

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Bernard Nussbaum, Carol Rasco, et. al. from Cheryl Mills and Marvin Krislov re: Civil Rights Act of 1991 Provisions (4 pages)	09/17/93	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 4592

FOLDER TITLE:

Equal Opportunity Policy 9-20-93 3:00-4:00

rw158

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

9/17

Please read at least cover
memo before 3:00pm meeting
on Monday in room 180.

Cheryl

SEP 17 RECD

*Meeting
file*

Withdrawal/Redaction Marker

Clinton Library

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**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

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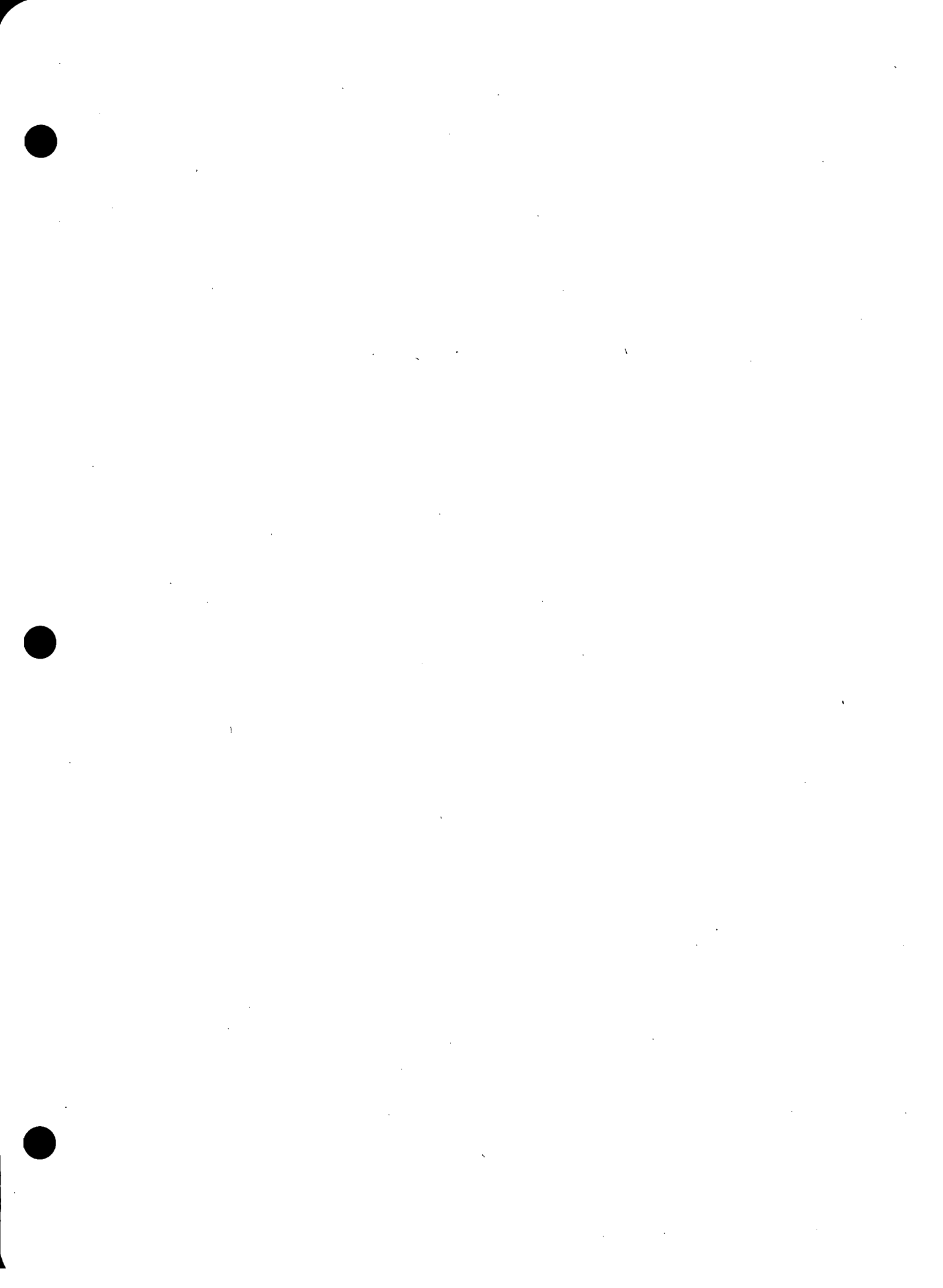
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One Hundred Second Congress of the United States of Am

AT THE FIRST SESSION

Begun and held at the City of Washington on Thursday, the third day of January, one thousand nine hundred and ninety-one

An Act

To amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

- (1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;
- (2) the decision of the Supreme Court in *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and
- (3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

SEC. 3. PURPOSES.

The purposes of this Act are—

- (1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;
- (2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989);
- (3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and
- (4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I—FEDERAL CIVIL RIGHTS REMEDIES

SEC. 101. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended—

- (1) by inserting "(a)" before "All persons within"; and
- (2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."

SEC. 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.—

"(1) CIVIL RIGHTS.—In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e-2 or 2000e-3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C. 1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(2) DISABILITY.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(3) REASONABLE ACCOMMODATION AND GOOD FAITH EFFORT.—In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 or regulations implementing section 501 of the Rehabilitation Act of 1973, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual

with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.—

"(1) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.—Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.—The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.

"(4) CONSTRUCTION.—Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.—If a complaining party seeks compensatory or punitive damages under this section—

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).

"(d) DEFINITIONS.—As used in this section:

"(1) COMPLAINING PARTY.—The term 'complaining party' means—

"(A) in the case of a person seeking to bring an action under subsection (a)(1), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

"(B) in the case of a person seeking to bring an action under subsection (a)(2), the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), or a person who may bring an action or proceeding under title I of the

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(2) DISCRIMINATORY PRACTICE.—The term 'discriminatory practice' means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a).

SEC. 103. ATTORNEY'S FEES.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended by inserting ", 1977A" after "1977".

SEC. 104. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

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

"(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 717."

SEC. 105. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

(a) Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

"(k)(1)(A) An unlawful employment practice based on disparate impact is established under this title 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 referred 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 title.

"(3) Notwithstanding any other provision of this title, 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 or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin."

(b) No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act that relates to Wards Cove—Business necessity/cumulation/alternative business practice.

SEC. 106. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by section 105) is further amended by adding at the end the following new subsection:

"(l) 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."

SEC. 107. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) **IN GENERAL.**—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 105 and 106) is further amended by adding at the end the following new subsection:

"(m) Except as otherwise provided in this title, 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."

(b) **ENFORCEMENT PROVISIONS.**—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended—

(1) by designating the first through third sentences as paragraph (1);

(2) by designating the fourth sentence as paragraph (2)(A) and indenting accordingly; and

(3) by adding at the end the following new subparagraph:

"(B) On a claim in which an individual proves a violation under section 703(m) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

"(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs dem.

onstrated to be directly attributable only to the pursuit of a claim under section 703(m); and

“(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).”.

SEC. 108. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as amended by sections 105, 106, and 107 of this title) is further amended by adding at the end the following new subsection:

“(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).

“(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 subsec-

tion shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code."

SEC. 109. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) **DEFINITION OF EMPLOYEE.**—Section 701(D) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) and section 101(4) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(4)) are each amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

(b) **EXEMPTION.**—

(1) **CIVIL RIGHTS ACT OF 1964.**—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) is amended—

(A) by inserting "(a)" after "Sec. 702."; and

(B) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 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)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 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."

(2) **AMERICANS WITH DISABILITIES ACT OF 1990.**—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) **COVERED ENTITIES IN FOREIGN COUNTRIES.**—

"(1) **IN GENERAL.**—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

"(2) **CONTROL OF CORPORATION.**—

"(A) **PRESUMPTION.**—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section

and is engaged in by such corporation shall be presumed to be engaged in by such employer.

"(B) EXCEPTION.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(C) DETERMINATION.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

"(i) the interrelation of operations;

"(ii) the common management;

"(iii) the centralized control of labor relations; and

"(iv) the common ownership or financial control, of the employer and the corporation."

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 110. TECHNICAL ASSISTANCE TRAINING INSTITUTE.

(a) TECHNICAL ASSISTANCE.—Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4) is amended by adding at the end the following new subsection:

"(j)(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 title shall not be excused from compliance with the requirements of this title 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."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 111. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraph:

"(2) In exercising its powers under this title, 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 title or such law, as the case may be."

SEC. 112. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by inserting "(1)" before "A charge under this section"; and

(2) by adding at the end the following new paragraph:

"(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 title (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."

SEC. 113. AUTHORIZING AWARD OF EXPERT FEES.

(a) REVISED STATUTES.—Section 722 of the Revised Statutes is amended—

(1) by designating the first and second sentences as subsections (a) and (b), respectively, and indenting accordingly; and

(2) by adding at the end the following new subsection:

"(c) In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1977 or 1977A of the Revised Statutes, the court, in its discretion, may include expert fees as part of the attorney's fee."

(b) CIVIL RIGHTS ACT OF 1964.—Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including expert fees)" after "attorney's fee".

SEC. 114. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking "thirty days" and inserting "90 days"; and

(2) in subsection (d), by inserting before the period " , and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties."

SEC. 115. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking paragraph (2);

(2) by striking the paragraph designation in paragraph (1);

(3) by striking "Sections 6 and" and inserting "Section"; and

(4) by adding at the end the following:

"If a charge filed with the Commission under this Act is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 11(a) against the respondent named in the charge within 90 days after the date of the receipt of such notice."

SEC. 116. LAWFUL COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION, AND CONCILIATION AGREEMENTS NOT AFFECTED.

