

NLWJC- Kagan

Counsel - Box 006 - Folder 007

Executive Accountability Bill

Wasting her word
from ~~Kathy~~ Cheryl

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

03-Jun-1996 06:20pm

TO: (See Below)

FROM: Annette E. Johnson
 Office of Legislative Affairs

SUBJECT: Presidential and Executive Office Accountability Act

There will be a meeting with Peter Jacoby, Office of Legislative Affairs, regarding the Presidential and Executive Office Accountability Act H.R. 3452, tomorrow 6/4 in 472 OEOB. Please let me know if you have any questions. Thank you.

Distribution:

TO: Kathleen M. Wallman
TO: Kathleen M. Whalen
TO: Cheryl D. Mills
TO: Elena Kagan
TO: James Weber
TO: Nelson W. Cunningham

CC: Jodie R. Torkelson
CC: Franklin S. Reeder

May 31, 1996

MEMORANDUM FOR KATHY WALLMAN
KATHI WHALEN
CHERYL MILLS
ELENA KAGAN
JIM WEBER
PETER JACOBY

FROM: NELSON W. CUNNINGHAM 
SUBJECT: Draft Analysis:
Presidential and Executive Office
Accountability Act (HR 3452)

The Presidential and Executive Office Accountability Act ("PEOAA") was introduced in the House by Congressman John Mica of the House Government Reform and Oversight Committee on May 14, 1996 with over 100 co-signers. Legislative Affairs (through Peter Jacoby) reports that **hearings on this bill are possible the week of July 8.**

We have prepared a draft analysis of the PEOAA and its possible impact on the operations of the WHO and EOP agencies. You will see that there are holes in the analysis and that further information needs to be gathered on particular provisions. But given our relatively short time frame, we wanted to get this draft out now for your review.

The enclosed packet includes:

- 1) a summary of the bill's provisions (6 pages);
- 2) a detailed analysis of the bill's provisions (23 pages); and
- 3) a copy of the bill itself, together with press releases from Congressman Mica and other chief co-sponsors.

Peter Jacoby will be contacting each of you to arrange a meeting early next week to discuss the bill and to begin outlining the Administration's response.

If you have comments or questions on the bill or on the enclosed drafts -- or if there is anyone else who should receive a copy -- please call me at 5-2273.

cc: Jodie Torkelson
Frank Reeder

Summary of HR 3452

The Presidential and Executive Office Accountability Act ("PEOAA") (HR 3452) was introduced on May 14, 1996 by Congressman John Mica, together with Congressman Steve Horn, Chairman William Clinger of the House Government Reform and Oversight Committee, and over 100 other co-sponsors.

The bill has three major provisions:

- apply 11 major workplace laws to employees within the WHO and EOP; modelled closely on the Congressional Accountability Act, P.L. 104-1. The 11 workplace laws are:
 - 1) Fair Labor Standards Act of 1938 (FLSA)
 - 2) Title VII of Civil Rights Act of 1964 (Title VII)
 - 3) The Americans With Disabilities Act of 1990 (ADA)
 - 4) The Age Discrimination in Employment Act of 1967 (ADEA)
 - 5) The Family and Medical Leave Act of 1993 (FMLA)
 - 6) Occupational Health and Safety Act of 1970 (OSHA)
 - 7) Chapter 71 of Title 5 (relating to Federal service labor-management relations)
 - 8) The Employee Polygraph Protection Act of 1988 (EPPA)
 - 9) The Worker Adjustment and Retraining Notification Act (WARN)
 - 10) The Rehabilitation Act of 1973 (Rehab Act)
 - 11) Chapter 43 (relating to veterans' employment and reemployment) of title 38
- create a Chief Financial Officer within the Executive Office of the President; and
- create a special definition of "special government employee" that would apply only within the EOP

Executive Summary

This section summarizes the provisions of the PEOAA and the potential impact on the EOP, and highlights the major concerns.

Summary of Provisions of PEOAA

I. Application of Workplace Laws

- Closely modelled on the Congressional Accountability Act of 1994; few relevant differences.
- Most provisions (7 out of 11) already apply to all the agencies and offices of the EOP -- 10 out of 11 apply to the Title 5 agencies (which employ 2/3 of EOP employees).
- As a general matter, there is likely to be little substantive change to the operations of the EOP. **However, taken together the employment provisions could substantially limit the President's ability to hire and fire employees in the WHO, OVP, OPD, and Exec Res.** This raises constitutional separation-of-powers concerns. Further, some provisions raise significant practical concerns.
- No funds or FTE are authorized to the EOP to draft regulations implementing the 11 workplace laws.
- **Following is a summary of the workplace laws and impact:**

Antidiscrimination provisions of Title VII, ADEA, ADA and Rehab Act of 1973.

Prohibits discrimination in employment actions affecting Title 3 employees (WHO, OVP, OPD, Exec Res).

Substantially duplicates provisions of 1991 Civil Rights Act that already prohibits such discrimination. One change is PEOAA applies the private sector provisions of Title VII, rather than the public sector provisions that apply elsewhere in federal government; differences relate to defenses available in lawsuit.

No substantial change in current coverage.

Family and Medical Leave Act.

Guarantees 12 weeks of unpaid leave for birth or adoption of child, family care, etc.

