

SEC. 3. *Reassignment of Functions Assigned.* The Secretary of Defense and the Secretary of Homeland Security may reassign the functions assigned to them by this order to civilian officers, within their respective departments, who hold a position for which the President makes an appointment by and with the advice and consent of the Senate, except that the Secretary of Defense and the Secretary of Homeland Security may not reassign the functions assigned by sections 1(b) and 2(b), respectively. The Secretary of Defense may not reassign the function assigned by section 1(c) of this order except to such an officer within the Office of the Secretary of Defense (as defined in section 131(b) of title 10).

SEC. 4. *General Provisions.* (a) This order shall take effect on October 1, 2004.

(b) Nothing in this order shall be construed to limit or otherwise affect the authority of the President as Commander in Chief of the Armed Forces of the United States, or under the Constitution and laws of the United States to nominate or to make or terminate appointments.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

MEMORANDUM ON ASSIGNMENT OF REPORTING FUNCTIONS UNDER THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 48633, as amended by Memorandum of President of the United States, July 1, 2005, 70 F.R. 41341, provided:

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Director of National Intelligence[,] the Attorney General[, and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code:

1. The reporting functions of the President under sections 4026(a)(4)(A), 4026(c)(2), 7104(e)(4)(A), 7202(d) [now 7202(g)], 7204(c)(1)–(2), and 7120 [118 Stat. 3803] of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458, 118 Stat. 3638) (the “Act”) [8 U.S.C. 1777(g), 22 U.S.C. 2656 note, 2751 note, 7555] are hereby assigned to the Secretary of State.

The reporting function under section 7202(d) [now 7202(g)] of the Act [8 U.S.C. 1777(g)] on the Human Smuggling and Trafficking Center shall be coordinated with the Attorney General and the Secretary of Homeland Security.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Secretary of State information the Secretary requests to perform such functions, in the format and on the schedule specified by the Secretary.

2. The reporting function of the President under section 7104(i) of the Act [22 U.S.C. 7536] is hereby assigned to the Secretary of Defense.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Secretary of Defense information the Secretary requests to perform such functions, in the format and on the schedule specified by the Secretary.

3. The reporting functions under sections 1022 and 1094 of the Act [50 U.S.C. 4040–1, 401 note] are hereby assigned to the Director of National Intelligence.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Director of National Intelligence information the Director requests to perform such functions, in the format and on the schedule specified by the Director.

The Secretaries of State and Defense, and the Director of National Intelligence shall perform such functions in a manner consistent with the President’s con-

stitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 302. Scope of delegation of functions

The authority conferred by this chapter shall apply to any function vested in the President by law if such law does not affirmatively prohibit delegation of the performance of such function as herein provided for, or specifically designate the officer or officers to whom it may be delegated. This chapter shall not be deemed to limit or derogate from any existing or inherent right of the President to delegate the performance of functions vested in him by law, and nothing herein shall be deemed to require express authorization in any case in which such an official would be presumed in law to have acted by authority or direction of the President.

(Added Oct. 31, 1951, ch. 655, § 10, 65 Stat. 712.)

SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE

For similar provisions contained in prior law, and saving clause in connection therewith, see note preceding section 301 of this title.

§ 303. Definitions

As used in this chapter, the term “function” embraces any duty, power, responsibility, authority, or discretion vested in the President or other officer concerned, and the terms “perform” and “performance” may be construed to mean “exercise”.

(Added Oct. 31, 1951, ch. 655, § 10, 65 Stat. 712.)

SIMILAR PROVISIONS; REPEAL; SAVING CLAUSE

For similar provisions contained in prior law, and saving clause in connection therewith, see note preceding section 301 of this title.

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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).

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4054.)

REGULATIONS

Section 2(b) of Pub. L. 104-331 provided that: “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.”

APPLICABILITY OF FUTURE EMPLOYMENT LAWS

Section 4 of Pub. L. 104-331 provided that:

“(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 [Oct. 26, 1996], 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.”

§ 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.