Nothing in the amendments made by this title shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

SEC. 117. COVERAGE OF HOUSE OF REPRESENTATIVES AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) **IN GENERAL.**—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) **EMPLOYMENT IN THE HOUSE.—**

(A) **APPLICATION.**—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) **ADMINISTRATION.—**

(i) **IN GENERAL.**—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) **RESOLUTION.**—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) **EXERCISE OF RULEMAKING POWER.**—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(b) INSTRUMENTALITIES OF CONGRESS.—

(1) **IN GENERAL.**—The rights and protections under this title and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) **ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.**—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 301(c)(1).

(3) **REPORT TO CONGRESS.**—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) **DEFINITION OF INSTRUMENTALITIES.**—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) **CONSTRUCTION.**—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII for the Civil Rights Act of 1964 (42 U.S.C. 2000e-16).

SEC. 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

TITLE II—GLASS CEILING

SEC. 201. SHORT TITLE.

This title may be cited as the "Glass Ceiling Act of 1991".

SEC. 202. FINDINGS AND PURPOSE.

(a) **FINDINGS.**—Congress finds that—

(1) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in management and decisionmaking positions in business;

(2) artificial barriers exist to the advancement of women and minorities in the workplace;

(3) United States corporations are increasingly relying on women and minorities to meet employment requirements and are increasingly aware of the advantages derived from a diverse work force;

(4) the "Glass Ceiling Initiative" undertaken by the Department of Labor, including the release of the report entitled "Report on the Glass Ceiling Initiative", has been instrumental in raising public awareness of—

(A) the underrepresentation of women and minorities at the management and decisionmaking levels in the United States work force;

(B) the underrepresentation of women and minorities in line functions in the United States work force;

(C) the lack of access for qualified women and minorities to credential-building developmental opportunities; and

(D) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(5) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(A) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business; and

(B) promote work force diversity;

(6) a comprehensive study that includes analysis of the manner in which management and decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artifi-

cial barriers to, the advancement of women and minorities to management and decisionmaking positions; and

(7) a national award recognizing employers whose practices and policies promote opportunities for, and eliminate artificial barriers to, the advancement of women and minorities will foster the advancement of women and minorities into higher level positions by—

(A) helping to encourage United States companies to modify practices and policies to promote opportunities for, and eliminate artificial barriers to, the upward mobility of women and minorities; and

(B) providing specific guidance for other United States employers that wish to learn how to revise practices and policies to improve the access and employment opportunities of women and minorities.

(b) PURPOSE.—The purpose of this title is to establish—

(1) a Glass Ceiling Commission to study—

(A) the manner in which business fills management and decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace; and

(2) an annual award for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

SEC. 203. ESTABLISHMENT OF GLASS CEILING COMMISSION.

(a) IN GENERAL.—There is established a Glass Ceiling Commission (referred to in this title as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to management and decisionmaking positions in business.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members, including—

(A) six individuals appointed by the President;

(B) six individuals appointed jointly by the Speaker of the House of Representatives and the Majority Leader of the Senate;

(C) one individual appointed by the Majority Leader of the House of Representatives;

(D) one individual appointed by the Minority Leader of the House of Representatives;

(E) one individual appointed by the Majority Leader of the Senate;

(F) one individual appointed by the Minority Leader of the Senate;

(G) two Members of the House of Representatives appointed jointly by the Majority Leader and the Minority Leader of the House of Representatives;

(H) two Members of the Senate appointed jointly by the Majority Leader and the Minority Leader of the Senate; and

(I) the Secretary of Labor.

(2) **CONSIDERATIONS.**—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold management or decisionmaking positions in corporations or other business entities recognized as leaders on issues relating to equal employment opportunity; and

(C) possess academic expertise or other recognized ability regarding employment issues.

(3) **BALANCE.**—In making the appointments under subparagraphs (A) and (B) of paragraph (1), each appointing authority shall seek to include an appropriate balance of appointees from among the groups of appointees described in subparagraphs (A), (B), and (C) of paragraph (2).

(c) **CHAIRPERSON.**—The Secretary of Labor shall serve as the Chairperson of the Commission.

(d) **TERM OF OFFICE.**—Members shall be appointed for the life of the Commission.

(e) **VACANCIES.**—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(f) **MEETINGS.**—

(1) **MEETINGS PRIOR TO COMPLETION OF REPORT.**—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(2) **MEETINGS AFTER COMPLETION OF REPORT.**—The Commission shall meet once each year after the completion of the report described in section 204(b). The Commission shall hold additional meetings if the Chairperson or a majority of the members of the Commission request the additional meetings in writing.

(g) **QUORUM.**—A majority of the Commission shall constitute a quorum for the transaction of business.

(h) **COMPENSATION AND EXPENSES.**—

(1) **COMPENSATION.**—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission, and travel to conduct the duties of the Commission.

(2) **TRAVEL EXPENSES.**—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each

day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(3) **EMPLOYMENT STATUS.**—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code; and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

SEC. 201. RESEARCH ON ADVANCEMENT OF WOMEN AND MINORITIES TO MANAGEMENT AND DECISIONMAKING POSITIONS IN BUSINESS.

(a) **ADVANCEMENT STUDY.**—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business. In conducting the study, the Commission shall—

(1) examine the preparedness of women and minorities to advance to management and decisionmaking positions in business;

(2) examine the opportunities for women and minorities to advance to management and decisionmaking positions in business;

(3) conduct basic research into the practices, policies, and manner in which management and decisionmaking positions in business are filled;

(4) conduct comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to management and decisionmaking positions;

(5) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to management and decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(6) examine any other issues and information relating to the advancement of women and minorities to management and decisionmaking positions in business.

(b) **REPORT.**—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(1) the findings and conclusions of the Commission resulting from the study conducted under subsection (a); and

(2) recommendations based on the findings and conclusions described in paragraph (1) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to management and decisionmaking positions in business, including recommendations for—

(A) policies and practices to fill vacancies at the management and decisionmaking levels;

(B) developmental practices and procedures to ensure that women and minorities have access to opportunities to

gain the exposure, skills, and expertise necessary to assume management and decisionmaking positions;

(C) compensation programs and reward structures utilized to reward and retain key employees; and

(D) the use of enforcement (including such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(c) **ADDITIONAL STUDY.**—The Commission may conduct such additional study of the advancement of women and minorities to management and decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

SEC. 205. ESTABLISHMENT OF THE NATIONAL AWARD FOR DIVERSITY AND EXCELLENCE IN AMERICAN EXECUTIVE MANAGEMENT.

(a) **IN GENERAL.**—There is established the National Award for Diversity and Excellence in American Executive Management, which shall be evidenced by a medal bearing the inscription "Frances Perkins-Elizabeth Hanford Dole National Award for Diversity and Excellence in American Executive Management". The medal shall be of such design and materials, and bear such additional inscriptions, as the Commission may prescribe.

(b) **CRITERIA FOR QUALIFICATION.**—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Commission, at such time, in such manner, and containing such information as the Commission may require, including at a minimum information that demonstrates that the business has made substantial effort to promote the opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of women and minorities, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Commission determines to be appropriate.

(c) **MAKING AND PRESENTATION OF AWARD.**—

(1) **AWARD.**—After receiving recommendations from the Commission, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) **PRESENTATION.**—The President or the designated representative of the President shall present the award with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(3) **PUBLICITY.**—A business that receives an award under this section may publicize the receipt of the award and use the award in its advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of women and minorities to foster the advancement of women and minorities to management and decisionmaking positions.

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(d) **BUSINESS.**—For purposes of this section, the term “business” includes—

- (1)(A) a corporation including nonprofit corporations;
 - (B) a partnership;
 - (C) a professional association;
 - (D) a labor organization; and
 - (E) a business entity similar to an entity described in subparagraphs (A) through (D);
- (2) an education referral program, a training program, such as an apprenticeship or management training program or a similar program; and
 - (3) a joint program formed by a combination of any entities described in paragraph (1) or (2).

SEC. 206. POWERS OF THE COMMISSION.

(a) **IN GENERAL.**—The Commission is authorized to—

- (1) hold such hearings and sit and act at such times;
- (2) take such testimony;
- (3) have such printing and binding done;
- (4) enter into such contracts and other arrangements;
- (5) make such expenditures; and
- (6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(b) **OATHS.**—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(c) **OBTAINING INFORMATION FROM FEDERAL AGENCIES.**—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(d) **VOLUNTARY SERVICE.**—Notwithstanding section 1342 of title 31, United States Code, the Chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(e) **GIFTS AND DONATIONS.**—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(f) **USE OF MAIL.**—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

SEC. 207. CONFIDENTIALITY OF INFORMATION.

(a) **INDIVIDUAL BUSINESS INFORMATION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in sections 204 and 205, the Commission shall maintain the confidentiality of all information that concerns—

- (A) the employment practices and procedures of individual businesses; or
- (B) individual employees of the businesses.

(2) **CONSENT.**—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(b) **AGGREGATE INFORMATION.**—In carrying out the duties of the Commission, the Commission may disclose—

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(1) information about the aggregate employment practices or procedures of a class or group of businesses; and

(2) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

SEC. 208. STAFF AND CONSULTANTS.

(a) STAFF.—

(1) **APPOINTMENT AND COMPENSATION.**—The Commission may appoint and determine the compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(2) **LIMITATIONS.**—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for level V of the Executive Schedule under section 5316 of title 5, United States Code for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) **EXPERTS AND CONSULTANTS.**—The Chairperson of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(c) **DETAIL OF FEDERAL EMPLOYEES.**—On the request of the Chairperson of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(d) **TECHNICAL ASSISTANCE.**—On the request of the Chairperson of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title. The sums shall remain available until expended, without fiscal year limitation.

SEC. 210. TERMINATION.

(a) **COMMISSION.**—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

(b) **AWARD.**—The authority to make awards under section 205 shall terminate 4 years after the date of the enactment of this Act.