FMLA currently applies as a matter of law to Title 5 employees, and as a matter of Administration policy to Title 3 employees.

No substantial change in current coverage.

Fair Labor Standards Act

Sets minimum wage for all workers; requires payment of overtime for work over 40 hours, except for managerial, administrative and professional workers; prohibits use of comp time.

FLSA currently covers Title 5 employees. Title 3 employees are **not** covered by FLSA. Exec Res has paid overtime since 1970's on voluntary basis.

There will be a substantial impact on Title 3 offices (WHO, OVP, OPD):

- *overtime must be paid to lower-level employees;*
- *volunteer labor is prohibited by minimum wage provision; will end the White House Volunteer Program and historic reliance on volunteer labor. Intern Program unaffected due to statutory exclusion of interns.*

Access to Facilities and Programs Under ADA

Extend private-sector protections of ADA governing access to facilities and programs to EOP offices and to the White House Complex.

EOP offices already covered by non-discrimination provisions of Rehab Act and Architectural Barriers Act, which apply to the entire executive branch. EOP has issued its own regulations covering all EOP offices and agencies. Further, GSA follows Rehab Act and Architectural Barriers Act accessibility guidelines in all GSA-owned buildings, including the entire White House complex other than the Exec Res. These provisions are substantially similar to ADA provisions, which apply only to private and state government employers. However, there are minor differences in standards (i.e., pitch of ramps, etc.) that may require changes on Complex if ADA provisions applied.

No substantial impact on EOP; possible impact on Exec Res. EOP would be only executive branch entity subject to private sector ADA regulations.

Occupational Safety and Health Act

Apply private-sector OSHA enforcement procedures to EOP offices -- including formal notifications and citations by the Secretary of Labor, and the power to seek court injunctions to enforce compliance.

EOP offices are already covered by OSHA standards, and by enforcement procedures in place for entire executive branch. Further, GSA also subject to OSHA, covering

all buildings on Complex other than Exec Res. Question regarding whether Exec Res is subject to OSHA [verifying].

No substantial impact on EOP, other than procedural; possible additional impact on Exec Res. EOP would be only executive branch entity subject to private sector OSHA enforcement procedures.

Federal Service Labor-Management Relations (5 USC Ch. 71)

Would extend to all EOP employees the unionization and collective bargaining rights enjoyed by career federal employees.

Title 5 EOP employees are currently covered by these provisions; there are no unions in the EOP. Title 3 employees are not covered by provisions and do not currently have the right to unionize or to bargain collectively.

Change in coverage for Title 3 employees; possible substantial impact. Congress created a potential exception to coverage for itself (leadership, member and committee offices) due to possible conflict of interest. Office of Compliance has rejected use of this exception in draft regulations, and extended union rights to all congressional employees; Congress has option to overrule. There is no similar potential exemption in PEOAA.

Employee Polygraph Protection Act of 1988

Would extend to all EOP employees private-sector restrictions on employers' use of polygraphs. EPPA permits use of polygraphs for intelligence and counter-intelligence purposes, and for investigations into physical and economic loss.

No present comprehensive statute governing polygraph use in executive branch. President Johnson issued 1969 memorandum (still followed) setting guidelines for national security and law enforcement use of polygraphs. OPM has proposed regulations prohibiting polygraph use for personnel screening outside of national security context. **It is the practice within the EOP that polygraph tests will not be administered on EOP employees.**

Change in coverage for entire EOP; no practical impact on EOP operations. EOP would be only executive branch entity subject to EPPA restrictions.

Worker Adjustment and Retraining Notification Act

Would extend the 60-day notice provisions in the "plant closing" law to the EOP. Notice requirement triggered by facility closing or mass layoff. PEOAA contains exception for Presidential transitions -- 60-day notice not required for such layoffs.

Title 5 employees are covered by RIF provisions that require 60 days' notice in the event of reductions in force (including facility closings or mass layoffs). Title 3 employees not covered by any notice provisions.

Possible substantial impact on Title 3 offices (WHO, OVP, OPD); could limit President's right to reorganize and restructure these offices. No impact on rest of EOP.

Veterans' Employment and Reemployment Rights (38 USC Ch. 41)

Would extend to all EOP employees protections against discrimination against veterans, and entitlement of veterans to their former positions at the conclusion of active duty (absent changed circumstances).

Title 5 employees are currently covered by these provisions. Title 3 employees are not formally covered; however, during the Gulf War the last Administration provided WHO employees leave and re-employment rights under the predecessor statute. This Administration would presumably do the same.

Change in coverage for Title 3 employees; no substantial impact on EOP operations.

II. Creation of Chief Financial Officer Within EOP

- PEOAA proposes to create a Chief Financial Officer and Deputy Chief Financial Officer, appointed by the President, within the EOP. Further, it would subject the EOP to the financial management and auditing requirements of the CFO Act of 1990, which mandates financial plans, annual financial statements, and independent audits of those statements. The CFO Act also gives a large role to the Comptroller General at GAO, who is empowered to review all audits, and to initiate GAO audits of agency finances on his own initiative or at the request of a committee of Congress.

Relatively small change in financial management requirements; substantial increase in role of GAO in Presidential finances; creates a CFO position "within the EOP" without acknowledging that there no single entity known as the EOP.

