the Old Executive Office Building, the New Executive Office Buildings, and any other facility to the extent that offices are provided for employees of the Executive Office of the President.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such remedy as would be appropriate if awarded under section 203 or 308 of the Americans with Disabilities Act of 1990, as the case may be, except that, with respect to any claim of employment discrimination, the exclusive remedy shall be under

section 411 of this title. A remedy under the preceding sentence shall be enforced in accordance with applicable provisions of such section 203 or 308, as the case may be.

"(c) DEFINITION.—For purposes of the application under this section of the Americans with Disabilities Act of 1990, the term 'public entity' as used in such Act, means, to the extent that public services, programs, or activities are provided, the White House and its appurtenant grounds and gardens, the Old Executive Office Building, the New Executive Office Buildings, and any other facility to the extent that offices are provided for employees of the Executive Office of the President.

"(d) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the appropriate officer of an executive agency to implement the statutory provisions referred to in subsections (a) and (b)—

"(A) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

"(B) except that the President or designee may, at the discretion of the President or designee, issue regulations to implement a provision of section 1, 2, 3, or 6 of the Act entitled 'An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped', approved August 12, 1968 (commonly known as the 'Architectural Barriers Act of 1968') or section 501 of the Rehabilitation Act of 1973 that applies to agencies of the executive branch of the Federal Government in lieu of an analogous statutory provision referred to in subsection (a) or (b), if the issuance of such regulations—

"(i) would be equally effective for the implementation of the rights and protections under this section; and

"(ii) would promote uniformity in the application of Federal law to agencies of the executive branch of the Federal Government.

"(e) EFFECTIVE DATE.—Subsections (a), (b), and (c) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (d); or

"(2) October 1, 1998.

"PART C—OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

"§ 425. Rights and protections under the Occupational Safety and Health Act of 1970; procedures for remedy of violations

"(a) OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS.—

"(1) IN GENERAL.—Each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970.

"(2) DEFINITIONS.—For purposes of the application under this section of the Occupational Safety and Health Act of 1970—

"(A) the term 'employer' as used in such Act means an employing office; and

"(B) the term 'employee' as used in such Act means a covered employee.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be an order to correct the violation, including such order as would be appropriate if issued under section 13(a) of the Occupational Safety and Health Act of 1970.

"(c) PROCEDURES.—

"(1) REQUESTS FOR INSPECTIONS.—Upon written request of any employing office or covered employee, the Secretary of Labor shall have the authority to inspect and investigate places of employment under the jurisdiction of employing offices in accordance with subsections (a), (d), (e), and (f) of section 8 of the Occupational Safety and Health Act of 1970.

"(2) CITATIONS, NOTICES, AND NOTIFICATIONS.—The Secretary of Labor shall have the authority, in accordance with sections 9 and 10 of the Occupational Safety and Health Act of 1970, to issue—

"(A) a citation or notice to any employing office responsible for correcting a violation of subsection (a); or

"(B) a notification to any employing office that the Secretary of Labor believes has failed to correct a violation for which a citation has been issued within the period permitted for its correction.

"(3) HEARINGS AND REVIEW.—If after issuing a citation or notification, the Secretary of Labor determines that a violation has not been corrected—

"(A) the citation and notification shall be deemed a final order (within the meaning of section 10(b) of the Occupational Safety and Health Act of 1970) if the employer fails to notify the Secretary of Labor within 15 days (excluding Saturdays, Sundays, and Federal holidays) after receipt of the notice that the employer intends to contest the citation or notification; or

"(B) opportunity for a hearing before the Occupational Safety and Health Review Commission shall be afforded in accordance with section 10(c) of the Occupational Safety and Health Act of 1970, if the employer gives timely notice to the Secretary that he intends to contest the citation or notification.

"(4) VARIANCE PROCEDURES.—An employing office may request from the Secretary of Labor an order granting a variance from a standard made applicable by this section, in accordance with sections 6(b)(6) and 6(d) of the Occupational Safety and Health Act of 1970.

"(5) JUDICIAL REVIEW.—Any person or employing office aggrieved by a final decision of the Occupational Safety and Health Review Commission under paragraph (3) or the Secretary of Labor under paragraph (4) may file a petition for review with the United States Court of Appeals for the Federal Circuit under section 1296 of title 28.

