§ 2000e  DEFINITIONS  

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer; or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.
(g) The term ‘‘commerce’’ means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term ‘‘industry affecting commerce’’ means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry ‘‘affecting commerce’’ within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term ‘‘State’’ includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term ‘‘religion’’ includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

(k) The terms ‘‘because of sex’’ or ‘‘on the basis of sex’’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term ‘‘complaining party’’ means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term ‘‘demonstrates’’ means meets the burdens of production and persuasion.

(n) The term ‘‘respondent’’ means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.


REFERENCES IN TEXT

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, which is classified principally to chapter 11 (§401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 302(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (l), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, which is classified generally to subchapter III (§1311 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–166, §109(a), inserted at end ‘‘With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.’’

Subsecs. (l) to (n). Pub. L. 102–166, §104, added subsecs. (l) to (n).

1986—Subsec. (b), Pub. L. 99–514 substituted ‘‘Internal Revenue Code of 1986’’ for ‘‘Internal Revenue Code of 1954’’, which for purposes of codification was translated as ‘‘title 26’’ thus requiring no change in text.

1978—Subsec. (a), Pub. L. 95–598 substituted ‘‘trustees in cases under title 11’’ for ‘‘trustees in bankruptcy’’.

Subsec. (k), Pub. L. 95–555 added subsec. (k).

1972—Subsec. (a), Pub. L. 92–261, §211, included within ‘‘person’’ governments, governmental agencies, and political subdivisions.

Subsec. (b), Pub. L. 92–261, §2(2), substituted ‘‘fifteen or more employees’’ for ‘‘twenty-five or more employees’’, extended coverage to include State and governments, excepted from coverage any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in section 2102 of title 5, and substituted provisions under which persons having fewer than twenty-five employees during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c), Pub. L. 92–261, §2(3), struck out from term ‘‘employment agency’’ exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e), Pub. L. 92–261, §2(4), substituted provisons which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year.
after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.


1966—Subsec. (b). Pub. L. 89–554 struck out provision which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

**Effective Date of 1991 Amendment**


**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–598 effective Oct. 1, 1978, see section 402(a) of Pub. L. 95–598, set out as Effective Date note preceding section 101 of Title II, Bankruptcy.

**Effective Date of 1978 Amendment; Exceptions to Application**


“(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

“(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act.”

**Effective Date**

Pub. L. 88–352, title VII, §716(a), (b), July 2, 1964, 78 Stat. 266, provided that:

“(a) This title [enacting this section and sections 2000e–1, 2000e–4, 2000e–7 to 2000e–15 of this title, and amending sections 2304 and 2205(a)(4) of former Title 5, Executive Order, the Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

“(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e-2, 2000e-3, 2000e-5, and 2000e-6 of this title] shall become effective immediately [July 2, 1964].”

**Glass Ceiling**

Pub. L. 102–166, title II, Nov. 21, 1991, 105 Stat. 1081–1087, entitled the “Glass Ceiling Act of 1991”, established a Glass Ceiling Commission which was to submit to Congress, no later than 15 months after Nov. 21, 1991, study and recommendations concerning eliminating artificial barriers to advancement of women and minorities in the workplace and increasing opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions in businesses, authorized creation of a National Award for Diversity and Excellence in American Executive Management which was to be awarded annually by the Commission to a qualified business concern which promoted more diverse skilled work force at management and decisionmaking levels in business, and further provided for composition of Commission, powers, staff and consultants, confidentiality of information, appropriations, and termination of Commission and authority to make awards 4 years after Nov. 21, 1991.

**Readjustment of Benefits**

Pub. L. 95–555, §3, Oct. 31, 1978, 92 Stat. 2076, provided that: “Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: Provided, That where the cost of benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: And provided further, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.”

**Executive Order No. 11126**


**Ex. Ord. No. 11246**

Equal Opportunity in Federal Employment


Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

**PART I—Nondiscrimination in Government Employment**


**PART II—Nondiscrimination in Employment by Government Contractors and Subcontractors**

**SUBPART A—DUTIES OF THE SECRETARY OF LABOR**

Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

**SUBPART B—CONTRACTORS’ AGREEMENTS**

Sec. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

“During the performance of this contract, the contractor agrees as follows:”
“(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will also take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.

“(2) The contractor will, in all solicitations or advertisements for employment, notice to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

“(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.

“(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers’ representative of the contractor’s commitments under Section 202 of this Order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

“(5) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

“(6) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, to the extent such information is within the contractor’s possession.

“(7) In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

“(8) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor.

“Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation against a subcontractor or vendor as a result of such litigation, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Sect. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contractor’s agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive Order, but the contractor shall not be required to submit, on behalf of himself or himself and his proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union’s or agency’s practices and policies affecting compliance with the provisions of Section 202 of this Order in any specific contract or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall not certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

Sect. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and (2) for purposes of investigation to ascertain compliance with the provisions of this Order in any specific contract, subcontract, or purchase order.
or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor:

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be instituted to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

(c) The Secretary of Labor shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

(d) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SBC 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SBC 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, unions, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d–3 of this title and this subchapter] or other provision of Federal law.

SBC 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SBC 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor:

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be instituted to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

(c) The Secretary of Labor shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

(d) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.
PART IV—MISCELLANEOUS

SIC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

SIC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the “Plans for Progress,” and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President’s Committee on Equal Employment Opportunity shall cease to have effect and be superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SIC. 404. The General Services Administration shall take appropriate action to revise the standard Govern-
ment contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

Section 4. This Order shall become effective thirty days after the date of this Order.

EX. ORD. NO. 11478. EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

Sec. 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, gender identity, or status as a parent., [sic] and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in this section. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in an effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability, and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and [sic] appropriate to carry out its responsibilities under this Order.

Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

Sec. 6. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

Sec. 7. The Office of Personnel Management shall be authorized to develop guidance on the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent.

Sec. 8. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office [now Government Accountability Office] as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 9. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 1375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Sec. 10. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 (Title 39, Postal Service).

Sec. 11. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.