TITLE III—GOVERNMENT EMPLOYEE RIGHTS

SEC. 301. GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

(a) **SHORT TITLE.**—This title may be cited as the "Government Employee Rights Act of 1991".

(b) **PURPOSE.**—The purpose of this title is to provide procedures to protect the right of Senate and other 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) **DEFINITIONS.**—For purposes of this title:

(1) **SENATE EMPLOYEE.**—The term "Senate employee" or "employee" means—

(A) any employee whose pay is disbursed by the Secretary of the Senate;

(B) any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;

(C) any applicant for a position that will last 90 days or more and that is to be occupied by an individual described in subparagraph (A) or (B); or

(D) any individual who was formerly an employee described in subparagraph (A) or (B) and whose claim of a violation arises out of the individual's Senate employment.

(2) **HEAD OF EMPLOYING OFFICE.**—The term "head of employing office" means the individual who has final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the Senate employment of an employee.

(3) **VIOLATION.**—The term "violation" means a practice that violates section 302 of this title.

SEC. 302. DISCRIMINATORY PRACTICES PROHIBITED.

All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(3) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102-104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112-14).

SEC. 303. ESTABLISHMENT OF OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES.

(a) **IN GENERAL.**—There is established, as an office of the Senate, the Office of Senate Fair Employment Practices (referred to in this title as the "Office"), which shall—

(1) administer the processes set forth in sections 305 through 307;

(2) implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring.

(b) **DIRECTOR.**—

(1) **IN GENERAL.**—The Office shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader. The appointment shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. The Director shall be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Director is appointed. A Director may be reappointed at the termination of any term of service. The President pro tempore, upon the joint recommendation of the Majority Leader in consultation with the Minority Leader, may remove the Director at any time.

(2) **SALARY.**—The President pro tempore, upon the recommendation of the Majority Leader in consultation with the Minority Leader, shall establish the rate of pay for the Director. The salary of the Director may not be reduced during the employment of the Director and shall be increased at the same time and in the same manner as fixed statutory salary rates within the Senate are adjusted as a result of annual comparability increases.

(3) **ANNUAL BUDGET.**—The Director shall submit an annual budget request for the Office to the Committee on Appropriations.

(4) **APPOINTMENT OF DIRECTOR.**—The first Director shall be appointed and begin service within 90 days after the date of enactment of this Act, and thereafter the Director shall be appointed and begin service within 30 days after the beginning of the session of the Congress immediately following the termination of a Director's term of service or within 60 days after a vacancy occurs in the position.

(c) **STAFF OF THE OFFICE.**—

(1) **APPOINTMENT.**—The Director may appoint and fix the compensation of such additional staff, including hearing officers, as are necessary to carry out the purposes of this title.

(2) **DETAILEES.**—The Director may, with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, use on a reimbursable or nonreimbursable basis the services of any such department or agency, including the services of members or personnel of the General Accounting Office Personnel Appeals Board.

(3) **CONSULTANTS.**—In carrying out the functions of the Office, the Director may procure the temporary (not to exceed 1 year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)).

(d) **EXPENSES OF THE OFFICE.**—In fiscal year 1992, the expenses of the Office shall be paid out of the Contingent Fund of the Senate from the appropriation account Miscellaneous Items. Beginning in fiscal year 1993, and for each fiscal year thereafter, there is authorized to be appropriated for the expenses of the Office such sums as shall be necessary to carry out its functions. In all cases, expenses shall be paid out of the Contingent Fund of the Senate upon vouchers approved by the Director, except that a voucher shall not be required for—

(1) the disbursement of salaries of employees who are paid at an annual rate;

(2) the payment of expenses for telecommunications services provided by the Telecommunications Department, Sergeant at Arms, United States Senate;

(3) the payment of expenses for stationery supplies purchased through the Keeper of the Stationery, United States Senate;

(4) the payment of expenses for postage to the Postmaster, United States Senate; and

(5) the payment of metered charges on copying equipment provided by the Sergeant at Arms, United States Senate.

The Secretary of the Senate is authorized to advance such sums as may be necessary to defray the expenses incurred in carrying out this title. Expenses of the Office shall include authorized travel for personnel of the Office.

(e) **RULES OF THE OFFICE.**—The Director shall adopt rules governing the procedures of the Office, including the procedures of hearing boards, which rules shall be submitted to the President pro tempore for publication in the Congressional Record. The rules may be amended in the same manner. The Director may consult with the Chairman of the Administrative Conference of the United States on the adoption of rules.

(f) **REPRESENTATION BY THE SENATE LEGAL COUNSEL.**—For the purpose of representation by the Senate Legal Counsel, the Office shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978 (2 U.S.C. 288, et seq.).

SEC. 301. SENATE PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

The Senate procedure for consideration of alleged violations consists of 4 steps as follows:

(1) Step I, counseling, as set forth in section 305.

(2) Step II, mediation, as set forth in section 306.

(3) Step III, formal complaint and hearing by a hearing board, as set forth in section 307.

(4) Step IV, review of a hearing board decision, as set forth in section 308 or 309.

SEC. 305. STEP I: COUNSELING.

(a) **IN GENERAL.**—A Senate employee alleging a violation may request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the alleged violation forming the basis of the request for counseling occurred. No request for counseling may be made until 10 days after the first Director begins service pursuant to section 303(b)(4).

(b) **PERIOD OF COUNSELING.**—The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

(c) **EMPLOYEES OF THE ARCHITECT OF THE CAPITOL AND CAPITOL POLICE.**—In the case of an employee of the Architect of the Capitol or an employee who is a member of the Capitol Police, the Director may refer the employee to the Architect of the Capitol or the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Architect of the Capitol or the

Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.

SEC. 306. STEP II: MEDIATION.

(a) **IN GENERAL.**—Not later than 15 days after the end of the counseling period, the employee may file a request for mediation with the Office. Mediation may include the Office, the employee, and the employing office in a process involving meetings with the parties separately or jointly for the purpose of resolving the dispute between the employee and the employing office.

(b) **MEDIATION PERIOD.**—The mediation period shall be 30 days beginning on the date the request for mediation is received and may be extended for an additional 30 days at the discretion of the Office. The Office shall notify the employee and the head of the employing office when the mediation period has ended.

SEC. 307. STEP III: FORMAL COMPLAINT AND HEARING.

(a) **FORMAL COMPLAINT AND REQUEST FOR HEARING.**—Not later than 30 days after receipt by the employee of notice from the Office of the end of the mediation period, the Senate employee may file a formal complaint with the Office. No complaint may be filed unless the employee has made a timely request for counseling and has completed the procedures set forth in sections 305 and 306.

(b) **HEARING BOARD.**—A board of 3 independent hearing officers (referred to in this title as "hearing board"), who are not Senators or officers or employees of the Senate, chosen by the Director (one of whom shall be designated by the Director as the presiding hearing officer) shall be assigned to consider each complaint filed under this section. The Director shall appoint hearing officers after considering any candidates who are recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters. A hearing board shall act by majority vote.

(c) **DISMISSAL OF FRIVOLOUS CLAIMS.**—Prior to a hearing under subsection (d), a hearing board may dismiss any claim that it finds to be frivolous.

(d) **HEARING.**—A hearing shall be conducted—

- (1) in closed session on the record by a hearing board;
- (2) no later than 30 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 60 days the time for conducting a hearing; and
- (3) except as specifically provided in this title and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code.

(e) **DISCOVERY.**—Reasonable prehearing discovery may be permitted at the discretion of the hearing board.

(f) **SUBPOENA.**—

(1) **AUTHORIZATION.**—A hearing board may authorize subpoenas, which shall be issued by the presiding hearing officer on behalf of the hearing board, for the attendance of witnesses at proceedings of the hearing board and for the production of correspondence, books, papers, documents, and other records.

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(2) **OBJECTIONS.**—If a witness refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with the proceedings of a hearing board, the hearing board shall rule on the objection. At the request of the witness, the employee, or employing office, or on its own initiative, the hearing board may refer the objection to the Select Committee on Ethics for a ruling.

(3) **ENFORCEMENT.**—The Select Committee on Ethics may make to the Senate any recommendations by report or resolution, including recommendations for criminal or civil enforcement by or on behalf of the Office, which the Select Committee on Ethics may consider appropriate with respect to—

(A) the failure or refusal of any person to appear in proceedings under this or to produce records in obedience to a subpoena or order of the hearing board; or

(B) the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under this section.

For purposes of section 1365 of title 28, United States Code, the Office shall be deemed to be a committee of the Senate.

(g) **DECISION.**—The hearing board shall issue a written decision as expeditiously as possible, but in no case more than 45 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the employee and the employing office. The decision shall state the issues raised by the complaint, describe the evidence in the record, and contain a determination as to whether a violation has occurred.

(h) **REMEDIES.**—If the hearing board determines that a violation has occurred, it shall order such remedies as would be appropriate if awarded under section 706 (g) and (k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5 (g) and (k)), and may also order the award of such compensatory damages as would be appropriate if awarded under section 1977 and section 1977A (a) and (b)(2) of the Revised Statutes (42 U.S.C. 1981 and 1981A (a) and (b)(2)). In the case of a determination that a violation based on age has occurred, the hearing board shall order such remedies as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)). Any order requiring the payment of money must be approved by a Senate resolution reported by the Committee on Rules and Administration. The hearing board shall have no authority to award punitive damages.

(i) **PRECEDENT AND INTERPRETATIONS.**—Hearing boards shall be guided by judicial decisions under statutes referred to in section 302 and subsection (h) of this section, as well as the precedents developed by the Select Committee on Ethics under section 308, and other Senate precedents.

SEC. 308. REVIEW BY THE SELECT COMMITTEE ON ETHICS.