"(6) COMPLIANCE DATE.—If new appropriated funds are necessary to correct a violation of subsection (a) for which a citation is issued, or to comply with an order requiring

correction of such a violation, correction or compliance shall take place as soon as possible, but not later than the end of the fiscal year following the fiscal year in which the citation is issued or the order requiring correction becomes final and not subject to further review.

"(d) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b)—

"(A) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

"(B) except that the President or designee may, at the discretion of the President or designee, issue regulations to implement a provision of section 19 of the Occupational Safety and Health Act of 1970 that applies to agencies or employees of the executive branch of the Federal Government in lieu of an analogous statutory provision referred to in subsection (a) or (b), if the issuance of such regulations—

"(i) would be equally effective for the implementation of the rights and protections under this section; and

"(ii) would promote uniformity in the application of Federal law to employees in the executive branch of the Federal Government.

"(3) EMPLOYING OFFICE RESPONSIBLE FOR CORRECTION.—The regulations issued under paragraph (1) shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation.

"(e) EFFECTIVE DATE.—Subsections (a) through (c) shall take effect on the earlier of—

"(1) the effective date of regulations issued under subsection (d); or

"(2) October 1, 1998.

"PART D—LABOR-MANAGEMENT RELATIONS

"§ 431. Application of chapter 71 of title 5, relating to Federal service labor-management relations; procedures for remedy of violations

"(a) LABOR-MANAGEMENT RIGHTS.—Subject to subsection (d), chapter 71 of title 5 shall apply to employing offices and to covered employees and representatives of those employees, except that covered employees shall not have a right to reinstatement pursuant to section 7118(a)(7)(C) or 7123 of title 5.

"(b) DEFINITION.—For purposes of the application under this section of chapter 71 of title 5, the term 'agency' as used in such chapter means an employing office.

"(c) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The Federal Labor Relations Authority shall issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—Except as provided in subsection (d), the regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Authority to implement the statutory provisions referred to in subsection (a), except—

"(A) to the extent the Authority may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; or

"(B) as the Authority may determine that a modification of such regulations is necessary to avoid a conflict of interest or appearance of a conflict of interest.

"(d) SPECIFIC REGULATIONS REGARDING APPLICATIONS TO CERTAIN EMPLOYING OFFICES.—

"(1) REGULATIONS REQUIRED.—The Authority shall issue regulations on the manner and the extent to which the requirements and exemptions of chapter 71 of title 5 should apply to covered employees who are employed in the offices listed in paragraph (2). The regulations shall, to the greatest extent practicable, be consistent with the provisions and purposes of chapter 71 of title 5 and of this chapter, and shall be the same as the substantive regulations issued by the Authority under such chapter, except—

"(A) to the extent the Authority may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

"(B) that the Authority shall exclude from coverage under this section any covered employees who are employed in offices listed in paragraph (2) if the Authority determines that such exclusion is required because of—

"(i) a conflict of interest or appearance of a conflict of interest; or

"(ii) the President's or Vice President's constitutional responsibilities.

"(2) OFFICES REFERRED TO.—The offices referred to in paragraph (1) include—

"(A) the White House Office;

"(B) the Executive Residence at the White House;

"(C) the Office of the Vice President;

"(D) the Office of Policy Development;

"(E) the Council of Economic Advisers;

"(F) the National Security Council;

"(G) the Office of Management and Budget; and

"(H) the Office of National Drug Control Policy.

"(e) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall take effect on the earlier of—

"(A) the effective date of regulations issued under subsection (c); or

"(B) October 1, 1998.

"(2) CERTAIN EMPLOYING OFFICES.—Subsections (a) and (b) shall take effect, with respect to employing offices, and

employees of employing offices, referred to in subsection (d)(2), on the earlier of—

"(A) the effective date of regulations issued under subsection (d); or

"(B) October 1, 1998.

"PART E—GENERAL

"§ 435. Generally applicable remedies and limitations

"(a) ATTORNEY'S FEES.—If a covered employee, with respect to any claim under this chapter, or a qualified person with a disability, with respect to any claim under section 421, is a prevailing party in any proceeding under section 453(1), the administrative agency may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

"(b) INTEREST.—In any proceeding under section 453(1), the same interest to compensate for delay in payment shall be made available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

"(c) CIVIL PENALTIES AND PUNITIVE DAMAGES.—Except as otherwise provided in this chapter, no civil penalty or punitive damages may be awarded with respect to any claim under this chapter.