DRAFT

III. Amend Definition of "Special Government Employee"

[to be added]

DRAFT

APPENDIX

DETAILED SUMMARY OF PROVISIONS

**PRESIDENTIAL AND EXECUTIVE OFFICE ACCOUNTABILITY ACT
HR 3452**

5/31/96

Part One -- Applying Workplace Laws to the EOP

Background

There are essentially two types of employees within the Executive Office of the President:

- Title 5 employees - appointed under the civil service laws set forth in Title 5 of the U.S. Code, and subject to civil service protections;
- Title 3 employees - appointed by the President "without regard to any other provision of law regulating the employment or compensation of persons in the Government service"

EOP offices and agencies employ the following types of employees:

WHO	OVP	OPD	Exc Res	CEA	CEQ	NDPC	NSC	OMB	OSTP	USTR	OA
3	3	3	3	5	5	5	5	5	5	5	3&5

Legend: "3" -- Title 3 employees
"5" -- Title 5 employees

General Provisions

Who is a "covered employee"?

There are two definitions of "covered employee":

a) with respect to employment discrimination prohibited by Title VII, ADEA, and the Rehab Act and ADA, "covered employee" is defined to mean "any employee of the executive branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the executive branch, who is not otherwise entitled to bring an action under any of [these] statutes," (excluding PAS appointees, FACA members, and military personnel). **For these statutes, "covered employee" does not include Title 5 employees within the EOP, who already are protected by such laws.** (Sec. 412(c)(1)).

b) for all other purposes, "covered employee" is defined to mean any individual employed by an "employing office" within the EOP -- both Title 5 and Title 3 employees. (Sec. 401).

What is an "employing office"?

The term "employing office" is broadly defined to include "each office, agency, or other component of the Executive Office of the President," plus the Executive Residence, and the official residence of the Vice President. (Section 401).

Counseling, Mediation, and Administrative and Court Relief

PEOAA establishes a mandatory counselling and mediation process for employees. An employee still aggrieved following mediation may elect either to pursue an administrative remedy (with the EEOC or MSPB), or may sue directly in federal district court. (Subchapter III -- "Administrative and Judicial Dispute-Resolution Procedures").

Remedies

In general, remedies available to employees aggrieved by a violation of the rights conferred by PEOAA would be the same as under the substantive workplace laws. This could include compensatory and punitive damages, backpay, reinstatement, attorneys' fees, and interest.

Section 6 of the PEOAA amends the Congressional Accountability Act to provide for punitive damages in the case of violations of Title VII of the Civil Rights Act, ADEA, ADA, and the Rehab Act

of 1973. This change has no effect on the EOP, but it does make congressional coverage consistent with proposed EOP coverage.

Regulations

The President is directed to draft regulations implementing the 11 workplace laws. The regulations are to be the same as the substantive regulations issued by the agencies responsible for enforcing such provisions "except to the extent that the President may determine, for good cause shown" that a modification "would be more effective for the implementation of the rights and protections under this section."

Repeal of Section 320 of Civil Rights Act of 1991

Congress in Section 320 of the Civil Rights Act of 1991 applied four anti-discrimination laws (Title VII, ADEA, Rehab Act and ADA) to all EOP employees not otherwise covered by them (essentially, to all Title 3 employees). Section 7 of the PEOAA repeals Section 320.

However, Section 412 of the PEOAA essentially re-enacts the provisions of Section 320, so there is no substantive change. The PEOAA does impose (in Subchapter III) certain procedural requirements that did not exist in Section 320, such as mandatory counselling and mediation.

Future Employment Laws

Section 5 of the PEOAA provides that all future federal laws governing employment in the private sector shall apply to EOP employing offices and employees, unless such law specifically provides otherwise. (Section 5).

Executive Summary of Workplace Laws

The majority of the 11 workplace laws covered by the PEOAA already protect the employees within the EOP, including those employed by the WHO, OVP, and OPD.

Following is a table summary of the **current** applicability of the 11 workplace laws that the PEOAA would purport to apply to the EOP:

Name of law	WHO	OVP	OPD	Exc Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
Title VII	R	R	R	R	R	R	R	R	R	R	R	R
ADEA	R	R	R	R	R	R	R	R	R	R	R	R
ADA/Rehab Act (personnel actions)	R	R	R	R	R	R	R	R	R	R	R	R
FMLA	V	V	V	V	R	R	R	R	R	R	R	R
FLSA	N	N	N	V	R	R	R	R	R	R	R	R
ADA (programs, facilities)	R	R	R		R	R	R	R	R	R	R	R
OSHA	R	R	R		R	R	R	R	R	R	R	R
Federal Labor- Management Relations	N	N	N	N	R	R	R	R	R	R	R	R
EPPA	N	N	N	N	N	N	N	N	N	N	N	N
WARN*	N	N	N	N	R	R	R	R	R	R	R	R
Veterans' Reemployment	V	V	V	V	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
 "V" -- covered, voluntarily
 "N" -- not covered

* Coverage refers to RIF protections, including notice, contained in Title 5; WARN provisions apply only to private sector employers.

Title VII of the Civil Rights Act of 1964 (Title VII)

What Title VII Provides:

Title VII prohibits discrimination in the workplace on the basis of race, color, religion, sex, or national origin. Two provisions are relevant here: Section 703 (which covers private employers) and Section 717 (which covers the federal government).