EXECUTIVE ORDER NO. 12050

EX. ORD. NO. 12067. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19987) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1. IMPLEMENTATION OF REORGANIZATION PLAN
1–101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19987) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1–2. RESPONSIBILITIES OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1–201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the
efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity with regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdiction of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1–202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment opportunity responsibilities.

1–203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1–3. SPECIFIC RESPONSIBILITIES

1–301. To implement its responsibilities under Section 1–2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations, or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statues, Executive orders, regulations, and policies; and develop programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1–302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements and job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1–303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such issuances to the affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1–304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1–305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1–306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1–307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency’s notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.
1–4. ANNUAL REPORT
1–401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide for federal departments and agencies an opportunity to comment on the report prior to formal submission.

1–5. GENERAL PROVISIONS
1–501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1–502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

JIMMY CARTER.

EX. ORD. NO. 12086. CONSOLIDATION OF CONTRACT COMPLIANCE FUNCTIONS FOR EQUAL EMPLOYMENT OPPORTUNITY

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 5101) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1–1. TRANSFER OF FUNCTIONS
1–101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order No. 11246, as amended [set out as a note, supra], are transferred or reassigned to the Secretary of Labor from the following agencies:
   (a) Department of the Treasury.
   (b) Department of Defense.
   (c) Department of the Interior.
   (d) Department of Commerce.
   (e) Department of Health and Human Services.
   (f) Department of Housing and Urban Development.
   (g) Department of Transportation.
   (h) Department of Energy.
   (i) Environmental Protection Agency.
   (j) General Services Administration.
   (k) Small Business Administration.

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1–2. CONFORMING AMENDMENTS TO EXECUTIVE ORDER No. 11246
1–201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, amended, is amended to read:

"SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order."

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
"

1–202. In subsection (c) of Section 204 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1–203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1–204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require."

1–205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor alleging discrimination contrary to the contractual provisions specified in Section 202 of this Order.
"

1–206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1–207. The introductory clause in Section 208(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1–208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, termi-
nated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.”.

1. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute “Secretary of Labor” for “each contracting agency” in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

“(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(3) of this Section.”.

2. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

“SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.”.

“SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.”.

1–211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

“SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of non-compliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.”.

1–212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

“(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order.”.

1–213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions “Secretary of Labor” shall be substituted for “administering department or agency” in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

“SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and such reports as the Secretary may require in the performance of the Secretary’s functions under this Order.”.

“(b) In the event an applicant fails and refuses to comply with the applicant’s undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.”.

“(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.”.

1–214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

“SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.”.

1–3. GENERAL PROVISIONS

1–301. The transfers or reassignments provided by Section 1–1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within sixty days.

1–302. The conforming amendments provided by Section 1–2 of this Order shall take effect on October 8, 1978, except that, with respect to those agencies identified in Section 1–101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1–301 of this Order.

EXECUTIVE ORDER No. 12135

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President’s Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out below.

EX. ORD. No. 12336. TASK FORCE ON LEGAL EQUITY FOR WOMEN


By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.
(2) Department of The Treasury.
(3) Department of Defense.
(4) Department of Justice.
(5) Department of The Interior.
(6) Department of Agriculture.
(7) Department of Commerce.
(8) Department of Labor.
(9) Department of Health and Human Services.
(10) Department of Housing and Urban Development.
(11) Department of Transportation.
(12) Department of Energy.
(13) Department of Education.
(14) Agency for International Development.
(15) Veterans Administration [now Department of Veterans Affairs].
(16) Office of Management and Budget.
(17) International Communication Agency.
(18) Office of Personnel Management.
(19) Environmental Protection Agency.
(20) ACTION [now Corporation for National and Community Service].

(21) Small Business Administration.

(22) Foreign Relations and Intercourse.

(b) Executive Order No. 12135 is revoked.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

§ 2000e-3.

General Provisions

(a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President’s directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or the designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

§ 2000e-4.

Functions

(a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President’s directives.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(d) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(e) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

§ 2000e-5.

General Provisions

(a) Section 1-101(h) of Executive Order No. 12238, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

RONALD REAGAN.

[TThe International Communication Agency was re-designated the United States Information Agency, see section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 281, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22.]

Ex. Ord. No. 13171.

Hispanic Employment in the Federal Government

Ex. Ord. No. 13171, Oct. 12, 2000, 65 F.R. 61251, provided that:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the representation of Hispanics in Federal employment, within merit system principles and consistent with the application of appropriate veterans’ preference criteria, to achieve a Federal workforce drawn from all segments of society, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the executive branch to recruit qualified individuals from appropriate sources in an effort to achieve a workforce drawn from all segments of society. Pursuant to this policy, this Administration shall continue to take steps to ensure that Hispanics remain underrepresented in the Federal workforce: they make up only 6.4 percent of the Federal civilian workforce, roughly half of their total representation in the civilian labor force. This Executive Order, therefore, affirms ongoing policies and recommends additional policies to eliminate the underrepresentation (sic) of Hispanics in the Federal workforce.

Sect. 2. Responsibilities of Executive Departments and Agencies. The head of each executive department and agency (agency) shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment. In its program, each agency shall:

(a) provide a plan for recruiting Hispanics that creates a fully diverse workforce for the agency in the 21st century;

(b) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics, including but not limited to:

(1) broadening the area of consideration to include applicants from all appropriate sources;

(2) ensuring that selection factors are appropriate and achieve the broadest consideration of applicants and do not impose barriers to selection based on nonmerit factors; and

(3) considering the appointment of Hispanic Federal executives to rating, selection, performance review, and executive resources panels and boards;

(c) improve outreach efforts to include organizations outside the Federal Government in order to increase the number of Hispanic candidates in the selection pool for the Senior Executive Service;

(d) promote participation of Hispanic employees in management, leadership, and career development programs;

(e) ensure that performance plans for senior executives, managers, and supervisors include specific language related to significant accomplishments on diversity recruitment and career development and that accountability is predicated on those plans;

(f) establish appropriate agency advisory councils that include Hispanic Employment Program Managers;

(g) implement the goals of the Government-wide Hispanic Employment Initiatives issued by the Office of Personnel Management (OPM) in September 1997 (Nine Point Plan), and the Report to the President’s Management Council on Hispanic Employment in the Federal Government of March 1999;

(h) ensure that managers and supervisors receive periodic training in diversity management in order to carry out their responsibilities to maintain a diverse workforce; and

(i) reflect a continuing priority for eliminating Hispanic underrepresentation in the Federal workforce and incorporate actions under this order as strategies for achieving workforce diversity goals in the agency’s Government Performance and Results Act (GPRA) Annual Performance Plan.