"(d) EXCLUSIVE PROCEDURE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no person may commence an administrative or judicial proceeding to seek a remedy for the rights and protections afforded by this chapter except as provided in this chapter and in sections 1296 and 1346(g) and chapter 179 of title 28.

"(2) VETERANS.—A covered employee under section 416 may also utilize any provisions of chapter 43 of title 38 that are applicable to that employee.

"(e) SCOPE OF REMEDY.—Only a covered employee who has undertaken and completed the procedures described in section 452 may be granted a remedy under part A of this subchapter.

"(f) CONSTRUCTION.—

"(1) DEFINITIONS AND EXEMPTIONS.—Except where inconsistent with definitions and exemptions provided in this chapter, the definitions and exemptions in the laws made applicable by this chapter shall apply under this chapter.

"(2) SIZE LIMITATIONS.—Notwithstanding paragraph (1), provisions in the laws made applicable under this chapter (other than paragraphs (2) and (3) of section 2(a) of the Worker Adjustment and Retraining Notification Act) determining coverage based on size, whether expressed in terms of numbers of employees, amount of business transacted, or other measure, shall not apply in determining coverage under this chapter.

"(g) POLITICAL AFFILIATION.—It shall not be a violation of any provision of this chapter to consider, or make any employment decision based on, the party affiliation, or political compatibility with the employing office, of an employee who is a covered employee.

"SUBCHAPTER III—ADMINISTRATIVE AND JUDICIAL DISPUTE RESOLUTION PROCEDURES

"§ 451. Procedure for consideration of alleged violations

"The procedure for consideration of alleged violations of part A of subchapter II consists of—

"(1) counseling and mediation as provided in section 452; and

"(2) election, as provided in section 453, of either—

"(A) an administrative proceeding as provided in section 453(1) and judicial review as provided in section 1296 of title 28; or

"(B) a civil action in a district court of the United States as provided in section 1346(g) of title 28.

"§ 452. Counseling and mediation

"(a) IN GENERAL.—The President, or the designee of the President, shall by regulation establish procedures substantially similar to those under sections 402 and 403 of the Congressional Accountability Act of 1995 for the counseling and mediation of alleged violations of a law made applicable under part A of subchapter II. Regulations.

"(b) EXHAUSTION REQUIREMENT.—A covered employee who has not exhausted counseling and mediation under subsection (a) shall be ineligible to make any election under section 453 or otherwise pursue any further form of relief under this subchapter.

"§ 453. Election of proceeding

"Not later than 90 days after a covered employee receives notice of the end of the period of mediation, but no sooner than 30 days after receipt of such notification, such covered employee may either—

"(1) file a complaint with the appropriate agency, as determined under section 454; or

"(2) file a civil action under section 1346(g) of title 28.

"§ 454. Appropriate agencies

"(a) IN GENERAL.—Except as provided in subsection (b), the appropriate agency under this section with respect to an alleged violation of part A of subchapter II shall be the Board. The complaint in an action involving such an alleged violation shall be processed under the procedures specified by the President, or the designee of the President, in such regulations as the President or designee may issue.

"(b) EXCEPTIONS.—

"(1) DISCRIMINATION.—For purposes of any action arising under section 411 (or any action alleging intimidation, reprisal, or discrimination under section 417 relating to any practice made unlawful under section 411), the appropriate agency shall be the Equal Employment Opportunity Commission, and the complaint in any such action shall be processed under the same administrative procedures as any such complaint filed by any employee in the executive branch of the Federal Government (other than a covered employee).

"(2) MIXED CASES.—In the case of any covered employee (within the meaning of section 411) who has been affected by an action which an employee of an executive agency may

appeal to the Board and who alleges that a basis for the action was discrimination prohibited by section 411 (or any action alleging intimidation, reprisal, or discrimination under section 417 relating to any practice made unlawful under section 411), the initial appropriate agency shall be the Board, and such matter shall thereafter be processed in accordance with section 7702(a)–(d) (disregarding paragraph (2) of such subsection (a)) and (f) of title 5.