<sup>1</sup> So in original. Does not conform to section catchline.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4054.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in par. (1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The Civil Rights Act of 1964, referred to in par. (2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 252, as amended. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

The Americans with Disabilities Act of 1990, referred to in par. (3), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The Age Discrimination in Employment Act of 1967, referred to in par. (4), is Pub. L. 90-202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

The Family and Medical Leave Act of 1993, referred to in par. (5), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, as amended, which enacted sections 60m and 60n of Title 2, The Congress, sections 6381 to 6387 of Title 5, Government Organization and Employees, and chapter 28 (§2601 et seq.) of Title 29, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

The Occupational Safety and Health Act of 1970, referred to in par. (6), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

The Employee Polygraph Protection Act of 1988, referred to in par. (8), is Pub. L. 100-347, June 27, 1988, 102 Stat. 646, as amended, which is classified generally to chapter 22 (§2001 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 29 and Tables.

The Worker Adjustment and Retraining Notification Act, referred to in par. (9), is Pub. L. 100-379, Aug. 4, 1988, 102 Stat. 890, which is classified generally to chapter 23 (§2101 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of Title 29 and Tables.

The Rehabilitation Act of 1973, referred to in par. (10), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

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.

(Added Pub. L. 104–331, §2(a), Oct. 26, 1996, 110 Stat. 4055.)

## REFERENCES IN TEXT

Sections 703, 706, and 717 of the Civil Rights Act of 1964, referred to in subsecs. (a)(1), (b)(1)(A), and (d)(2)(B), are classified to sections 2000e–2, 2000e–5, and 2000e–16, respectively, of Title 42, The Public Health and Welfare.

Sections 7 and 15 of the Age Discrimination in Employment Act of 1967, referred to in subsecs. (a)(1) and (b)(2), are classified to sections 626 and 633a, respectively, of Title 29, Labor.

Sections 501 and 505 of the Rehabilitation Act of 1973, referred to in subsecs. (a)(3), (b)(3)(A), and (d)(2)(B), are classified to sections 791 and 794a, respectively, of Title 29.

Sections 102 to 104 and 107 of the Americans with Disabilities Act of 1990, referred to in subsecs. (a)(3) and (b)(3)(A), are classified to sections 12112 to 12114 and 12117, respectively, of Title 42, The Public Health and Welfare.

Sections 1977 and 1977A of the Revised Statutes, referred to in subsec. (b)(1)(B), (3)(B), are classified to sections 1981 and 1981a, respectively, of Title 42.

Section 3(2) of the Federal Advisory Committee Act, referred to in subsec. (c)(1)(B), is section 3(2) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this chapter, referred to in subsec. (e), is Oct. 1, 1997, unless otherwise provided, see section 471 of this title.

## EFFECTIVE DATE

Subsec. (d) of this section effective Oct. 26, 1996, see section 471(b) of this title.

## REGULATIONS

For provisions requiring that appropriate measures be taken to ensure that any regulations required to implement this section be in effect by Oct. 1, 1997, see section 2(b)(1) of Pub. L. 104–331, set out as a note under section 401 of this title.

### § 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4057.)

#### REFERENCES IN TEXT

The Family and Medical Leave Act of 1993, referred to in subsecs. (a) and (b), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, as amended, which enacted sections 60m and 60n of Title 2, The Congress, sections 6381 to 6387 of Title 5, Government Organization and Employees, and chapter 28 (§2601 et seq.) of Title 29, Labor, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of Title 29. Sections 101 to 105 and 107 of the Act are classified to sections 2611 to 2615 and 2617, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

#### EFFECTIVE DATE

Subsec. (c) of this section effective Oct. 26, 1996, see section 471(b) of this title.

### § 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4058.)

#### REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsecs. (a)(1), (b), and (c)(3), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. Sections 6, 7, 12, and 16 of the Act are classified to sections 206, 207, 212, and 216, respectively, of Title 29. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

#### EFFECTIVE DATE

Subsec. (c) of this section effective Oct. 26, 1996, see section 471(b) of this title.

### § 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4058.)

#### REFERENCES IN TEXT

Sections 3 and 6 of the Employee Polygraph Protection Act of 1988, referred to in subsecs. (a) and (b), are classified to sections 2002 and 2005, respectively, of Title 29, Labor.