Both Section 703 and 717 bar discrimination on the basis of race, color, religion, sex, or national origin. Both provisions provide for EEOC enforcement and adjudication, and for private civil suits. Section 703 (governing private employers) provides certain defenses to private employers that are not available under 717 to the Federal government (e.g., "bona fide occupational qualification" as a defense to discrimination).

Existing Coverage Within the EOP:

Section 703, covering private employers, does not apply to any executive branch employees.

Title 5 employees have been covered by Section 717 of Title VII since its inception. See also 5 U.S.C. § 2302 (discrimination in violation of Section 717 of Title VII a prohibited personnel practice).

Title 3 employees have been covered by Section 717 of Title VII since enactment of the Civil Rights Act of 1991. Section 320 of that act extended a number of workplace laws, including Section 717 of Title VII, to presidential appointees, including Title 3 employees. [Sec. 320, Pub. L. 102-166].

Existing coverage of Section 717 of Title VII to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
R	R	R	R	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Apply the rights and protections of Section 703 (covering private employers) of Title VII to all employees not otherwise entitled to bring an action under Title VII (essentially, all Title 3 employees). **Certain EOP employees (Title 3) will be covered by Section 703; the remainder (Title 5) will be covered by Section 717.**

Age Discrimination in Employment Act of 1967 (ADEA)

What ADEA Provides:

The ADEA provides that all personnel actions shall be free from age discrimination. The act protects individuals who are at least 40 years old against age discrimination. Individuals younger than 40 are not protected, even if they are subjected to age discrimination. A bona fide seniority or merit system may be permissible if it is not intended to discriminate on the basis of age.

Existing Coverage Within the EOP:

Title 5 employees are already covered by the ADEA. See 5 U.S.C. § 2302 (age discrimination under the ADEA a prohibited personnel practice).

Title 3 employees have been covered by the ADEA since enactment of the Civil Rights Act of 1991. Section 320 of that act extended a number of workplace laws, including the ADEA, to presidential appointees, including Title 3 employees. [Sec. 320, Pub. L. 102-166].

Existing coverage of ADEA to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDPC	NSC	OMB	OSTP	USTR	OA
R	R	R	R	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Apply section 15 of the ADEA to all employees not otherwise entitled to bring an action under the ADEA (essentially, all Title 3 employees).

This provision of the PEOAA essentially re-enacts the provisions of Section 320 of the Civil Rights Act of 1991. There is no change in existing coverage for Title 3 or Title 5 employees.

Americans with Disabilities Act of 1990 (ADA) and Rehabilitation Act of 1973 (Rehab Act) (Personnel Actions)

What the Rehab Act and ADA Provide:

The Rehab Act and ADA provide substantially similar protections for disabled persons. The Rehab Act applies primarily to the federal government and programs conducted by the federal government, and the ADA applies primarily to private and state employers.

The Rehab Act, among other things, requires departments, agencies and "instrumentalities" within the executive branch to establish affirmative action programs for the hiring and advancement of individuals with disabilities (sec. 501).

The ADA applies only to private employers and state and local governments. Among other things, it prohibits discrimination in the hiring or employment of "qualified individuals with disabilities" (sections 102-04).

Existing Coverage Within the EOP:

All EOP employees are currently protected against discrimination on the basis of disability.

All federal agencies and instrumentalities (including, by implication, the WHO and other Title 3 agencies) are barred from discriminating on the basis of disability, by the terms of the Rehab Act, section 501. Title 5 employees are additionally protected from discrimination on the basis of disability by 5 U.S.C. § 2302 (defining disability discrimination as a prohibited personnel practice). Finally, Section 320 of the Civil Rights Act of 1991 extended the coverage of the employment protections of the Rehab Act and ADA to presidential appointees, including Title 3 employees. [Sec. 320, Pub. L. 102-166.]

Existing coverage of employment discrimination provisions of ADA and Rehab Act to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
R	R	R	R	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered.

What the PEOAA Proposes to Do:

Prohibit discrimination on the basis of disability, as defined in Sections 102-04 of the ADA and Section 501 of the Rehab Act, in personnel actions affecting all employees not otherwise entitled to bring an action under the ADA or Rehab Act (essentially, all Title 3 employees). (section 411(a)(3)).

This provision of the PEOAA essentially re-enacts the provisions of Section 320 of the Civil Rights Act of 1991. There is no change in existing coverage for Title 3 or Title 5 employees.

Family and Medical Leave Act of 1993 (FMLA)

What FMLA Provides:

The FMLA entitles an "eligible employee" to take a total of 12 weeks of unpaid leave within a 12-month period for specified family or medical reasons, including birth and care of a newborn child, adoption or foster care of a child, caring for immediate family member with a serious health condition, or because of the employee's own serious health condition.

An "eligible employee" is one who has worked at least 12 months for the employing office, and for a total of 1,250 hours during the previous 12 months.

Employees may take sick or annual leave before taking the unpaid leave guaranteed by the FMLA.

Existing Coverage Within the EOP:

Title 5 employees have always been covered by the FMLA (Title II).

Title 3 employees have been covered by the FMLA under a policy announced by a memorandum from the Assistant to the President for Management and Administration, dated January 31, 1994.