"(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law (including any provision of law referenced in paragraph (1) or (2)), judicial review of any administrative decision under this subsection shall be by appeal to the United States Court of Appeals for the Federal Circuit under section 1296 of title 28.

"§ 455. Effect of failure to issue regulations

"In any proceeding under section 453(1), if the President, or the designee of the President, has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the administrative agency shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

"§ 456. Confidentiality

"(a) COUNSELING.—All counseling under section 452 shall be strictly confidential, except that, with the consent of the covered employee, the employing office may be notified.

"(b) MEDIATION.—All mediation under section 452 shall be strictly confidential.

"SUBCHAPTER IV—EFFECTIVE DATE

"§ 471. Effective date

"(a) IN GENERAL.—Except as otherwise provided in this chapter, this chapter shall take effect on October 1, 1997.

"(b) REGULATIONS.—Sections 411(d), 412(c), 413(c), 414(c), 415(c), 416(c), 421(d), 425(d), 431(c), 431(d), 452(a), and 454(a) shall take effect on the date of enactment of this Act.".

3 USC 401 note.

(b) REGULATIONS.—Appropriate measures shall be taken to ensure that—

(1) any regulations required to implement section 411 of title 3, United States Code, shall be in effect by October 1, 1997; and

(2) any other regulations needed to implement chapter 5 of title 3, United States Code, shall be in effect as soon as practicable, but not later than October 1, 1998.

(c) TECHNICAL AMENDMENT.—The table of chapters for title 3, United States Code, is amended by adding at the end the following:

"5. Extension of Certain Rights and Protections to Presidential Offices ..... 401".

SEC. 3. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIRCUIT COURT JURISDICTION.—

(1) IN GENERAL.—Chapter 83 of title 28, United States Code, is amended by adding at the end the following:

"§ 1296. Review of certain agency actions

"(a) JURISDICTION.—Subject to the provisions of chapter 179, the United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under chapter 5 of title 3 of—

"(1) an appropriate agency (as determined under section 454 of title 3);

"(2) the Federal Labor Relations Authority made under part D of subchapter II of chapter 5 of title 3, notwithstanding section 7123 of title 5; or

"(3) the Secretary of Labor or the Occupational Safety and Health Review Commission, made under part C of subchapter II of chapter 5 of title 3.

"(b) FILING OF PETITION.—Any petition for review under this section must be filed within 30 days after the date the petitioner receives notice of the final decision.".

(2) TABLE OF SECTIONS.—The table of sections for chapter 83 of title 28, United States Code, is amended by adding at the end the following:

"1296. Review of certain agency actions.".

(b) DISTRICT COURT ACTIONS.—

(1) JURISDICTION.—Section 1346 of title 28, United States Code, is amended by adding at the end the following:

"(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.".

(2) VENUE.—

(A) IN GENERAL.—Chapter 37 of title 28, United States Code, relating to venue, is amended by adding at the end the following:

"§ 1413. Venue of cases under chapter 5 of title 3

"Notwithstanding the preceding provisions of this chapter, a civil action under section 1346(g) may be brought in the United States district court for the district in which the employee is employed or in the United States District Court for the District of Columbia.".

(B) TABLE OF SECTIONS.—The table of sections for chapter 37 of title 28, United States Code, relating to venue, is amended by adding at the end the following:

"1413. Venue of cases under chapter 5 of title 3.".

(3) JURY TRIALS.—Section 2402 of title 28, United States Code (relating to jury trials), is amended by striking "Any action" and inserting "Subject to chapter 179 of this title, any action".

(c) PROCEDURE.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

"Chapter 179—Judicial Review of Certain Actions by Presidential Offices

"Sec.
"3901. Civil actions.
"3902. Judicial review of regulations.
"3903. Effect of failure to issue regulations.
"3904. Expedited review of certain appeals.

"3905. Attorney's fees and interest.
"3906. Payments.
"3907. Other judicial review prohibited.
"3908. Definitions.

"§ 3901. Civil actions

"(a) PARTIES.—In an action under section 1346(g) of this title, the defendant shall be the employing office alleged to have committed the violation involved.

"(b) JURY TRIAL.—In an action described in subsection (a), any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made applicable by chapter 5 of title 3. In any case in which a violation of section 411 of title 3 is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 411(b)(1) or 411(b)(3) of title 3.