(a) **IN GENERAL.**—An employee or the head of an employing office may request that the Select Committee on Ethics (referred to in this section as the "Committee"), or such other entity as the Senate may designate, review a decision under section 307, including any decision following a remand under subsection (c), by filing a request for review with the Office not later than 10 days after the receipt of the decision of a hearing board. The Office, at the discretion of the Director, on its own initiative and for good cause, may file a request

for review by the Committee of a decision of a hearing board not later than 5 days after the time for the employee or employing office to file a request for review has expired. The Office shall transmit a copy of any request for review to the Committee and notify the interested parties of the filing of the request for review.

(b) **REVIEW.**—Review under this section shall be based on the record of the hearing board. The Committee shall adopt and publish in the Congressional Record procedures for requests for review under this section.

(c) **REMAND.**—Within the time for a decision under subsection (d), the Committee may remand a decision no more than one time to the hearing board for the purpose of supplementing the record or for further consideration.

(d) **FINAL DECISION.**—

(1) **HEARING BOARD.**—If no timely request for review is filed under subsection (a), the Office shall enter as a final decision, the decision of the hearing board.

(2) **SELECT COMMITTEE ON ETHICS.**—

(A) If the Committee does not remand under subsection (c), it shall transmit a written final decision to the Office for entry in the records of the Office. The Committee shall transmit the decision not later than 60 calendar days during which the Senate is in session after the filing of a request for review under subsection (a). The Committee may extend for 15 calendar days during which the Senate is in session the period for transmission to the Office of a final decision.

(B) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, unless a majority of the Committee votes to reverse or remand the decision of the hearing board within the time for transmission to the Office of a final decision.

(C) The decision of the hearing board shall be deemed to be a final decision, and entered in the records of the Office as a final decision, if the Committee, in its discretion, decides not to review, pursuant to a request for review under subsection (a), a decision of the hearing board, and notifies the interested parties of such decision.

(3) **ENTRY OF A FINAL DECISION.**—The entry of a final decision in the records of the Office shall constitute a final decision for purposes of judicial review under section 309.

(e) **STATEMENT OF REASONS.**—Any decision of the Committee under subsection (c) or subsection (d)(2)(A) shall contain a written statement of the reasons for the Committee's decision.

SEC. 309. JUDICIAL REVIEW.

(a) **IN GENERAL.**—Any Senate employee aggrieved by a final decision under section 308(d), or any Member of the Senate who would be required to reimburse the appropriate Federal account pursuant to the section entitled "Payments by the President or a Member of the Senate" and a final decision entered pursuant to section 308(d)(2)(B), may petition for review by the United States Court of Appeals for the Federal Circuit.

(b) **LAW APPLICABLE.**—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that—

(1) with respect to section 2344 of title 28, United States Code, service of the petition shall be on the Senate Legal Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, United States Code, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 308(d);

(4) the Office shall be an "agency" as that term is used in chapter 158 of title 28, United States Code; and

(5) the Office shall be the respondent in any proceeding under this section.

(c) **STANDARD OF REVIEW.**—To the extent necessary to decision and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. The record on review shall include the record before the hearing board, the decision of the hearing board, and the decision, if any, of the Select Committee on Ethics.

(d) **ATTORNEY'S FEES.**—If an employee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

SEC. 310. RESOLUTION OF COMPLAINT.

If, after a formal complaint is filed under section 307, the employee and the head of the employing office resolve the issues involved, the employee may dismiss the complaint or the parties may enter into a written agreement, subject to the approval of the Director.

SEC. 311. COSTS OF ATTENDING HEARINGS.

Subject to the approval of the Director, an employee with respect to whom a hearing is held under this title may be reimbursed for actual and reasonable costs of attending proceedings under sections 307 and 308, consistent with Senate travel regulations. Senate Resolution 259, agreed to August 5, 1987 (100th Congress, 1st Session), shall apply to witnesses appearing in proceedings before a hearing board.

SEC. 312. PROHIBITION OF INTIMIDATION.

Any intimidation of, or reprisal against, any employee by any Member, officer, or employee of the Senate, or by the Architect of the Capitol, or anyone employed by the Architect of the Capitol, as the case may be, because of the exercise of a right under this title constitutes an unlawful employment practice, which may be remedied in the same manner under this title as is a violation.

SEC. 313. CONFIDENTIALITY.

(a) **COUNSELING.**—All counseling shall be strictly confidential except that the Office and the employee may agree to notify the head of the employing office of the allegations.

(b) **MEDIATION.**—All mediation shall be strictly confidential.

(c) **HEARINGS.**—Except as provided in subsection (d), the hearings, deliberations, and decisions of the hearing board and the Select Committee on Ethics shall be confidential.

(d) **FINAL DECISION OF SELECT COMMITTEE ON ETHICS.**—The final decision of the Select Committee on Ethics under section 308 shall be made public if the decision is in favor of the complaining Senate employee or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee on Ethics may decide to release any other decision at its discretion. In the absence of a proceeding under section 308, a decision of the hearing board that is favorable to the employee shall be made public.

(e) **RELEASE OF RECORDS FOR JUDICIAL REVIEW.**—The records and decisions of hearing boards, and the decisions of the Select Committee on Ethics, may be made public if required for the purpose of judicial review under section 309.

SEC. 314. EXERCISE OF RULEMAKING POWER.

The provisions of this title, except for sections 309, 320, 321, and 322, are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate. Notwithstanding any other provision of law, except as provided in section 309, enforcement and adjudication with respect to the discriminatory practices prohibited by section 302, and arising out of Senate employment, shall be within the exclusive jurisdiction of the United States Senate.

SEC. 315. TECHNICAL AND CONFORMING AMENDMENTS.

Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) through (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (2) and (3), respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by striking “(2) and (6)(A)” and inserting “(2)(A)”, as redesignated by subparagraph (B) of this paragraph; and

(ii) by striking “(3), (4), (5), (6)(B), and (6)(C)” and inserting “(2)”; and

(2) in subsection (c)(2), by inserting “, except for the employees who are defined as Senate employees, in section 301(c)(1) of the Civil Rights Act of 1991” after “shall apply exclusively”.

SEC. 316. POLITICAL AFFILIATION AND PLACE OF RESIDENCE.

(a) **IN GENERAL.**—It shall not be a violation with respect to an employee described in subsection (b) to consider the—

(1) party affiliation;

(2) domicile; or

(3) political compatibility with the employing office, of such an employee with respect to employment decisions.

(b) **DEFINITION.**—For purposes of this section, the term “employee” means—

- (1) an employee on the staff of the Senate leadership;
- (2) an employee on the staff of a committee or subcommittee;
- (3) an employee on the staff of a Member of the Senate;
- (4) an officer or employee of the Senate elected by the Senate or appointed by a Member, other than those described in paragraphs (1) through (3); or
- (5) an applicant for a position that is to be occupied by an individual described in paragraphs (1) through (4).

SEC. 317. OTHER REVIEW.

No Senate employee may commence a judicial proceeding to redress discriminatory practices prohibited under section 302 of this title, except as provided in this title.

SEC. 318. OTHER INSTRUMENTALITIES OF THE CONGRESS.

It is the sense of the Senate that legislation should be enacted to provide the same or comparable rights and remedies as are provided under this title to employees of instrumentalities of the Congress not provided with such rights and remedies.

SEC. 319. RULE XLII OF THE STANDING RULES OF THE SENATE.

(a) **REAFFIRMATION.**—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate, which provides as follows:

“No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

“(a) fail or refuse to hire an individual;

“(b) discharge an individual; or

“(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.”

(b) **AUTHORITY TO DISCIPLINE.**—Notwithstanding any provision of this title, including any provision authorizing orders for remedies to Senate employees to redress employment discrimination, the Select Committee on Ethics shall retain full power, in accordance with its authority under Senate Resolution 338, 88th Congress, as amended, with respect to disciplinary action against a Member, officer, or employee of the Senate for a violation of Rule XLII.

SEC. 320. COVERAGE OF PRESIDENTIAL APPOINTEES.

(a) **IN GENERAL.**—

(1) **APPLICATION.**—The rights, protections, and remedies provided pursuant to section 302 and 307(h) of this title shall apply with respect to employment of Presidential appointees.

(2) **ENFORCEMENT BY ADMINISTRATIVE ACTION.**—Any Presidential appointee 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, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States

Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

(3) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any party aggrieved by a final order under paragraph (2) may petition for review by the United States Court of Appeals for the Federal Circuit.

(B) LAW APPLICABLE.—Chapter 158 of title 28, United States Code, shall apply to a review under this section except that the Equal Employment Opportunity Commission or such other entity as the President may designate under paragraph (2) shall be an "agency" as that term is used in chapter 158 of title 28, United States Code.

(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under paragraph (2) if it is determined that the order was—

- (i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (ii) not made consistent with required procedures; or
- (iii) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(D) ATTORNEY'S FEES.—If the presidential appointee is the prevailing party in a proceeding under this section, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(b) PRESIDENTIAL APPOINTEE.—For purposes of this section, the term "Presidential appointee" means any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to bring an action under any of the statutes referred to in section 302 but does not include any individual—

- (1) whose appointment is made by and with the advice and consent of the Senate;
- (2) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or
- (3) who is a member of the uniformed services.

SEC. 321. COVERAGE OF PREVIOUSLY EXEMPT STATE EMPLOYEES.

(a) APPLICATION.—The rights, protections, and remedies provided pursuant to section 302 and 307(h) 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) 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, United States Code, 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 706(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(d)) 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 alleging an unlawful employment practice” means a complaint filed under this section.

(c) **JUDICIAL REVIEW.**—Any party aggrieved by a final order under subsection (b) may obtain a review of such order under chapter 158 of title 28, United States Code. For the purpose of this review, the Equal Employment Opportunity Commission shall be an “agency” as that term is used in chapter 158 of title 28, United States Code.