Sect. 3. Cooperation. All efforts taken by heads of agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation among Federal, public, and private sector employers, and appropriate Hispanic organizations whenever such partnerships and cooperation are possible and would promote the Federal employment of qualified individuals. In developing the long-term comprehensive strategies required by section 2 of this order, agencies shall, as appropriate, consult with and seek information and advice from experts in the areas of special targeted recruitment and diversity in employment.

Sect. 4. Responsibilities of the Office of Personnel Management. The Office of Personnel Management is required by law and regulations to undertake a Government-wide minority recruitment effort. Pursuant to that on-going effort and in implementation of this order, the Director of OPM shall:

(a) provide Federal human resources management policy guidance to address Hispanic underrepresentation where it occurs;

(b) take the lead in promoting diversity to executive agencies for such actions as deemed appropriate to promote equal employment opportunity;
lives of women and girls and to ensure that Federal agencies on matters related to this order. The first annual report shall be issued no later than 1 year from the date of this order.

Section 5. Judicial Review. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity except as may be identified in existing laws and regulations, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13506. ESTABLISHING A WHITE HOUSE COUNCIL ON WOMEN AND GIRLS

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

SECTION 1. Policy. Over the past generation, our society has made tremendous progress in eradicating barriers to women's success. A record number of women are attending college and graduate school. Women make up a growing share of our workforce, and more women are corporate executives and business owners than ever before, helping boost the U.S. economy and fostering U.S. competitiveness around the world. Today, women are serving at the highest levels of all branches of the Government.

Despite this progress, certain inequalities continue to persist. On average, American women continue to earn only about 78 cents for every dollar men make, and women are still significantly underrepresented in the science, engineering, and technology fields. Far too many women lack health insurance, and many are unable to take time off to care for a new baby or an ailing family member. Violence against women remains a global epidemic. The challenge of ensuring equal educational opportunities for women and girls endures. As the current economic crisis has swept across our Nation, women have been seriously affected.

These issues do not concern just women. When jobs do not offer family leave, that affects men who wish to help care for their families. When women earn less than men for the same work, that affects families who have to work harder to make ends meet. When our daughters do not have the same educational and career opportunities as our sons, that affects entire communities, our economy, and our future as a Nation.

The purpose of this order is to establish a coordinated Federal response to issues that particularly impact the lives of women and girls and to ensure that Federal programs and policies address and take into account the distinctive concerns of women and girls, including women of color and those with disabilities.

SECTION 2. White House Council on Women and Girls. There is established within the Executive Office of the President a White House Council on Women and Girls (Council).

(a) Membership of the Council. The Council shall consist of the following members:

1. the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison, who shall serve as Chair of the Council;
2. the Secretary of State;
3. the Secretary of the Treasury;
4. the Secretary of Defense;
5. the Attorney General;
6. the Secretary of the Interior;
7. the Secretary of Agriculture;
8. the Secretary of Commerce;
9. the Secretary of Labor;
10. the Secretary of Health and Human Services;
11. the Secretary of Housing and Urban Development;
12. the Secretary of Transportation;
13. the Secretary of Energy;
14. the Secretary of Education;
15. the Secretary of Veterans Affairs;
16. the Secretary of Homeland Security;
17. the Representative of the United States of America to the United Nations;
18. the United States Trade Representative;
19. the Director of the Office of Management and Budget;
20. the Administrator of the Environmental Protection Agency;
21. the Chair of the Council of Economic Advisers;
22. the Director of the Office of Personnel Management;
23. the Administrator of the Small Business Administration;
24. the Assistant to the President and Director of the Domestic Policy Council;
25. the Assistant to the President for Economic Policy and Director of the National Economic Council; and
26. the heads of such other executive branch departments, agencies, and offices as the President may, from time to time, designate.

A member of the Council may designate, to perform the Council functions of the member, a senior-level official who is a part of the member’s department, agency, or office, and who is a full-time officer or employee of the Federal Government. At the direction of the Chair, the Council may establish subgroups consisting exclusively of Council members or their designees under this section, as appropriate.

(b) Administration of the Council. The Department of Commerce shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations. The Chair shall convene regular meetings of the Council, determine its agenda, and direct its work. The Chair shall designate an Executive Director of the Council, who shall coordinate the work of the Council and head any staff assigned to the Council.

SECTION 3. Mission and Functions of the Council. The Council shall work across executive departments and agencies to provide a coordinated Federal response to issues that have a distinct impact on the lives of women and girls, including assisting women-owned businesses to compete internationally and working to increase the participation of women in the science, engineering, and technology workforce, and to ensure that Federal programs and policies adequately take those impacts into account. The Council shall be responsible for providing recommendations to the President on the effects of pending legislation and executive branch policy proposals; for suggesting changes to Federal programs or policies to address issues of special importance to women and girls; for reviewing and recommending changes to policies that have a distinct impact on women in the Federal workforce; and for assisting in the development of legislative and policy proposals of special importance to women and girls. The functions of the Council are advisory only.

SECTION 4. Outreach. Consistent with the objectives set out in this order, the Council, in accordance with appli-
The Federal Government is required to implement programs for recruitment, hire, and retain qualified workers with disabilities through related or overlapping statutory mandates, directions from Executive Orders, and regulatory requirements. By this order, I am directing executive departments and agencies to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of their human resources strategies. This approach should include a continuing effort to identify and adopt best practices, implemented in an integrated manner, to promote diversity and remove barriers to equal employment opportunity, consistent with merit system principles and applicable law.