Existing coverage of FMLA to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
V	V	V	V	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Apply the FMLA to all EOP employees. Because Title 5 employees are already covered as a matter of law and Title 3 employees are covered as a matter of policy, there is no change in existing coverage.

Fair Labor Standards Act of 1938 (FLSA)

What FLSA Provides:

FLSA sets the minimum wage (currently \$4.25 per hour), and requires the payment of overtime pay at the rate of time-and-a-half to "nonexempt" workers. The FLSA exempts certain categories of workers from the overtime rules. These "exempt" employees include those in:

- managerial positions
- administrative positions (policy-making)
- professional and scientific positions

Existing Coverage Within the EOP:

Title 5 employees have been covered by the FLSA since the enactment of the Fair Labor Standards Act Amendments of 1974.

Title 3 employees are not now covered by FLSA.

Existing coverage of FLSA to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
N	N	N	V	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
 "V" -- covered, voluntarily
 "N" -- not covered

What the PEOAA Proposes to Do:

Apply the minimum wage, maximum hour, and child labor provisions of FLSA to all EOP employees.

This provision would have no significant effect on pay or working conditions of Title 5 employees. It would have a significant impact on the offices employing Title 3 employees -- WHO, OVP, OPD, and Exec Res. In these offices, for the first time:

- 1) "nonexempt workers" (those in clerical and non-supervisory positions) would be entitled to overtime; and
- 2) volunteer labor (labor at less than the minimum wage) would be prohibited. Although "interns" are excluded from coverage, the Congressional Office of Compliance (interpreting the identical language) has determined that other volunteers are not excluded from coverage. **This bill will eliminate the White House Volunteer Program, by**

DRAFT

effectively forbidding the practice of accepting labor at less than the minimum wage.

Americans with Disabilities Act of 1990 (ADA)
(Services, Programs and Facilities)

What the ADA Provides:

The public access provisions of the ADA require private and state and local government employers to ensure that places of public accommodation, public facilities, and public transport are accessible to persons with disabilities. (sections 201, 202, 204; 302, 303, 309).

The Rehab Act, among other things, requires departments, agencies and "instrumentalities" within the executive branch to issue regulations to ensure that any "program or activity" conducted by an agency is free from discrimination against individuals with disabilities (sec. 504). The EOP has issued regulations in accordance with section 504; they are found at 3 CFR ch. 102. These regulations apply to every office and agency within the EOP, including the WHO, OVP and OPD. The Architectural Barriers Act (42 U.S.C.

Existing Coverage Within the EOP:

All programs and activities conducted by any office within the EOP (including WHO, OVP and OPD) are already required to be free from discrimination against disabled persons, by the terms of the Rehab Act, section 504, and by the terms of EOP regulations issued thereunder (3 CFR Ch. 201).

Moreover, the Architectural Barriers Act of 1968 (ABA) (42 U.S.C. § 4151 et seq.), and the Uniform Federal Accessibility Standards (UFAS) issued thereunder, requires all buildings constructed or altered by the United States to be accessible. GSA adheres to UFAS in all its buildings (including those on the White House Complex); further, where the ADA guidelines are more stringent, it applies the ADA standards.

Existing coverage of UFAS/ADA standards to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
R	R	R	R	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Extend the provisions of the ADA regarding public services and accommodations to the buildings and grounds of the White House Complex, as well as to any other facilities providing offices to employees of the EOP (sec. 420).

Because the Rehab Act, ABA and EOP regulations already require EOP programs, activities and facilities to be free from discrimination on the basis of disability, there is little or no substantive change in protections.

Occupational Safety and Health Act (OSHA)

What OSHA Provides:

OSHA provides the Secretary of Labor with the responsibility to ensure worker safety and health by promulgating occupational safety or health standards (section 6; 29 U.S.C. § 655).

Section 5 of OSHA (29 U.S.C. § 654) requires private employers to abide by OSHA standards. With respect to private employers, the Secretary of Labor is empowered to conduct workplace inspections and investigations into possible violations of OSHA standards (section 8; 29 U.S.C. § 657), to issue citations and notifications, and to seek orders of compliance (sections 9, 10, 13; 29 U.S.C. §§ 658, 659, 662).

Section 19 of OSHA (29 U.S.C. § 668) requires Federal agencies to abide by OSHA standards. By Executive Order (E.O. 12196), the term "agency" in this context is broadly defined to include "any employing unit or authority of the Federal government, other than those of the judicial and legislative branches." All EOP entities would fall under this broad definition, and are therefore covered by OSHA standards. OSHA itself does not provide for inspections, citations, etc., of federal agencies. However, EO 12196 does provide for Labor Department inspections of federal workplaces, and provides that Labor shall notify agencies of safety hazards, with a mechanism for resolving disputes that may arise between Labor and an agency.

Existing Coverage Within the EOP:

OSHA standards apply to all EOP entities, by statute and by EO 12196. Furthermore, GSA has the responsibility of ensuring compliance with OSHA in GSA buildings (see EO 12196, sec. 1-6). The OEOB, NEOB, East and West Wings, Winder Building, and Lafayette townhouses are all GSA buildings. [Checking on Executive Residence].