#### EFFECTIVE DATE

Subsec. (c) of this section effective Oct. 26, 1996, see section 471(b) of this title.

### § 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4059.)

#### REFERENCES IN TEXT

Sections 3 and 5 of the Worker Adjustment and Retraining Notification Act, referred to in subsecs. (a)(1) and (b), are classified to sections 2102 and 2104, respectively, of Title 29, Labor.

The Family and Medical Leave Act of 1993, referred to in subsec. (a)(2)(A)(ii), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, as amended, which enacted sections 60m and 60n of Title 2, The Congress, sections 6381 to 6387 of Title 5, Government Organization and Employees, and chapter 28 (§2601 et seq.) of Title 29, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

#### EFFECTIVE DATE

Subsec. (c) of this section effective Oct. 26, 1996, see section 471(b) of this title.

### § 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 section 4323(d) 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4060; amended Pub. L. 111-275, title VII, §703(c), Oct. 13, 2010, 124 Stat. 2888.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-275 substituted “under section 4323(d) of title 38” for “under paragraphs (1) and (2)(A) of section 4323(c) of title 38”.

EFFECTIVE DATE

Subsec. (c) of this section effective Oct. 26, 1996, see section 471(b) of this title.

**§ 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).

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4061.)

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 Dwight D. Eisenhower 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 Dwight D. Eisenhower 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4061; amended Pub. L. 106-92, §2, Nov. 9, 1999, 113 Stat. 1309.)

#### REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsecs. (a) to (c), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. Sections 201 to 204, 302, 303, 308, and 309 of the Act are classified to sections 12131 to 12134, 12182, 12183, 12188, and 12189, respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

Sections 1, 2, 3, and 6 of the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, referred to in subsec. (d)(2)(B), are classified to sections 4151 to 4153 and 4156, respectively, of Title 42.

Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (d)(2)(B), is classified to section 791 of Title 29, Labor.

#### AMENDMENTS

1999—Subsecs. (a), (c). Pub. L. 106-92 substituted “Dwight D. Eisenhower Executive Office Building” for “Old Executive Office Building”.

#### EFFECTIVE DATE

Subsec. (d) of this section effective Oct. 26, 1996, see section 471(b) of this title.

### 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 ap-

propriate 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4062.)

#### REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a) to (c)(4) and (d)(2)(B), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. Sections 5, 6, 8 to 10, 13, and 19 of the Act are classified to sections 654, 655, 657 to 659, 662, and 668, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

#### EFFECTIVE DATE

Subsec. (d) of this section effective Oct. 26, 1996, see section 471(b) of this title.

#### 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4064.)

## EFFECTIVE DATE

Subsecs. (c) and (d) of this section effective Oct. 26, 1996, see section 471(b) of this title.

## 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 applica-

ble 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4066.)

## REFERENCES IN TEXT

Sections 706 and 717 of the Civil Rights Act of 1964, referred to in subsecs. (a) and (b), are classified to sections 2000e-5 and 2000e-16, respectively, of Title 42, The Public Health and Welfare.

Section 2 of the Worker Adjustment and Retraining Notification Act, referred to in subsec. (f)(2), is classified to section 2101 of Title 29, Labor.

## 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4067.)

**§ 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.

(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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4067.)

## REFERENCES IN TEXT

Sections 402 and 403 of the Congressional Accountability Act of 1995, referred to in subsec. (a), are classified to sections 1402 and 1403, respectively, of Title 2, The Congress.

## EFFECTIVE DATE

Section effective Oct. 1, 1997, except that subsec. (a) of this section effective Oct. 26, 1996, see section 471 of this title.

**§ 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4067.)

**§ 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4067.)

## EFFECTIVE DATE

Section effective Oct. 1, 1997, except that subsec. (a) of this section effective Oct. 26, 1996, see section 471 of this title.

**§ 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4068.)

**§ 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.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4068.)

## 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.<sup>1</sup>

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4068.)

## REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (b), probably means the date of enactment of Pub. L. 104-331, which enacted this chapter and was approved Oct. 26, 1996.

<sup>1</sup> See References in Text note below.