"§ 3902. Judicial review of regulations

"In any proceeding under section 1296 or 1346(g) of this title in which the application of a regulation issued under chapter 5 of title 3 is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued. Except as provided in this section, the validity of regulations issued under this chapter is not subject to judicial review.

"§ 3903. Effect of failure to issue regulations

"In any proceeding under section 1296 or 1346(g) of this title, if the President, the designee of the President, or the Federal Labor Relations Authority has not issued a regulation on a matter for which chapter 5 of title 3 requires a regulation to be issued, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

"§ 3904. Expedited review of certain appeals

"(a) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order of a court upon the constitutionality of any provision of chapter 5 of title 3.

"(b) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in subsection (a), advance the appeal on the docket, and expedite the appeal to the greatest extent possible.

"§ 3905. Attorney's fees and interest

"(a) ATTORNEY'S FEES.—If a covered employee, with respect to any claim under chapter 5 of title 3, or a qualified person with a disability, with respect to any claim under section 421 of title 3, is a prevailing party in any proceeding under section 1296 or section 1346(g), the court may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

"(b) INTEREST.—In any proceeding under section 1296 or section 1346(g), the same interest to compensate for delay in payment shall be made available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

"(c) PUNITIVE DAMAGES.—Except as otherwise provided in chapter 5 of title 3, no punitive damages may be awarded with respect to any claim under chapter 5 of title 3.

"§ 3906. Payments

"A judgment, award, or compromise settlement against the United States under this chapter (including any interest and costs) shall be paid—

"(1) under section 1304 of title 31, if it arises out of an action commenced in a district court of the United States (or any appeal therefrom); or

"(2) out of amounts otherwise appropriated or available to the office involved, if it arises out of an appeal from an administrative proceeding under chapter 5 of title 3.

"§ 3907. Other judicial review prohibited

"Except as expressly authorized by this chapter and chapter 5 of title 3, the compliance or noncompliance with the provisions of chapter 5 of title 3, and any action taken pursuant to chapter 5 of title 3, shall not be subject to judicial review.

"§ 3908. Definitions.

"For purposes of applying this chapter, the terms 'employing office' and 'covered employee' have the meanings given those terms in section 401 of title 3.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1997. 28 USC 1296 note.

(e) CONFORMING AMENDMENTS.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"179. Judicial Review of Certain Actions by Presidential Offices ..... 3901".

SEC. 4. APPLICABILITY OF FUTURE EMPLOYMENT LAWS. 3 USC 401 note.

(a) IN GENERAL.—Each provision of Federal law that is made applicable to the legislative branch under section 102 of the Congressional Accountability Act of 1995 (2 U.S.C. 1302), and that is enacted later than 12 months after the date of the enactment of this Act, shall be deemed to apply with respect to "employing offices" and "covered employees" (within the meaning of section 401 of title 3, United States Code, as added by this Act), unless such law specifically provides otherwise and expressly cites this section.

(b) REGULATIONS.—

(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement such provision.

(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) to implement a provision shall be the same as substantive regulations promulgated by the head of the appropriate executive agency to implement the provision, except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective

for the implementation of the rights and protections under the section.

SEC. 5. REPEAL OF SECTION 303 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) IN GENERAL.—Section 303 of the Government Employee Rights Act of 1991 (as redesignated by section 504(a)(3) of the Congressional Accountability Act of 1995) is repealed.

2 USC 1219 note.

2 USC 1219 note.

(b) EFFECTIVE DATE.—This section shall take effect on October 1, 1997.

2 USC 1219 note.

(c) SAVINGS PROVISION.—The repeal under this section shall not affect proceedings under such section 303 in which a complaint was filed before the effective date of this section, and orders shall be issued in such proceedings and appeals shall be taken therefrom as if this section had not been enacted.

Approved October 26, 1996.

LEGISLATIVE HISTORY—H.R. 3452:

HOUSE REPORTS: No. 104–820, Pt. 1 (Comm. on Government Reform and Oversight).

CONGRESSIONAL RECORD, Vol. 142 (1996):
Sept. 24, considered and passed House.
Oct. 3, considered and passed Senate, amended.
Oct. 4, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):
Oct. 26, Presidential statement.