Wherever possible, the Federal Government must also seek to consolidate compliance efforts established by the Federal Government or otherwise affect:

(a) develop and issue a Government-wide Diversity and Inclusion Strategic Plan (Government-wide Plan), to be updated as appropriate and at a minimum every 4 years, focusing on workforce diversity, workforce inclusion, and agency accountability and leadership. The Government-wide Plan shall highlight comprehensive strategies for agencies to identify and remove barriers to equal employment opportunity that may exist in the Federal Government’s recruitment, hiring, promotion, retention, professional development, and training policies and practices. The Office of Personnel Management (OPM) and the Deputy Director for Management at the Office of Management and Budget (OMB), in coordination with the President’s Management Council (PMC) and the Chair of the Equal Employment Opportunity Commission (EEOC), shall:

(i) develop and issue a Government-wide Diversity and Inclusion Strategic Plan (Government-wide Plan), to be updated as appropriate and at a minimum every 4 years, focusing on workforce diversity, workforce inclusion, and agency accountability and leadership. The Government-wide Plan shall highlight comprehensive strategies for agencies to identify and remove barriers to equal employment opportunity that may exist in the Federal Government’s recruitment, hiring, promotion, retention, professional development, and training policies and practices. The Office of Personnel Management (OPM) and the Deputy Director for Management at the Office of Management and Budget (OMB), in coordination with the President’s Management Council (PMC) and the Chair of the Equal Employment Opportunity Commission (EEOC), shall:

(b) within 90 days of the date of this order:

(i) develop and issue a Government-wide Diversity and Inclusion Strategic Plan (Government-wide Plan), to be updated as appropriate and at a minimum every 4 years, focusing on workforce diversity, workforce inclusion, and agency accountability and leadership. The Government-wide Plan shall highlight comprehensive strategies for agencies to identify and remove barriers to equal employment opportunity that may exist in the Federal Government’s recruitment, hiring, promotion, retention, professional development, and training policies and practices. The Office of Personnel Management (OPM) and the Deputy Director for Management at the Office of Management and Budget (OMB), in coordination with the President’s Management Council (PMC) and the Chair of the Equal Employment Opportunity Commission (EEOC), shall:

(ii) review applicable directives to agencies related to the development or submission of agency human capital and other workforce plans and reports in connection with recruitment, hiring, promotion, retention, professional development, and training policies and practices, and develop a strategy for consolidating such agency plans and reports where appropriate and permitted by law; and

(iii) provide guidance to agencies concerning formulation of agency-specific Diversity and Inclusion Strategic Plans prepared pursuant to section 3(b) of this order:

(c) identify appropriate practices to improve the effectiveness of each agency’s efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce, consistent with merit system principles and applicable law; and

(d) establish a system for reporting regularly on agencies’ progress in implementing their agency-spe-
cific Diversity and Inclusion Strategic Plans and in meeting the objectives of this order.

SEC. 3. Responsibilities of Executive Departments and Agencies. All agencies shall implement the Government-wide Plan prepared pursuant to section 2 of this order, and such other related guidance as issued from time to time by the Director of OPM and Deputy Director for Management of OMB. In addition, the heads of each executive department and agency referred to under subsections (1) and (2) of section 901(b) of title 31, United States Code, shall:

(a) designate the agency’s Chief Human Capital Officer to be responsible for enhancing employment and promotion opportunities within the agency, in collaboration with the agency’s Director of Equal Employment Opportunity and Director of Diversity and Inclusion, if any, and consistent with law and merit system principles, including development and implementation of the agency-specific Diversity and Inclusion Strategic Plan;

(b) within 120 days of the issuance of the Government-wide Plan or its update under section 2(b)(i) of this order, develop and submit for review to the Director of OPM and the Deputy Director for Management of OMB an agency-specific Diversity and Inclusion Strategic Plan for recruiting, hiring, training, developing, advancing, promoting, and retaining a diverse workforce consistent with applicable law, the Government-wide Plan, merit system principles, the agency’s overall strategic plan, its human capital plan prepared pursuant to Part 250 of title 5 of the Code of Federal Regulations, and other applicable workforce planning strategies and initiatives;

(c) implement the agency-specific Diversity and Inclusion Strategic Plan after incorporating it into the agency’s human capital plan; and

(d) provide information as specified in the reporting requirements developed under section 2(d).

SEC. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted to a department or agency or the head thereof, including the authority granted to the Equal Employment Opportunity Commission by any other Executive Orders (including Executive Order 12067) or any agency’s authority to establish an independent Diversity and Inclusion Office or other functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(ii) authority granted by law to a department, agency, or the head thereof, including the authority granted to the Equal Employment Opportunity Commission by any other Executive Orders (including Executive Order 12067) or any agency’s authority to establish an independent Diversity and Inclusion Office or other functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13665. NON-RETRIAL FOR DISCLOSURE OF COMPENSATION INFORMATION

Ex. Ord. No. 13665, Apr. 8, 2014, 79 F.R. 20749, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 101 et seq., and in order to take further steps to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

SECTION 1. Policy. This order is designed to promote economy and efficiency in Federal Government procurement. It is the policy of the executive branch to enforce vigorously the civil rights laws of the United States, including those laws that prohibit discriminatory practices with respect to compensation. Federal contractors that employ such practices are subject to enforcement action, increasing the risk of disruption, delay, and increased expense in Federal contracting. Compensation discrimination also can lead to labor disputes that are burdensome and costly.

When employees are prohibited from inquiring about, disclosing, or discussing their compensation with fellow workers, compensation discrimination is much more difficult to discover and remediate, and more likely to persist. Such prohibitions (either express or implicit) also restrict the amount of information available to participants in the Federal contracting labor pool, which tends to diminish market efficiency and decrease the likelihood that the most qualified and productive workers are hired at the market efficient price. Encouraging employees to determine their compensation or the compensation of other potential employees in a manner which tends to diminish market efficiency and decreases the ability of Federal contractors and their employees to detect and remediate unlawful discriminatory practices, which will contribute to a more efficient market in Federal contracting.

SEC. 2. [Amended Ex. Ord. No. 11246, set out above.]

SEC. 3. Regulations. Within 180 days of the date of this order, the Secretary of Labor shall propose regulations to implement the requirements of this order.