Existing coverage of OSHA standards to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
R	R	R		R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Apply the private employer provision of OSHA (section 5) to the EOP entities; provide for inspections, citations, notifications and orders of compliance (sections 9, 10, 13).

The major difference from existing law is that PEOAA would give the Labor Secretary statutory authority to inspect and investigate EOP workplaces, and for the first time give the Labor Secretary authority to seek court orders enjoining unsafe working conditions. **The EOP would be the only entity within the executive branch where the Labor Secretary would have the authority to issue citations and seek court orders.**

The PEOAA would lead to the anomalous result that GSA (which is not an EOP entity) would be covered by Section 19 of OSHA (governing federal workplaces), but the GSA tenant agencies within the EOP would be covered by Section 6 (governing private workplaces).

**Federal Service Labor-Management Relations
Chapter 71 of Title 5, U.S. Code (Chapter 71)**

What Chapter 71 Provides:

Chapter 71 protects the right of career federal employees to join unions and to bargain collectively with the federal government.

Existing Coverage Within the EOP:

Title 5 employees have always been covered by the provisions of Chapter 71. However, at present there are no employee unions within the EOP.

Title 3 employees have not been covered by the provisions of Chapter 71.

Existing coverage of Chapter 71 to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
N	N	N	N	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
 "V" -- covered, voluntarily
 "N" -- not covered

What the PEOAA Proposes to Do:

Apply Chapter 71 to all EOP employees, including Title 3 employees.

Coverage of Congress

The Congressional Accountability Act provides that member, leadership and committee offices may be exempted from the provisions of Chapter 71 if the Office of Compliance concludes that exclusion is required because of "a conflict of interest or appearance of a conflict of interest; or Congress' constitutional responsibilities." The articulated reason for this potential sweeping exclusion is that unionized employees might have a conflict of interest in advising their employers on how to vote on union-related legislation. **The PEOAA does not provide for a comparable exclusion for the White House Office or any comparable EOP office.** [On May 29, 1996, the Office of Compliance issued rules for comment that decline to exclude any congressional employees from coverage on these grounds; Congress has the power to overrule or amend the regulations].

Employee Polygraph Protection Act of 1988 (EPPA)

What EPPA Provides:

EPPA prohibits private employers from using polygraph tests on their employees, from relying upon the results of polygraph tests, or from disciplining an employee for refusing to take a polygraph.

However, the EPPA contains several broad exceptions to this general prohibition:

- an employer may use polygraphs in connection with a specific investigation into an incident causing economic or physical harm to the employer;
- an employer involved in controlled substances may use polygraphs on prospective employees and in connection with an investigation of misconduct involving controlled substances; and
- the federal government may use polygraphs in connection with intelligence or counter-intelligence functions on employees with access to top secret information.

Existing Coverage Within the EOP:

There is no comprehensive polygraph statute that applies to federal employees. President Johnson issued a memorandum to agency heads in 1969 guiding and limiting the use by federal agencies of polygraphs for national security and law enforcement purposes; that memorandum is still followed. OPM has recently proposed regulations that would bar the use of polygraphs by federal agencies for personnel screening outside the national security context. Congress excluded federal, state and local governments from the reach of EPPA in 1988 because it concluded that the Constitution provided adequate safeguards against unreasonable use of polygraphs by government bodies.

It is the practice within the EOP that polygraph tests will not be administered on EOP employees.

[Other than the Constitution, there is no comprehensive polygraph statute covering the EOP (or any other part of the executive branch):] [revise?]

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDPC	NSC	OMB	OSTP	USTR	OA
N	N	N	N	N	N	N	N	N	N	N	N

Legend: "R" -- covered, required by law
 "V" -- covered, voluntarily
 "N" -- not covered

DRAFT

What the PEOAA Proposes to Do:

Apply the EPPA to all EOP employees. Because the EOP does not currently use polygraph tests on its employees, this provision will have little impact.

The Congressional Accountability Act provides an additional exception to the general ban on polygraphs. It provided that the Capitol Police could use polygraphs in connection with ongoing investigations. There is no comparable provision in the PEOAA.

Worker Adjustment and Retraining Notification Act (WARN)

What WARN Provides:

WARN -- also known as the "Plant Closing Law" -- provides that a private employer closing a facility or conducting a mass layoff must provide employees with 60 days' advance notice. WARN only applies to employers with more than 100 employees.

Existing Coverage Within the EOP:

Title 5 employees are covered by the RIF (reduction in force) provisions set forth in Sections 3501-03 of Title 5. These provisions require 60 days' notice before a RIF (which would include a mass layoff or facility closing), and in addition give employees "bump" and "retreat" rights designed to protect more senior employees from layoffs.

Title 3 employees are not covered by the above RIF provisions.

EOP offices whose employees are covered by the comprehensive RIF protections of Title 5:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
N	N	N	N	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Apply WARN to all EOP employees. No notice need generally be given when a mass layoff is occasioned by a Presidential transition.

The PEOAA provides that WARN shall apply to EOP offices without regard to the 100-employee minimum set forth in WARN. There is no similar provision in the Congressional Accountability Act -- thus congressional offices with less than 100 employees need not comply. This effectively exempts all member, committee and leadership offices from the provisions of WARN.