(d) **STANDARD OF REVIEW.**—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (2) not made consistent with required procedures; or
- (3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) **ATTORNEY'S FEES.**—If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection, attorney's fees may be allowed by the court in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

SEC. 322. SEVERABILITY.

Notwithstanding section 401 of this Act, if any provision of section 309 or 320(a)(3) is invalidated, both sections 309 and 320(a)(3) shall have no force and effect.

SEC. 323. PAYMENTS BY THE PRESIDENT OR A MEMBER OF THE SENATE.

The President or a Member of the Senate shall reimburse the appropriate Federal account for any payment made on his or her behalf out of such account for a violation committed under the provisions of this title by the President or Member of the Senate not later than 60 days after the payment is made.

SEC. 324. REPORTS OF SENATE COMMITTEES.

(a) Each report accompanying a bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations and the Committee on the Budget) shall contain a listing of the provisions of the bill or joint resolution that apply to Congress and an evaluation of the impact of such provisions on Congress.

(b) The provisions of this section are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

SEC. 325. INTERVENTION AND EXPEDITED REVIEW OF CERTAIN APPEALS.

(a) **INTERVENTION.**—Because of the constitutional issues that may be raised by section 309 and section 320, any Member of the Senate may intervene as a matter of right in any proceeding under section 309 for the sole purpose of determining the constitutionality of such section.

(b) **THRESHOLD MATTER.**—In any proceeding under section 309 or section 320, the United States Court of Appeals for the Federal Circuit shall determine any issue presented concerning the constitutionality of such section as a threshold matter.

(c) **APPEAL.**—

(1) **IN GENERAL.**—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by the United States Court of Appeals for the Federal Circuit ruling upon the constitutionality of section 309 or 320.

(2) **JURISDICTION.**—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in paragraph (1), advance the appeal on the docket and expedite the appeal to the greatest extent possible.

TITLE IV—GENERAL PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.

SEC. 402. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as otherwise specifically provided, this Act and the amendments made by this Act shall take effect upon enactment.

(b) **CERTAIN DISPARATE IMPACT CASES.**—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.

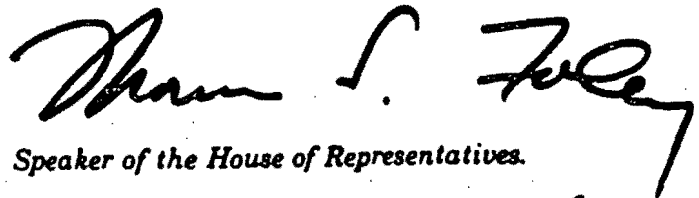
S. 1745—30

**TITLE V—CIVIL WAR SITES ADVISORY
COMMISSION**

SEC. 501. CIVIL WAR SITES ADVISORY COMMISSION.

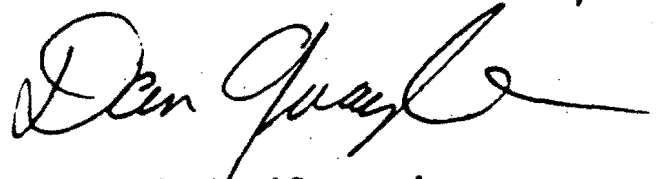
Section 1205 of Public Law 101-628 is amended in subsection (a)
by—

- (1) striking "Three" in paragraph (4) and inserting "Four" in lieu thereof; and
- (2) striking "Three" in paragraph (5) and inserting "Four" in lieu thereof.



Thomas S. Foley

Speaker of the House of Representatives.



Dan Quayle

*Vice President of the United States and
President of the Senate.*



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 C.F.R. Part 1603

RIN 3046-AA45

Procedures for Complaints of Employment Discrimination under the Government Employees Rights Act of 1991

AGENCY: Equal Employment Opportunity Commission

ACTION: Interim Rule.

SUMMARY: Title III of the Civil Rights Act of 1991, entitled the Government Employees Rights Act of 1991, extends the protections against employment discrimination based on race, color, religion, sex, national origin, age and disability to Presidential appointees and previously exempt state and local employees. This interim rule establishes EEOC procedures for resolving employment discrimination complaints filed by those individuals.

DATES: This rule will become effective on [date of publication]. Written comments on the interim rule must be received on or before [60 days after date of publication].

ADDRESSES: Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, N.W., Washington, D.C. between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Associate Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney, at (202) 663-4670 or TDD (202) 663-7026. This notice is also available in the following

formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1-800-669-3362.

SUPPLEMENTAL INFORMATION: Title III of the Civil Rights Act of 1991 contains the Government Employee Rights Act of 1991. 2 U.S.C.1201 et seq. The Government Employee Rights Act of 1991 (the Act) provides new equal employment opportunity protections for three classes of individuals: Senate employees, Presidential appointees and previously exempt state and local employees. The Act designates the Equal Employment Opportunity Commission as the enforcement agency for previously exempt state and local employees covered by section 321. 2 U.S.C. 1220. In accordance with section 320, covering Presidential appointees, the President has designated EEOC as the enforcement agency for Presidential appointees also. 2 U.S.C. 1219.

Sections 320 and 321 of the Act provide for an administrative enforcement mechanism that is different from EEOC's other charge resolution procedures. See 29 C.F.R. Parts 1601 and 1614. Under sections 320 and 321, a covered individual who believes he or she was discriminated against has 180 days to file a complaint with EEOC. Thereafter, the Act provides that EEOC process the matter in accordance with the formal adjudication principles and procedures set forth in sections 554 through 557 of the Administrative Procedure Act, 5 U.S.C. §§ 554-557. Section 320 provides for judicial review of an EEOC final

order by the United States Court of Appeals for the Federal Circuit. Section 321 provides for judicial review of an EEOC final order under chapter 158 of title 28 of the United States Code.

This interim rule sets out EEOC's procedures for handling complaints brought by individuals covered by sections 320 and 321 of the Act. Once a complaint is filed, EEOC may refer the matter to a neutral mediator or to any other alternative dispute resolution process. EEOC may investigate a complaint using a variety of fact-finding methods. In an investigation, EEOC will have subpoena authority to produce evidence and witnesses. EEOC's existing subpoena procedures, found at 29 C.F.R. § 1601.16, will apply to subpoenas issued under this part. The procedures of this part are modeled after those in Part 1601 of this Chapter. It is the Commission's intention to apply these procedures consistently with its application of the Part 1601 procedures.

If the complaint is not dismissed or resolved during mediation or investigation, the Commission will send the complaint to an administrative law judge for formal adjudication in accordance with the Administrative Procedure Act. Discovery under this part will be conducted in accordance with the Federal Rules of Civil Procedure and administrative law judges will accept evidence in accordance with the Federal Rules of Evidence. Administrative law judges will issue decisions within 270 days after referral of a complaint for hearing.

Within 30 days of issuance, any party may appeal the dismissal of a complaint, a matter certified for interlocutory review, an administrative law judge's denial of a motion for withdrawal or a decision of an administrative law judge to the Commission. After the parties have briefed the issues, the Commission will issue a final order. In the absence of a timely appeal, the final decision of the administrative law judge will become the final order of the Commission. Presidential appointees may seek judicial review of an EEOC final order by filing a petition for review with the Court of Appeals for the Federal Circuit within 60 days after issuance of the final order. Previously exempt state and local government employees may seek judicial review of an EEOC final order within 60 days after its issuance in the judicial circuit in which the petitioner resides, or has its principle office, or in the United States Court of Appeals for the District of Columbia Circuit.

The Commission is publishing Part 1603 as an interim rule to provide for immediate processing of complaints already filed under sections 320 and 321 of the Act. The Commission will consider all comments received on Part 1603 and, if necessary, will publish a revised final rule.

List of Subjects in 29 C.F.R. Part 1603

Administrative practice and procedure, Equal Employment Opportunity, Government employees.

For the Commission,

Evan J. Kemp, Jr.
Chairman

For the reasons set forth in the preamble, title 29, chapter XIV of the Code of Federal Regulations is amended by adding part 1603 to read as follows:

PART 1603--PROCEDURES FOR COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER THE GOVERNMENT EMPLOYEES RIGHTS ACT OF 1991

1603.100 Purpose

Subpart A--Administrative Process

1603.101 Coverage
1603.102 Complaints
1603.103 Computation of Time
1603.104 Referral of State and Local Government Employees' Complaints
1603.105 Service of the Complaint
1603.106 Withdrawal of a Complaint
1603.107 Dismissals of Complaints
1603.108 Settlement and Alternative Dispute Resolution
1603.109 Investigations

Subpart B--Hearings

1603.201 Referral and Scheduling for Hearing
1603.202 Administrative Law Judge
1603.203 Unavailability or Withdrawal of Administrative Law Judges
1603.204 Ex Parte Communications
1603.205 Separation of Functions
1603.206 Consolidation and Severance of Hearings
1603.207 Intervention
1603.208 Motions
1603.209 Filing and Service
1603.210 Discovery

1603.211 Subpoenas
1603.212 Witness Fees
1603.213 Interlocutory Review
1603.214 Evidence
1603.215 Record of Hearings
1603.216 Summary Decision
1603.217 Decision of the Administrative Law Judge

Subpart C--Appeals

1603.301 Appeal to the Commission
1603.302 Filing an Appeal
1603.303 Briefs on Appeal
1603.304 Commission Decision
1603.305 Modification or Withdrawal of Commission Decision
1603.306 Judicial Review

§ 1603.100 Purpose

This part contains the regulations of the Equal Employment Opportunity Commission (hereinafter the Commission) for processing complaints of discrimination filed under sections 320 and 321 of the Government Employee Rights Act, 2 U.S.C. 1219 and 1220.

SUBPART A--Administrative Process

§ 1603.101 Coverage

(a) Presidential Appointees: This part applies to any officer or employee, or applicant seeking to become an officer or employee, in any unit of the Executive Branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the Executive Branch, who is not already entitled to file a complaint under 29 C.F.R. Part 1614, but does not include any individual:

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

(2) who is appointed to an advisory committee, as defined

in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.); or

(3) who is a member of the uniformed services.