SEC. 4. Severability. If any provision of this order, or the application of such provision or amendment to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 5. General Provisions. (a) Nothing in this order shall be construed to limit the rights of an employee or applicant for employment furnished under any law of the United States. It shall not be construed to prevent a Federal contractor covered by this order from pursuing a defense, as long as the defense is not based on a rule, policy, practice, agreement, or other instrument that prohibits employees or applicants from discussing or disclosing their compensation or the compensation of other employees or applicants, subject to paragraph (3) of section 202 of Executive Order 11246, as added by this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) 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, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13672. FURTHER AMENDMENTS TO EXECUTIVE ORDER 11478, EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT, AND EXECUTIVE ORDER 11246, EQUAL EMPLOYMENT OPPORTUNITY

Ex. Ord. No. 13672, July 21, 2014, 79 F.R. 42971, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination and take further steps to provide a uniform policy for the Federal Government to prohibit discrimination and take further steps to promote economy and efficiency in Federal Government procurement by prohibiting discrimination based on sexual orientation and gender identity, it is hereby ordered as follows:

SECTION 1. [Amended Ex. Ord. No. 11478, set out above.]

SEC. 2. [Amended Ex. Ord. No. 11246, set out above.]

SEC. 3. Regulations. Within 90 days of the date of this order, the Secretary of Labor shall prepare regulations to implement the requirements of section 2 of this order.
ENHANCED COLLECTION OF RELEVANT DATA AND STATISTICS RELATING TO WOMEN

Memorandum of President of the United States, Mar. 4, 2011, 76 F.R. 12823, provided:

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

I am proud to work with the White House Council on Women and Girls, the Office of Management and Budget, and the Department of Commerce on this week’s release of Women in America, a report detailing the status of American women in the areas of families and income, health, employment, education, and violence and crime. This report provides a snapshot of the status of American women today, serving as a valuable resource for Government officials, academics, members of nonprofit, nongovernmental, and news organizations, and others.

My Administration is committed to ensuring that Federal programs achieve policy goals in the most cost-effective manner. The Women in America report, together with the accompanying website collection of relevant data, will assist Government officials in crafting policies in light of available statistical evidence. It will also assist the work of the nongovernmental sector, including journalists, public policy analysts, and academic researchers, by providing data that allow greater understanding of policies and programs.

Preparation of this report revealed the vast data resources of the Federal statistical agencies. It also revealed some gaps in data collection. Gathering and analyzing additional data to fill in the gaps could help policymakers gather a more accurate and comprehensive view of the status and needs of American women.

My Administration hereby requests the heads of executive departments and agencies, where possible within existing constraints, to identify and to seek to fill in gaps in statistics and improve survey methodology relating to women wherever appropriate, including in the broad areas covered by the Women in America report: families and income, health, employment, education, and violence and crime.

Examples of some of the efforts that could be undertaken by departments and agencies with respect to the gathering or design of comprehensive data related to women include the following:

(a) Maternal Mortality. I encourage the National Center for Health Statistics (NCHS) to continue to work with States and other registration areas to complete the expedient adoption of the most current standards for the collection of information on vital events, as well as the transition to electronic reporting systems. Maternal mortality is an important indicator of women’s health both internationally and nationally. In the United States, maternal mortality statistics are based upon the information recorded on death certificates and collected by State and local vital records offices. The National Center for Health Statistics (NCHS) compiles the data across the 50 States and other registration areas. Due to concerns about data quality in the ascertainment of maternal mortality statistics, the 2003 revision of the standard death certificate introduced improved standards for collecting data. Until all 50 States and registration areas adopt the new data standards, formulating a national-level maternal mortality ratio remains difficult.

(b) Women in Leadership in Corporate America. Women participate in every sector of the workforce. Their current role in corporate leadership is an important indicator of their progress. I encourage the Chair of the Securities and Exchange Commission to seek to supplement the information it already collects by seeking to collect, among other data, information on the presence of women in governance positions in corporations, in order to shed further light on the role of women in corporate America.

(c) Women in Leadership in Public Service. I encourage the Corporation for National and Community Service to include statistics about the role of women in diverse aspects of public service within its planned work on measuring civic engagement.

This memorandum shall be carried out to the extent permitted by law, consistent with the legal authorities of executive departments and agencies and subject to the availability of appropriations. Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 2000e–1. Exemption

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e–2 or 2000e–3 of this title for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e–2 or
2000e–3 of this title engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e–2 and 2000e–3 of this title shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

(A) the interrelation of operations;
(B) the common management;
(C) the centralized control of labor relations; and
(D) the common ownership or financial control of the employer and the corporation.


AMENDMENTS

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1972—Pub. L. 92–261 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

§ 2000e–2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual’s race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase “unlawful employment practice” shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin and the employer fails to demonstrate that the challenged practice is job related for each particular challenged employment practice and consistent with business necessity; or

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent’s decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration required to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of “alternative employment practice”.

(2) A demonstration that an employment practice is required by business necessity may not be
used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(f) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B) except as provided in paragraph (2).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.


REFERENCES IN TEXT

The Subactive Activities Control Act of 1950, referred to in subsec. (f), is title I (§§1–32) of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, which is classified principally to subchapter I (§781 et seq.) of chapter 13 of Title 21, Food and Drugs. The Controlled Substances Act, referred to in subsec. (k)(3), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1232, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.


AMENDMENTS


Subsec. (m). Pub. L. 102–166, §107(a), added subsec. (m).


1972—Subsec. (a)(2). Pub. L. 92–261, §8(a), inserted “or applicants for employment” after “his employees”.