Veterans' Employment and Re-employment
Chapter 41 of Title 38, U.S. Code (Chapter 41)

What Chapter 41 Provides:

The relevant provisions of Chapter 41 prohibit discrimination by employers against individuals who are members of or have duties related to the uniformed services. The provisions also require an employer to re-employ an individual called into uniformed service at the conclusion of that service (with certain exceptions based on changed circumstances).

Existing Coverage Within the EOP:

Title 5 employees have been covered by Chapter 41 since its enactment in 1994, and by similar provisions contained in predecessor statutes now incorporated in Chapter 41 (formerly found in Chapter 43, Title 38, U.S. Code).

Title 3 employees are not presently covered by the terms of Chapter 41; however, during the Gulf War the last Administration voluntarily provided WHO employees leave and re-employment rights under the predecessor provisions to Chapter 41 (former Chapter 43). This Administration would presumably provide leave and re-employment rights to Title 3 employees called up in a future war.

Existing coverage of Chapter 41 protections to EOP entities:

WHO	OVP	OPD	Exec Res	CEA	CEQ	NDCP	NSC	OMB	OSTP	USTR	OA
V	V	V	V	R	R	R	R	R	R	R	R

Legend: "R" -- covered, required by law
"V" -- covered, voluntarily
"N" -- not covered

What the PEOAA Proposes to Do:

Apply certain provisions of Chapter 41 (Sections 4311-13, 4316-18) to all EOP employees. Because Title 5 employees are already covered as a matter of law and Title 3 employees are covered as a matter of policy, there is no change in existing coverage.

Part Two -- Create a Chief Financial Officer In the EOP

Section 3 of the PEOAA would create a Chief Financial Officer and Deputy Financial Officer within the Executive Office of the President, in accordance with the Chief Financial Officers Act of 1990 (CFOA) (31 U.S.C. § 901 et seq.). The PEOAA would also subject the EOP to the auditing requirements of the CFOA.

What the CFO Act of 1990 Requires:

Requires all departments and certain large agencies to employ CFO's, who are given the following responsibilities:

- consolidating and enhancing agency financial management operations;
- developing financial management plans;
- preparing financial statements on all activities of the agency, and arranging for an independent audit.

The CFO is given statutory access to all records, reports, documents, papers or other material which are the property of or available to the agency, and which relate to programs and operations with respect to which the CFO has financial responsibilities.

The Comptroller General at GAO is given authority to review the audits of financial statement or to initiate a GAO audit of agency financial statements (which a congressional committee may request).

Existing Coverage within the EOP:

The Financial Management Division at OA performs many of the financial management and planning tasks assigned to a CFO under the CFO Act. Financial statements and audits are not required of EOP agencies under current law.

Certain accounts available to the President and Vice President -- for the maintenance of the Exec Res, for official entertainment expenses, and for subsistence expenses of those travelling with the President or Vice President -- are subject to limited audit by the Comptroller General "solely for the purpose of verifying that all such expenditures related to" those authorized expenses. (3 U.S.C. §§ 105, 106).

What the PEOAA Proposes:

To create a CFO and Deputy CFO, appointed by the President, within the EOP, and to extend the financial management and auditing requirements of the CFO Act to the EOP.

Two immediate problems present themselves with the PEOAA proposal:

- 1) The EOP is not a single entity. There is no institutional place for a CFO "of the EOP." No EOP entity -- not the WHO, not OMB and not OA -- is in a position to oversee and direct financial planning and auditing of other EOP offices.
- 2) The extensive supervision and auditing powers given to the GAO under the CFO Act are inconsistent with the separation of powers and with the sphere of independence to which the President is entitled.

Part Three -- Amendment to "Special Government Employee"

Section 4 of the PEOAA would amend the definition of "special government employee" (SGE) found in 18 U.S.C. § 202. SGEs are temporary or intermittent executive branch employees who work for the federal government less than 135 days within a 365-day period. SGEs are exempted from many federal conflict-of-interest provisions, but are subject to conflict-of-interest laws with regard to matters within the scope of the work undertaken for the government.

In its review of the Travel Office matter, the GAO concluded that Harry Thomasson was not an SGE because he was not appointed or employed as a federal employee.

Section 4 would amend the definition of SGE **within the EOP and nowhere else** to provide that an individual shall be deemed to be "retained, designated, appointed, or employed" if such individual

1) is retained by the President or Vice President or other authorized individual (including a spouse of the President or Vice President) to provide advice, counsel, or recommendations to employees of the EOP; and

2) (A) is provided the use of an office or equipment at Government expense;

(B) owns at least 10 percent of a company that is doing business or attempting to do business with the U.S. government;

(C) is a registered lobbyist; or

(D) provides advice on personnel, organization, or reorganization of the EOP; the contracting or privatization of any government function; contracts to provide goods or services to the government; or congressional hearings or proceedings.

This revised definition is carefully crafted to capture exactly the conduct in which Harry Thomasson is alleged to have engaged during early 1993.

[ANALYSIS TO BE ADDED]

JOHN L. MICA
11th DISTRICT, F.D.R.C.A.