(b) Previously exempt state and local government employees:

This part applies to employment, which includes application for 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.

§ 1603.102 Complaints

(a) Who May Make a Complaint: Individuals referred to in section 1603.101 of this part who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability or retaliated against for opposing any practice made unlawful by sections 320 and 321 of the Government Employee Rights Act, 2 U.S.C. 1219 and 1220, or for participating in any stage of administrative or judicial proceedings under sections 320 and 321 may file a complaint with the Commission or its designated agent not later than 180 days after the occurrence of the alleged discrimination.

(b) Where to Make a Complaint: A complaint may be made in person or by mail or by facsimile machine to the offices of the Commission in Washington, D.C., or any of its field offices or with any designated agent or representative of the Commission. The addresses of the Commission's field offices appear in § 1610.4.

(c) Contents of a Complaint: A complaint shall be in writing, signed and verified. In addition, each complaint should contain the following:

(1) the full name, address and telephone number of the person making the complaint;

(2) the full name and address of the person, governmental entity or political subdivision against whom the complaint is made (hereinafter referred to as the respondent);

(3) a clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices (See § 1601.15(b));

(4) a statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local FEP agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(d) Amendment of a Complaint: Notwithstanding the foregoing, a complaint is sufficient when the Commission receives from the person making the complaint a written statement sufficiently precise to identify the parties and to describe generally the

alleged discriminatory action or practices. A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint, or to clarify and amplify its allegations. Such amendments, and amendments alleging additional acts that constitute discriminatory employment practices related to or growing out of the subject matter of the original complaint, will relate back to the date the complaint was first received. A complaint that has been amended after it was referred shall not be again referred to the appropriate state or local fair employment practices agency.

(e) Misfiled Complaint: A charge filed pursuant to Part 1601 or Part 1626, or a complaint filed pursuant to Part 1614, that is later deemed to be a matter under this part, shall be processed as a complaint under this part and shall relate back to the date of the initial charge or complaint. A complaint filed under this part that is later deemed to be a matter under Part 1601, Part 1626 or Part 1614 shall be processed as a charge or complaint under the appropriate part and shall relate back to the date of the initial complaint.

§ 1603.103 Computation of Time

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely if it is delivered in person or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the

applicable filing period.

(c) All time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included unless it falls on a Saturday, Sunday or federal holiday, in which case the period shall be extended to include the next business day.

§ 1603.104 Referral of State and Local Government Employees' Complaints

(a) The Commission will notify an FEP agency, as defined in 1601.3(a), when a complaint is filed by a state or local government employee or applicant under this part concerning an employment practice within the jurisdiction of the FEP agency. The FEP agency will be entitled to process the complaint exclusively for a period of not less than 60 days if the FEP agency makes a written request to the Commission within 10 days of receiving notice that the complaint has been filed, unless the complaint names the FEP agency as the respondent.

(b) The Commission may enter into an agreement with an FEP agency that authorizes the FEP agency to receive complaints under this part on behalf of the Commission, or waives the FEP agency's right to exclusive processing of complaints.

§ 1603.105 Service of the Complaint

Upon receipt of a complaint, the Commission shall promptly serve the respondent with a copy of the complaint.

§ 1603.106 Withdrawal of a Complaint

The complainant may withdraw a complaint at any time by so advising the Commission in writing.

§ 1603.107 Dismissals of Complaints

(a) Where a complaint on its face, or after further inquiry, is determined to be not timely filed or otherwise fails to state a claim under this part, the Commission shall dismiss the complaint.

(b) Where the complainant cannot be located, the Commission may dismiss the complaint provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 30 days to a notice sent by the Commission to the complainant's last known address.

(c) Where the complainant fails to provide requested information, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate, the Commission, after providing the complainant with notice and 30 days in which to respond, may dismiss the complaint.

(d) Written notice of dismissal pursuant to paragraphs (a), (b), or (c) of this section shall be issued to the complainant and the respondent. The Commission hereby delegates authority to the Program Director, Office of Program Operations, or upon delegation to the Directors, Field Management Programs, Office of Program Operations, and District Directors or upon delegation to Area Directors or Local Directors, and the Director, Office of

Federal Operations, to dismiss complaints.

(e) A complainant who is dissatisfied with a dismissal issued pursuant to paragraphs (a), (b), or (c) of this section may appeal to the Commission in accordance with the procedures in Subpart C of this Part.

§ 1603.108 Settlement and Alternative Dispute Resolution

(a) The parties are at all times free to settle all or part of a complaint on terms that are mutually agreeable. Any settlement reached shall be in writing and signed by both parties and shall identify the allegations resolved. A copy of any settlement shall be served on the Commission.

(b) With the agreement of the parties, the Commission may refer a complaint to a neutral mediator or to any other alternative dispute resolution process authorized by the Administrative Dispute Resolution Act, 5 U.S.C. 581 note, or other statute.

(c) The Commission may use the services of the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, other federal agencies, appropriate professional organizations, employees of the Commission and other appropriate sources in selecting neutrals for alternative dispute resolution processes.

(d) The alternative dispute resolution process shall be strictly confidential and no party to a complaint or neutral shall disclose any dispute resolution communication or any information provided in confidence to the neutral except as provided in 5 U.S.C. 584.

§ 1603.109 Investigations

(a) The Commission may conduct an investigation of a complaint filed under this part using an exchange of letters, interrogatories, fact-finding conferences, interviews, on-site visits or other fact-finding methods that address the matters at issue. The Commission shall inform the complainant in writing of the right to an investigation of the complaint, and give the complainant the election between an investigation or an immediate referral to an Administrative Law Judge under section 1603.201.

(b) During an investigation of a complaint under this part, the Commission shall have the authority to sign and issue a subpoena requiring the attendance and testimony of witnesses, the production of evidence and access to evidence for the purposes of examination and the right to copy. The subpoena procedures contained in § 1601.16 shall apply to subpoenas issued pursuant to this section.

SUBPART B--Hearings

§ 1603.201 Referral and Scheduling for Hearing

(a) If the complaint is not dismissed or resolved under subpart A of this part, the Commission shall transmit the complaint file to an administrative law judge, appointed under 5 U.S.C. 3105, for a hearing.

(b) The administrative law judge shall fix the time, place, and date for the hearing with due regard for the convenience of the parties, their representatives or witnesses and shall notify the parties of the same.

§ 1603.202 Administrative Law Judge

(a) The administrative law judge shall have all the powers necessary to conduct fair, expeditious, and impartial hearings as provided in 5 U.S.C. 556(c). In addition, the administrative law judge shall have the power to:

(1) change the time, place or date of the hearing;

(2) enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge and presenting arguments as to why the party or the party's representative could not appear either prior to the hearing or within two days after the scheduled hearing; and

(3) take any appropriate action authorized by the Federal Rules of Civil Procedure.

§ 1603.203 Unavailability or Withdrawal of Administrative Law Judges

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hearing or issuing a decision on the record as made, or both.

(b) The administrative law judge may withdraw from the adjudication at any time the administrative law judge deems himself or herself disqualified. Prior to issuance of the decision, any party may move that the administrative law judge withdraw on the ground of personal bias or other

disqualification, by filing with the administrative law judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal.

(c) The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion is timely and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

(d) A party may appeal the administrative law judge's denial of a motion for withdrawal in accordance with the procedures in subpart C of this part.

§ 1603.204 Ex Parte Communications

(a) Oral or written communications concerning the merits of an adjudication between the administrative law judge or the Commission and an interested party to the adjudication without providing the other party a chance to participate are prohibited from the time the parties have knowledge that the matter may be considered by the Commission until the Commission has rendered a final decision. Communications concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission and other purely procedural questions are permitted.

(b) Any communication made in violation of this section shall be made part of the record and an opportunity for rebuttal by the

other party allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(c) The following sanctions are available:

(1) The offending party may be required to show cause why, in the interest of justice, his or her claim should not be dismissed, denied or otherwise adversely affected.

(2) Commission personnel who engage in prohibited ex parte communications will be treated in accordance with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635.

§ 1603.205 Separation of Functions

(a) The administrative law judge may not be responsible to or subject to the supervision or direction of a Commission employee engaged in investigating complaints under this part.

(b) No Commission employee engaged in investigating complaints under this part shall participate or advise in the decision of the administrative law judge, except as a witness or counsel in the adjudication or its appellate review.

§ 1603.206 Consolidation and Severance of Hearings

(a) The administrative law judge may, upon motion by a party or upon his or her own motion, after providing reasonable notice and opportunity to object to all parties affected, consolidate any or all matters at issue in two or more adjudications docketed under this part where common parties, factual or legal questions exist, where such consolidation would expedite or simplify consideration

of the issues and where the interests of justice would be served. For purposes of this rule, no distinction is made between joinder and consolidation of adjudications.

(b) The administrative law judge may, upon motion of a party or upon his or her own motion, for good cause shown, order any adjudication severed with respect to some or all parties, claims or issues.

§ 1603.207 Intervention

(a) Any person or entity that wishes to intervene in any proceeding under this part shall file a motion to intervene in accordance with § 1603.208.

(b) A motion to intervene shall indicate the question of law or fact common to the movant's claim or defense and the complaint at issue and state all other facts or reasons the movant should be permitted to intervene.

(c) Any party may file a response to a motion to intervene within 15 days after the filing of the motion to intervene.

§ 1603.208 Motions

(a) All motions shall state the specific relief requested. All motions shall be in writing, except that a motion may be made orally during a conference or during the hearing. After providing an opportunity for response, the administrative law judge may rule on an oral motion immediately or may require that it be submitted in writing.