Subsec. (c)(2). Pub. L. 92–261, §8(b), inserted “or applicants for membership” after “membership”.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 801 of this title.
§ 2000e-3. Other unlawful employment practices
(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or for a labor organization, or any person making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, on the basis of race, color, religion, sex, or national origin, with respect to apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to publish or cause to be published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

§ 2000e-4. Equal Employment Opportunity Commission

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall
conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

c. **Excerise of powers during vacancy; quorum**

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

d. **Seal; judicial notice**

The Commission shall have an official seal which shall be judicially noticed.

e. **Reports to Congress and the President**

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the money it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

f. **Principal and other offices**

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all of its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

g. **Powers of Commission**

The Commission shall have power—

1. to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

2. to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

3. to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

4. upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

5. to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

6. to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

h. **Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities**

1. The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

2. In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

   A. individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

   B. individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

i. **Personnel subject to political activity restrictions**

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of title 5, notwithstanding any exemption contained in such section.

j. **Technical Assistance Training Institute**

1. The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

2. An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

3. There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

k. **EEOC Education, Technical Assistance, and Training Revolving Fund**

1. There is hereby established in the Treasury of the United States a revolving fund to be known as the “EEOC Education, Technical Assistance, and Training Revolving Fund” (hereinafter in this subsection referred to as the “Fund”) and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

2. (A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training—

   i. shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

   ii. shall not exceed the cost of providing such education, assistance, and training, and

   iii. with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

1 See References in Text note below.
(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to—
(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,
(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and
(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.


Subsecs. (b) to (d), added subsec. (b), struck out subsec. (e) which amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and redesignated existing subsecs. (b), (c), and (d) as (c), (d), and (e), respectively.

Subsec. (g)(6), Pub. L. 92–261, § 8(f), substituted provisions which authorized Commission to refer matters to Attorney General for recommendations to institute civil actions.

Subsecs. (h) to (j), Pub. L. 92–261, § 8(e)(2), (3), struck out subsec. (h) which provided for legal representation for Commission, and redesignated subsecs. (i) and (j) as (h) and (i), respectively.

Effective Date of 1991 Amendment
Pub. L. 102–166, title I, § 110(b), Nov. 21, 1991, 105 Stat. 1078, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 1991]."

Amendment by section 111 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1113 of Title 31, Money and Finance.

Termination of Reporting Requirements
For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (e) of this section is listed in item 20 on page 165), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) (div. A, § 1402(1)) of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

Reorganization Plan No. 1 of 1978 SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978
Pub. L. 95–454, title IX, § 905, Oct. 13, 1978, 92 Stat. 1224, provided in part that any provision in Reorganization Plan No. 1 of 1978 (set out in section 4) inconsistent with any provision of that Act (see Tables for classification) was superseded thereby.

Reorganization Plan No. 1 of 1978
43 F.R. 19807, 92 Stat. 3761
Prepared by the President and transmitted to the Senate and the House of Representatives in Congress as—
EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Transfer of Equal Pay Enforcement Functions

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f)(9); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)(1); 206(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 18(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

Section 2. Transfer of Age Discrimination Enforcement Functions


Section 3. Transfer of Equal Opportunity in Federal Employment Enforcement Functions

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

Section 4. Transfer of Federal Employment of Handicapped Individuals Enforcement Functions

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

Section 5. Transfer of Public Sector Title VII Functions

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions, under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investiga-

Section 6. Transfer of Functions and Abolition of the Equal Employment Opportunity Coordinating Council

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

Section 7. Savings Provision

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

Section 8. Incidental Transfers

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, transferred, to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

Section 9. Effective Date

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 995 of Title 5 of the United States Code.

[Text continues]
I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment employment enforcement and initiates for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken a series of steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity enforcement responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulation of the private sector.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me in reorganizing administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, (section 2000e et seq. of this title) which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 (set out as a note under section 2000e of this title). This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this "contract compliance" program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 (section 206(d) of Title 29, Labor), which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 (section 621 et seq. of Title 29), which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on grievances filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlapping and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of the Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds. These programs have had only limited success. Some of the past deficiencies include:

- Inconsistent standards of compliance;
- Duplicitous, inconsistent paperwork requirements and investigatory efforts;
- Conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;
- Confusion on the part of workers about how and where to seek redress;
- Lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 (section 2000e-4 of this title). The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e-14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1978, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.5 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven "compliance agencies"—into the Labor Department (1,317 positions and $35.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance requirements.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized enforcement.
data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for consolidation and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General’s responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission’s equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency’s equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been leery of enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect, I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employment practices of the Labor Department, which is administered by the Labor Department, and the Civil Service Commission, relating to enforcement of equal employment opportunity. This overlap is burdensome to employers and confuses victims of discrimination.

The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General’s responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. The Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. The Plan is done only under the statutory authority provided by Section 906(b) of Title 5 of the United States Code.

It is not anticipated that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards as well as increased accountability. Combined with the intense commitment of those charged with these responsibilities, it will become possible for us to accelerate this nation’s progress in ensuring equal job opportunities for all our people.

JIMMY CARTER.


EX. ORD. NO. 12106. TRANSFER OF CERTAIN EQUAL EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided: By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (33 FR 9807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1–101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (33 FR 9807) shall be effective on January 1, 1979.

1–102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further...
amended by deleting the preamble, by substituting "national origin, handicap, or age" for "or national origin" in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

"Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

"Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

"Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

"1–103. Executive Order No. 11022, as amended [set out as a note under section 3061 of this title], is further amended by revising Section 1(b) to read as follows:

"(b) The Council shall be composed of the Secretary of Health, Education, and Welfare [now Health and Human Services], who shall be Chairman, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission.

"1–104. Executive Order No. 11480 of September 9, 1969 [set out as a note under section 791 of Title 29, Labor], is amended by deleting "and the Chairman of the United States Civil Service Commission" in Section 4 and substituting therefor "Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission".

"1–105. Executive Order No. 11630 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

"In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1–101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out above]).

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1–104. This Order shall be effective July 1, 1979.

JIMMY CARTER.

§ 2000e–5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e–2 or 2000e–3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge
is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsections with respect thereto upon receiving notice thereof, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by such person against whom such charge is made within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

1 So in original. Probably should be subsection "(b)".
of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision named in the charge.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.
(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. In the event the Commission determines that back pay is appropriate, the amount of such back pay shall not include interest except as provided in paragraph (2), nor shall the filing of a charge with the Commission, alone, operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e–3(a) of this title.

(B) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney’s fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(k) Attorney’s fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney’s fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.