(b) Unless otherwise directed by the administrative law judge, any other party may file a response in support of or in

opposition to any written motion within ten (10) business days after service of the motion. If no response is filed within the response period, the party failing to respond shall be deemed to have waived any objection to the granting of the motion. The moving party shall have no right to reply to a response, unless the administrative law judge, in his or her discretion, orders that a reply be filed.

(c) Except for procedural matters, the administrative law judge may not grant a written motion prior to the expiration of the time for filing responses. The administrative law judge may deny a written motion without awaiting a response. The administrative law judge may allow oral argument (including that made by telephone) on written motions. Any party adversely affected by the ex parte grant of a motion for a procedural order may request, within five (5) business days of service of the order, that the administrative law judge reconsider, vacate or modify the order.

(d) The administrative law judge may summarily deny dilatory, repetitive or frivolous motions. Unless otherwise ordered by the administrative law judge, the filing of a motion does not stay the proceeding.

(e) All motions and responses must comply with the filing and service requirements of § 1603.209.

§ 1603.209 Filing and Service

(a) Unless otherwise ordered by the administrative law judge, a signed original of each motion, brief or other document shall be

filed with the administrative law judge, with a certificate of service indicating that a copy has been sent to all other parties, and the date and manner of service. All documents shall be on standard size (8 1/2 x 11) paper. Each document filed shall be clear and legible.

(b) Filing and service shall be made by first class mail or other more expeditious means of delivery. Service shall be made on a party's representative, if any, or, if not represented, on the party.

(c) Every document shall contain a caption, the complaint number or docket number assigned to the matter, a designation of the type of filing (e.g., motion, brief, etc.), and the filing person's signature, address, telephone number and telecopier number, if any.

§ 1603.210 Discovery

(a) Unless otherwise ordered by the administrative law judge, discovery may begin as soon as the complaint has been transmitted to the administrative law judge pursuant to § 1603.201.

Discovery shall be completed as expeditiously as possible within such time as the administrative law judge directs.

(b) Unless otherwise ordered by the administrative law judge, parties may obtain discovery by written interrogatories (not to exceed 20 interrogatories including subparts), depositions upon oral examination or written questions, requests for production of documents or things for inspection or other purposes, requests for admission or any other method found reasonable and

appropriate by the administrative law judge.

(c) Except as otherwise specified, the Federal Rules of Civil Procedure shall govern discovery in proceedings under this part.

(d) Neutral mediators who have participated in the alternative dispute resolution process in accordance with section 1603.108 shall not be called as witnesses or subject to discovery in any adjudication under this part.

§ 1603.211 Subpoenas

(a) Upon written application of any party, the administrative law judge may on behalf of the Commission issue a subpoena requiring the attendance and testimony of witnesses and the production of any evidence, including, but not limited to, books, records, correspondence, or documents, in their possession or under their control. The subpoena shall state the name and address of the party at whose request the subpoena was issued, identify the person and evidence subpoenaed, and the date and time the subpoena is returnable.

(b) Any person served with a subpoena who intends not to comply shall, within 5 days after service of the subpoena, petition the administrative law judge in writing to revoke or modify the subpoena. All petitions to revoke or modify shall be served upon the party at whose request the subpoena was issued. The requestor may file with the administrative law judge a response to the petition to revoke or modify within 5 days after service of the petition.

(c) Upon the failure of any person to comply with a subpoena

issued under this section, the administrative law judge may refer the matter to the Commission for enforcement procedures in accordance with 1601.16(c).

§ 1603.212 Witness Fees

Witnesses summoned in an adjudication shall receive the same fees and mileage as witnesses in the courts of the United States. Those fees must be paid or offered to the witness by the party requesting the subpoena at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to pay or offer witness fees and mileage allowances in advance.

§ 1603.213 Interlocutory Review

(a) Interlocutory review may not be sought except when the administrative law judge determines upon motion of a party or upon his or her own motion that:

(1) the ruling involves a controlling question of law or policy about which there is substantial ground for difference of opinion;

(2) an immediate ruling will materially advance the completion of the proceeding; or

(3) the denial of an immediate ruling will cause irreparable harm to the party or the public.

(b) Application for interlocutory review shall be filed within ten (10) days after notice of the administrative law judge's ruling. Any application for review shall:

(1) designate the ruling or part thereof from which appeal

is being taken; and

(2) contain arguments or evidence that tend to establish one or more of the grounds for interlocutory review contained in paragraph (a) of this section.

(c) Any party opposing the application for interlocutory review shall file a response to the application within 10 days after service of the application. The applicant shall have no right to reply to a response unless the administrative law judge, within his or her discretion, orders that a reply be filed.

(d) The administrative law judge shall promptly certify in writing any ruling that qualifies for interlocutory review under paragraph (a) of this section.

(e) The filing of an application for interlocutory review and the grant of an application shall not stay proceedings before the administrative law judge unless the administrative law judge or the Commission so orders. The Commission shall not consider a motion for a stay unless the motion was first made to the administrative law judge.

§ 1603.214 Evidence

The administrative law judge shall accept relevant non-privileged evidence in accordance with the Federal Rules of Evidence.

§ 1603.215 Record of Hearings

(a) All hearings shall be mechanically or stenographically reported. All evidence relied upon by the administrative law judge for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All

exhibits introduced as evidence shall be marked for identification, with a copy provided for all parties, if not previously provided, and incorporated into the record.

Transcripts may be obtained by the parties and the public from the official reporter at rates fixed by the contract with the reporter.

(b) Corrections to the official transcript will be permitted upon motion, only when errors of substance are involved and upon approval of the administrative law judge. Motions for correction must be submitted within ten (10) days of the receipt of the transcript unless additional time is permitted by the administrative law judge.

§ 1603.216 Summary Decision

Upon motion of a party or after notice to the parties, the administrative law judge may issue a summary decision without a hearing if the administrative law judge finds that there is no genuine issue of material fact or that the complaint may be dismissed pursuant to 1603.107 or any other grounds authorized by this part. A summary decision shall otherwise conform to the requirements of 1603.217.

§ 1603.217 Decision of the Administrative Law Judge

(a) The administrative law judge shall issue a decision on the merits of the complaint within 270 days after referral of a complaint for hearing, unless the administrative law judge makes a written determination that good cause exists for extending the time for issuing a decision. The decision shall contain findings

of fact and conclusions of law, shall order appropriate relief where discrimination is found, and shall provide notice of appeal rights consistent with subpart C of this part.

(b) The administrative law judge shall serve the decision promptly on all parties to the proceeding. Thereafter, the administrative law judge shall transmit the case file to the Office of Federal Operations including the decision and the record. The record shall include the complaint; the investigative file, if any; referral notice; motions; briefs; rulings; orders; official transcript of the hearing; all discovery and any other documents submitted by the parties.

SUBPART C--APPEALS

§ 1603.301 Appeal to the Commission

Any party may appeal to the Commission the dismissal of a complaint under § 1603.107, the administrative law judge's denial of a motion for withdrawal under § 1603.203, any matter certified for interlocutory review under § 1603.213, or the administrative law judge's final decision under § 1603.217.

§ 1603.302 Filing an Appeal

(a) An appeal shall be filed within 30 days after the date of the initial decision, unless the Commission, upon a showing of good cause, extends the time for filing an appeal for a period not to exceed an additional 30 days.

(b) An appeal shall be filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036, or by personal delivery or

facsimile.

§ 1603.303 Briefs on Appeal

(a) The appellant shall file a brief or other written statement within 30 days after the appeal is filed, unless the Commission otherwise directs.

(b) All other parties may file briefs or other written statements within 30 days of service of the appellant's brief or statement.

(c) Every brief or statement shall contain a statement of facts and a section setting forth the party's legal arguments. Any brief or statement in support of the appeal shall contain arguments or evidence that tend to establish that the dismissal, order or decision:

(1) is not supported by substantial evidence;

(2) contains an erroneous interpretation of law, regulation or material fact, or misapplication of established policy;

(3) contains a prejudicial error of procedure; or

(4) involves a substantial question of law or policy.

(d) Appellate briefs shall not exceed 50 pages in length.

(e) Filing and service of appellate briefs shall be made in accordance with § 1603.209.

§1603.304 Commission Decision

(a) On behalf of the Commission, the Office of Federal Operations shall review the record and the appellate briefs submitted by all the parties. The Office of Federal Operations shall prepare a recommended decision for consideration by the

Commission.

(b) When an administrative law judge certifies a matter for interlocutory review under 1603.213, the Commission may, in its discretion, issue a decision on the matter or send the matter back to the administrative law judge without decision.

(c) The Commission will not accept or consider new evidence on appeal, except that the Commission may, in its discretion, reopen the record on appeal.

(d) The decision of the Commission on appeal shall be its final order and shall be served on all parties.

(e) In the absence of a timely appeal under § 1603.302, the decision of the administrative law judge under § 1603.217 or a dismissal under § 1603.107 shall become the final order of the Commission. A final order under this paragraph shall not have precedential significance.