AMENDMENTS

1991—Subsec. (e). Pub. L. 102–166, § 112, designated existing provisions as par. (1) and added par. (2).
Subsec. (g). Pub. L. 102–166, § 107(b), designated existing provisions as pars. (1) and (2)(A) and added par. (2)(B).
Subsec. (k). Pub. L. 102–166, § 113(b), inserted “(including expert fees)” after “attorney’s fee”.
Subsec. (b). Pub. L. 92–261, § 4(a), redesignated former subsec. (a) as (b), modified the procedure for the filing and consideration of charges by the Commission, subjected to coverage unlawful employment practices of joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, required the Commission to accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law in its determination of reasonable cause, and inserted provision setting forth the time period, after charges have been filed, allowed to the Commission to determine reasonable cause. Former subsec. (b) redesignated (c).
Subsecs. (c), (d). Pub. L. 92–261, § 4(a), redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).
Subsec. (e). Pub. L. 92–261, § 4(a), redesignated former subsec. (d) as (e), extended from ninety to one hundred and eighty days after the occurrence of the alleged unlawful employment practice the time for filing charges under this section and from two hundred and ten to three hundred days the time for filing such charges where the person aggrieved initially instituted proceedings with a State or local agency, and inserted requirement that notice of the charge be served on the respondent within ten days after filing. Former subsec. (e) redesignated (f)(1).
Subsec. (f). Pub. L. 92–261, § 4(a), redesignated former subsec. (e) as par. (1), substituted provisions setting forth the procedure for civil actions brought under this subchapter where the Commission was unable to secure from the respondents a conciliation agreement to prevent further unlawful em...
plementation practices for provisions setting forth the procedure for civil actions where the Commission was unable to obtain voluntary compliance with this subchapter and inserted provisions setting forth the procedure for civil action where the respondent is a government, governmental agency, or political subdivision and the Commission could not secure a conciliation agreement, added par. (2), redesignated former subsec. (f) as par. (3), substituted ‘‘aggrieved person’’ for ‘‘plaintiff’’, and added pars. (4) and (5).

Subsec. (g), Pub. L. 92–261, §4(a), inserted provisions which authorized the court to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate, and provisions which set forth the accrual date for back pay.

Subsecs. (i), (j), Pub. L. 92–261, §4(b)(1), (2), substituted “this section” for “subsection (e) of this section”.

**Effective Date of 2009 Amendment**

Pub. L. 111–2, §6, Jan. 29, 2009, 123 Stat. 7, provided that: “This Act [amending this section and section 2000e–5 of this title and sections 626, 633a, and 794a of Title 29, Labor, and enacting provisions set out as notes under this section, section 2000a of this title] is intended to change current law treatment of when pension distributions are considered paid.”

**Application to Other Laws**

Pub. L. 111–2, §5(a), (b), Jan. 29, 2009, 123 Stat. 6, provided that:

“(a) **AMERICANS WITH DISABILITIES ACT OF 1990.**—The amendments made by section 3 [amending this section] shall apply to claims of discrimination in compensation brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5).

“(b) **REHABILITATION ACT OF 1973.**—The amendments made by section 3 shall apply to claims of discrimination in compensation brought under sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794), pursuant to—

“(1) sections 501(g) and 504(d) of such Act (29 U.S.C. 791(g) [now 29 U.S.C. 794(f)], 794(d)), which adopt the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) for determining whether a violation has occurred in a complaint alleging employment discrimination and

“(2) paragraphs (1) and (2) of section 505(a) of such Act (29 U.S.C. 794a(a)) (as amended by subsection (c)).”

**§ 2000e–6. Civil actions by the Attorney General**

(a) **Complaint**

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) **Jurisdiction; three-judge district court for cases of general public importance; hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action**

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding judge of the circuit) in which the
case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a report which concludes that the functions to be transferred are necessary for the performance of functions of the Attorney General in performing its duties, including the investigation of alleged unlawful employment practices, under this subchapter.

The functions transferred to the Commission by this subsection shall be performed in accordance with the procedures set forth in section 2000e–5 of this title.

The transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e–5 of this title.


AMENDMENTS

1972—Subsec. (c) to (e). Pub. L. 92–261 added subsecs. (c) to (e).

Transfer of Functions

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under this section, and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, were transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with this subchapter, and with the Attorney General authorized to delegate any function under this section to any officer or employee of the Department of Justice, by Reorg. Plan No. 1 of 1978, § 5, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title.

EX. ORD. NO. 12068. TRANSFER OF CERTAIN FUNCTIONS TO ATTORNEY GENERAL

Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 F.R. 19807) [set out as a note under section 2000e–4 of this title], in order to clarify the Attorney General’s authority to initiate public sector litigation under Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–6), it is ordered as follows:

1–1. Section 707 Functions of the Attorney General


1–102. The functions transferred to the Attorney General by Section 5 of Reorganization Plan Number 1 of 1978 [set out as a note under section 2000e–4 of this title] shall, consistent with Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–7, 2000e–7a, 2000e–8), be performed in accordance with Department of Justice procedures heretofore followed under Section 707.

JIMMY CARTER.

§ 2000e–7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.


§ 2000e–8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e–5 of this title,
the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitations of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any case or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training programs; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–261 inserted provisions authorizing the Commission to engage in and contribute to the conduct of research and other projects undertaken by State and local agencies and provisions authorizing the Commission to make advance payments to State and local agencies and their employees for services rendered to the Commission; and struck out provisions relating to agreements between the Commission and State and local agencies prohibiting private civil actions under section 2000e-8 of this title in specified cases.

Subsec. (c). Pub. L. 92–261 struck out “Except as provided in subsection (d) of this section,” before “every employer, employment agency, and labor organization subject to this subchapter shall (1)”.

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, provisions of this subchapter shall apply. (Pub. L. 88–352, title VII, §710, July 2, 1964, 78 Stat. 261; Pub. L. 92–261, §7, Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Pub. L. 92–261 substituted provisions making applicable section 161 of title 29 to all hearings and investigations conducted by the Commission or its authorized agents or agencies, for provisions enumerating the investigatory powers of the Commission and the procedure for their enforcement.

§ 2000e–10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.


§ 2000e–11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.


§ 2000e–12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or penalty for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.


COMIFICATION

In subsec. (a), “subchapter II of chapter 5 of title 5” substituted for “the Administrative Procedure Act” on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

GUIDELINES ON RELIGIOUS HARASSMENT

Pub. L. 112–55, div. B, title V, §506, Nov. 18, 2011, 125 Stat. 631, provided that: “During the current fiscal year and in each fiscal year thereafter, none of the funds made available in this or any other Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known
§ 2000c–13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18

The provisions of sections 111 and 1114, title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.


Cross References to Statutes

1972—Pub. L. 92–261 inserted provisions which made section 1114 of title 18 applicable to officers, etc., of the Commission and set forth punishment for violation of such section 1114.

§ 2000c–14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.


Codification

The first sentence of this section, which read "There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates" was omit-

**AMENDMENTS**


1972—Pub. L. 92–261 substituted provisions which established the Equal Employment Opportunity Coordinating Council and set forth the composition, powers, and duties of the Council for provisions which directed the Secretary of Labor to make a report to the Congress not later than June 30, 1965 concerning discrimination in employment because of age.

**TERMINATION OF REPORTING REQUIREMENTS**

For termination, effective May 15, 2000, of provisions in this section relating to transmittal of a report and recommendations to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1313 of Title 31, Money and Finance, and item 19 on page 165 of House Document No. 165–7.

**TRANSFER OF FUNCTIONS**


**SUBMISSION OF SPECIFIC LEGISLATIVE RECOMMENDATIONS TO CONGRESS BY JANUARY 1, 1967, TO IMPLEMENT REPORT ON AGE DISCRIMINATION**

Pub. L. 89–601, title VI, § 606, Sept. 23, 1966, 80 Stat. 845, directed the Secretary of Labor to submit to the Congress not later than Jan. 1, 1967 his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to provisions of this section prior to its amendment in 1972.

**§ 2000e–15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership**

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President’s Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.


**EXECUTIVE ORDER NO. 11197**


(a) **Discriminatory practices prohibited; employees or applicants for employment subject to coverage**

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 165 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Publishing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) **Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress**

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal em-
mployment opportunity programs, periodically obtaining and publishing (on at least a semi-annual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e–5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e–5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.1

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e–5(e)(3) of this title applicable to compensation discrimination

Section 2000e–5(e)(3) of this title shall apply to complaints of discrimination in compensation under this section.

(1) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

REFERENCES IN TEXT


AMENDMENTS


1 So in original.
by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

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(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of “genetic tests” when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual’s genetic tests;

(B) information about the genetic tests of an individual’s family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual’s current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1–202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee’s status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect
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to an employee, or information about a request for or the receipt of genetic services by an employee except:
(1) to the employee who is the subject of the information, at his or her request;
(2) to an occupational or other health researcher, if the research conducted complies with the regulations or protections provided for under part 46 of title 45, of the Code of Federal Regulations;
(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or
(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.
(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.
§ 2000e–16a. 1–301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1202. (a) The employing department or agency may request or require information defined in section 1–201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:
(1) the request or requirement is consistent with the Rehabilitation Act [29 U.S.C. 701 et seq.] and other applicable law;
(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order;
(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and
(4) the information defined in section 1–201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order.
(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:
(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1–301(a) of this order);
(2) the employee who uses the genetic or health care services has provided prior, knowing, voluntary, and written authorization to the employer to collect protected genetic information;
(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1–202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);
(4) such information is not used in violation of sections 1–202(a) or 1–202(b) of this order;
(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.
(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:
(1) the employee has provided prior, knowing, voluntary, and written authorization;
(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;
(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and
(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.
(e) This order does not limit the statutory authority of a Federal department or agency to:
(1) promulgate or enforce workplace safety and health laws and regulations;
(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations;
(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.
§ 2000e–16c. Miscellaneous.
1–401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.
1–402. Nothing in this order shall be construed to:
(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or
(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.
1–403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2000e–16a. Short title; purpose; definition
(a) Short title
Sections 2000e–16a to 2000e–16c of this title may be cited as the “Government Employee Rights Act of 1991”.

(b) Purpose
The purpose of sections 2000e–16a to 2000e–16c of this title is to provide procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.
(c) “Violation” defined
For purposes of sections 2000e–16a to 2000e–16c of this title, the term “violation” means a practice that violates section 2000e–16(a) of this title.

§ 2000e–16b. Discriminatory practices prohibited

(a) Practices

All personnel actions affecting the Presidential appointees described in section 1219 of title 2 of title 2 or the State employees described in section 2000e–16c of this title shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 2000e–16 of this title;

(2) age, within the meaning of section 633a of title 29; or

(3) disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.

(b) Remedies

The remedies referred to in sections 1219(a)(1) of title 2 and 2000e–16c(a) of this title—

(1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) of this section has occurred, such remedies as would be appropriate if awarded under sections 2000e–5(g), 2000e–5(c), and 2000e–16(d) of this title, and such compensatory damages as would be appropriate if awarded under section 1981 or sections 1981a(a) and 1981a(b)(2) of this title;

(2) may include, in the case of a determination that a violation of subsection (a)(2) of this section has occurred, such remedies as would be appropriate if awarded under section 633a(c) of title 29; and

(3) may not include punitive damages.

$ 2000e–16c. Coverage of previously exempt State employees

(a) Application

The rights, protections, and remedies provided pursuant to section 2000e–16b of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official’s personal staff;

(2) to serve the elected official on the policymaking level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) Enforcement by administrative action

(1) In general

Any individual referred to in subsection (a) of this section may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) Referral to State and local authorities

(A) Application

Section 2000e–5(d) of this title shall apply with respect to any proceeding under this section.

(B) Definition

For purposes of the application described in subparagraph (A), the term “any charge filed by a member of the Commission alleg-
§ 2000e–17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.


SUBCHAPTER VII—REGISTRATION AND VOTING STATISTICS

§ 2000f. Survey for compilation of registration and voting statistics; geographical areas; scope; application of census provisions; voluntary disclosure; advising of right not to furnish information

The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this subchapter: Provided, however, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.