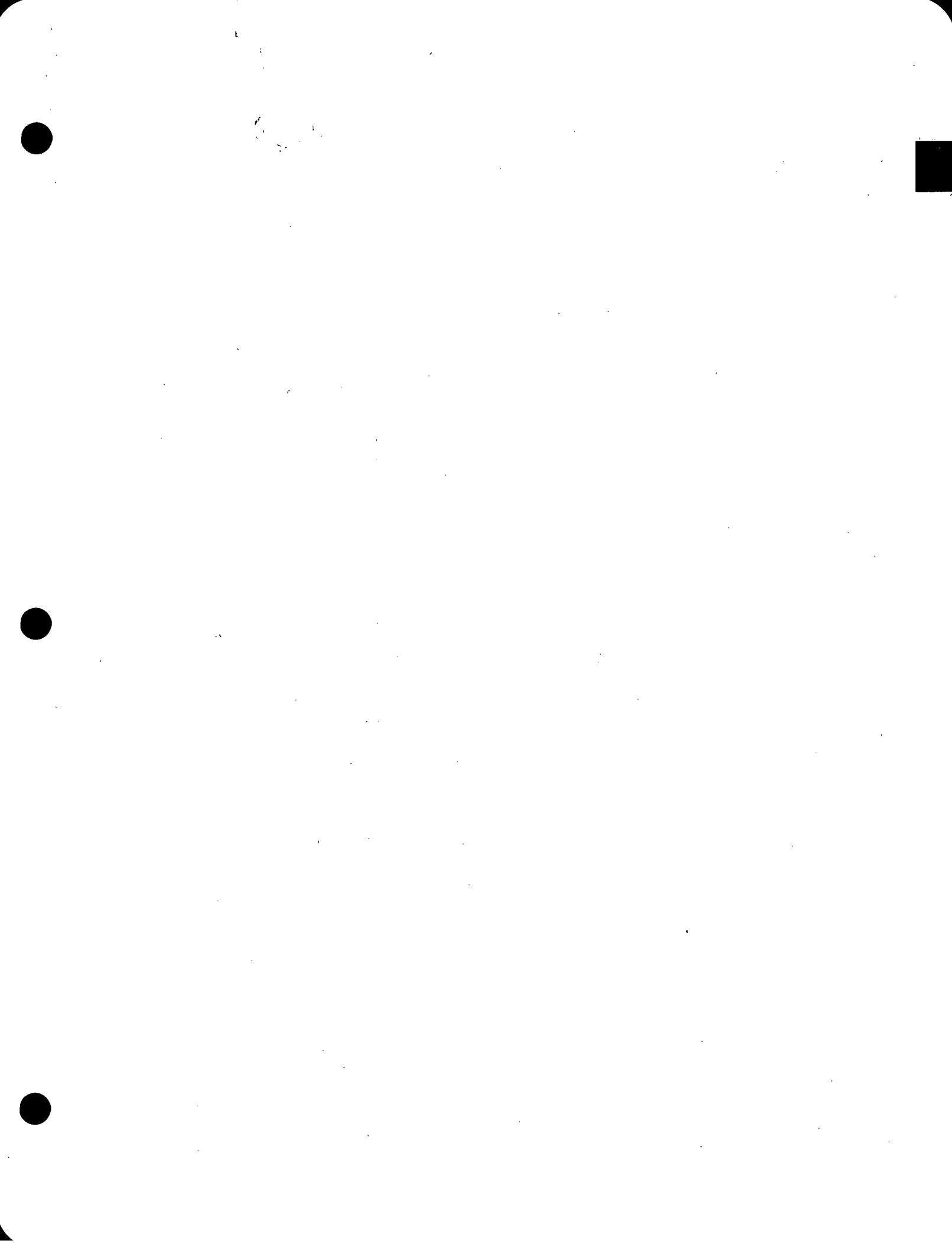
§ 1603.305 Modification or Withdrawal of Commission Decision

At any time, the Commission may modify or withdraw a decision for any reason provided that no petition for review in a United States Court of Appeals has been filed.

§ 1603.306 Judicial Review

(a) Any party to a complaint filed by a Presidential appointee, as defined in § 1603.101(a), who is aggrieved by a final order under § 1603.304 may obtain a review of such order under chapter 158 of title 28 of the United States Code by filing a petition for review with the United States Court of Appeals for the Federal Circuit within 60 days after issuance of the final order.

(b) Any party to a complaint filed by a previously exempt state employee, as defined in § 1603.101(b), who is aggrieved by a final order under § 1603.304 may obtain a review of such order under chapter 158 of title 28 of the United States Code by filing a petition for review with a United States Court of Appeals within 60 days after issuance of the final order. Such a petition for review should be filed in the judicial circuit in which the petitioner resides, or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.





DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

April 15, 1992

EEO AND CIVIL RIGHTS POLICY STATEMENT

It is customary for Secretaries of Agriculture to issue strong statements about their concern for equal opportunity and civil rights. Since coming on board, I have talked with scores of employees as well as members of the public. I know that many employees, at all levels, are absolutely committed to the goal of ensuring equal opportunity for all in employment and program delivery.

However, many also believe strongly that past EEO statements, while sincere, were not reinforced with the necessary actions and follow up that critical policy issues require. Many feel that the Department's efforts have focused too much on process, and too little on results. Therefore, I would like to share some of my concerns, goals, and expectations in this important area.

My goal is to make the Department of Agriculture a place where equal opportunity for all Americans is assured and where promoting civil rights is essential to employee and managerial success. Ours is a diverse society. Diversity is a source of strength for USDA as we tap the talents, creativity, and energy of all Americans who desire to serve, or who have an interest in the programs and services that we provide.

To ensure these results, we must first improve our system of accountability. In line with this policy, managers and supervisors will be evaluated for their performance in EEO and civil rights. Success in this vital area will be an important factor in the performance assessment of every employee. It will be considered in their competition for monetary awards as well as for future responsibility.

We will improve the ability of civil rights and EEO related units to accomplish their duties in a manner that is timely and of high quality. The present EEO complaint process is burdensome and it is often misunderstood. It is time consuming and expensive for employees and for the Department. There is also concern that some civil rights related units are positioned so as to lessen - rather than enhance - their ability to perform functions vital to the success of each agency.

We will create an environment where employees and supervisors are able to discuss concerns openly without fear of reprisal or retaliation. I am especially concerned about allegations of a "culture of reprisal" at USDA. Many persons feel that filing EEO complaints will be detrimental to one's career. I am also aware of several instances of overt racist and sexist remarks and acts which no one should have to endure.

All of these considerations point to the need for change. We must have the courage to change, especially the way we manage our most precious resource, our people. A key

element of reinventing government is that we change how we interact with one another, and how we treat one another. My goal is to create a participatory work environment at Team USDA that allows everyone to realize their full potential, and increases our productivity, without the waste of human resources.

In line with this policy, our actions will be directed towards positive accomplishments in the Department's efforts to attain a diverse workforce, ensure equal opportunity, respect civil rights, and create a work environment free of discrimination and harassment based on gender or sexual orientation.

I expect all managers to develop a positive, problem solving approach to handling employment and program discrimination complaints, to work at understanding the basis for complaints, and to extend every effort to resolve them, where feasible, before they reach the formal stage. Further, there is simply no room for management by discrimination, reprisal, or fear in the new USDA and such activities will not be tolerated.

We will eliminate discrimination from our program delivery system, reach out to groups which have historically been neglected, and ensure that we are inclusive, rather than exclusive, in all aspects of our program delivery. We will communicate in such a manner that everyone making an inquiry or participating in USDA programs understands how program will benefit them. We are the "people's" department. Barriers that prevent the full participation of under-served groups will overcome.

Under secretaries, assistant secretaries and agency heads must ensure that all managers are committed to each of these goals and that their performance appraisals take into account specific and timely accomplishments in these areas. I also expect agency heads to examine the placement of civil rights units and ensure that they have adequate support.

This policy is more than a sincere statement of intent. It is a personal commitment to take the actions necessary to ensure implementation. Each employee, at every level, will be held personally accountable for her or his performance in ensuring equal opportunity and promoting civil rights.


MIKE ESPY
SECRETARY



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES
EQUAL OPPORTUNITY POLICY STATEMENT

As Secretary, let me affirm that it is the policy of this Department that no one be denied opportunities because of his or her race, color, religion, sex, age, national origin, disability or sexual orientation.

My commitment extends far beyond simply reducing or preventing discrimination. We have an obligation to do more. I will aggressively promote equal employment opportunity for all persons in our workplace, to fully include minorities, women, individuals of different sexual orientations, the disabled, and older Americans at all levels of the organization and to remove any real or artificial barriers that may limit opportunities.

Every effort will be made to ensure that this commitment is thoroughly understood, rigorously followed and recognized as an integral part of every program of this Department. By our aggressive and affirmative implementation of this policy, we keep faith with the citizens of this Nation. Our citizens have not only entrusted us with the transportation issues of the Nation, but also with the ideals and liberties that are the cornerstones of America.

A handwritten signature in cursive script, reading "Federico Peña", is positioned above the printed name.

Federico Peña



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

May 27, 1993

MEMORANDUM TO ALL DOT EMPLOYEES

DIVERSITY POLICY STATEMENT

As Secretary of the Department of Transportation, I am totally committed to creating and maintaining a diverse work force which will meet America's growing transportation needs today and into the 21st century. To be successful and recognized as an innovative, highly productive, world class organization, we must create an environment which fully utilizes the talents and capabilities of all civilian and military employees, grantees, and contractors from all backgrounds at all levels of the organization.

Diversity means inclusion--hiring, developing, promoting and retaining employees of all races, ethnic groups, sexual orientations, and cultural backgrounds; the old, the young, and the middle-aged; the able-bodied and the disabled; men and women. My senior managers and I know that there is much to be gained from a diverse work force. We embrace the richer, broader perspective that diverse individuals bring to the workplace, and respect the dignity of ourselves and our customers.

Each manager is responsible for nurturing and capitalizing on the best that every employee has to give. I firmly believe this is done by empowering all employees with the opportunities, tools and support they need to develop to their fullest potential and contribute productively to the mission of the organization. My experience has proven that it is also done by helping employees balance work and family needs and providing appropriate accommodations and support systems for individuals with disabilities.

Although managers must lead the way in ensuring complete support of diversity, every single employee can get involved and participate by valuing the differences and cultures of others as well as their own. This will require mutual adjustment and understanding. These actions are critical to diversity becoming an integral part of the organization, benefiting not only the individual but also the Department and ultimately the Nation.

I know that I can count on you to join me in making the Department a leader in the area of work force diversity.

A handwritten signature in cursive script, reading 'Federico Peña', is positioned above the printed name.

Federico Peña