COMMITTEE ON GOVERNMENT REFORM
AND OVERSIGHT
CHAIRMAN, SUBCOMMITTEE ON CIVIL SERVICE
SUBCOMMITTEE ON NATIONAL SECURITY
INTERNATIONAL AFFAIRS AND CRIMINAL JUSTICE
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
SUBCOMMITTEE ON RAILROADS

Congress of the United States
House of Representatives
Washington, DC 20515-0907

March 18, 1996

REP. TO
328 CANNON HOUSE OFFICE BLDG.
WASHINGTON, DC 20515
(202) 225-4025
1211 SEMORAN BLVD
SUITE 117
CASSELBERRY, FL 32707
(407) 657-8060
840 DELTONA BLVD
SUITE G
DELTONA, FL 32725
(407) 860-1499
1796 DUNNINGTON AVE
SUITE 28
POPPA ORANGE, FL 32727
(904) 756-9798

Dear Colleague:

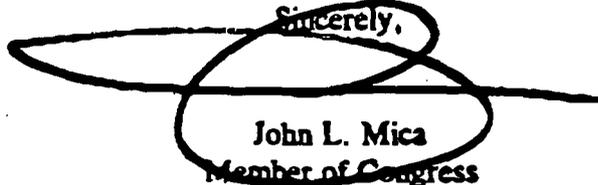
During the first 100 days of this Congress, we took an historic step forward by passing the Congressional Accountability Act. That Act made Congress live under the same laws we impose on the private sector. Now, I propose that we close the loop and make the White House live under those very same laws as well by passing the Presidential and Executive Office Accountability Act, which I will introduce this week. When that is done, both of the political branches of the federal government will be covered by the same laws our citizens must deal with every day.

Under the Presidential and Executive Office Accountability Act, all of the laws that Congress applied to itself in the Congressional Accountability Act will also apply to the White House. All future laws regulating private sector employment will also apply to the White House unless Congress specifically exempts it. In addition, to increase Presidential accountability, the Act requires the President to appoint a Chief Financial Officer, who will perform the same functions for the Executive Office of the President as Chief Financial Officers are required by law to perform for executive agencies. And the Act makes crystal clear that people like Harry Thomason - who used his relationship with the President and First Lady and his office in the White House to fire career White House Travel Office employees and promote the business interest of his own company - would be special government employees subject to conflict of interest laws.

Finally, this Act closes a loophole in the Congressional Accountability Act that exempts Congress and the White House from punitive damages under civil rights laws. If private entrepreneurs - the people who create jobs and economic strength - have to live under the threat of punitive damages, there is no reason for Congress and the President to be exempt.

I am sure you will agree with me that we need this bill to complete the work of our first 100 days. If you would like to co-sponsor the bill, please call Garry Ewing at 225-6427.

Sincerely,



John L. Mica
Member of Congress

**CO-SPONSOR THE PRESIDENTIAL AND EXECUTIVE
OFFICE ACCOUNTABILITY ACT**

MAJOR PROVISIONS OF THE PRESIDENTIAL AND EXECUTIVE OFFICE ACCOUNTABILITY ACT

- ▶ The bill is modeled after the Congressional Accountability Act.
- ▶ Coverage extends to most Presidential appointees, except those appointed by the President with Senate confirmation, those appointed to advisory committees, and members of a uniformed service.
- ▶ The bill makes clear that people like Harry Thomason are covered by conflict of interest statutes.
- ▶ Most White House employees would be entitled to the same remedies as a private sector worker.
- ▶ Following the Congressional Accountability Act, a White House employee would have the option of filing an administrative complaint with the Merit Systems Protection Board, the FLRA, or the EEOC or going to federal court.
- ▶ Punitive damages could be awarded against Executive Office of the President and Congress, just as they are in the private sector.
- ▶ Nothing in this bill changes the "at will" status of these employees.
- ▶ Laws made applicable to the White House:
 1. The Fair Labor Standards Act
 2. Title VII of the Civil Rights Act of 1964*
 3. The Americans with Disabilities Act of 1990*
 4. The Age Discrimination in Employment Act of 1967*
 5. The Rehabilitation Act of 1973*
 6. The Family and Medical Leave Act of 1993**
 7. The Occupational Safety and Health Act of 1970
 8. Chapter 71 of title 5, regulating Federal Labor-Management Relations
 9. The Employee Polygraph Protection Act of 1988
 10. The Worker Adjustment and Retraining Notification Act
 11. Chapter 43 of title 38, regulating veterans' employment and reemployment rights.
 12. Requires President to appoint Chief Financial Officer
 13. Clarifies definition of Special Government Employee
 14. Future laws regulating private sector employment unless the White House is expressly exempted in that law.

* Already apply to White House employees.

** May already apply to some White House employees, but there is some question.



News from

Stephen Horn

U.S. Representative 38th District, California
 Bellflower, Downey, Lakewood, Long Beach, Paramount, San Pedro, Signal Hill

CONTACT: MARY HINDS (202) 225-6676
 RELEASE: MAY 14, 1996

STATEMENT OF

U.S. REPRESENTATIVE STEVE HORN (R-CA)

ON

THE EXECUTIVE ACCOUNTABILITY ACT OF 1996

"I am pleased to be a cosponsor of the Presidential and Executive Office Accountability Act. The bill applies to the Executive Office of the President the same kind of discipline Congress has imposed on itself through the Congressional Accountability Act. The Congressional Accountability Act -- the first bill signed into law by the President in the 104th Congress and an important part of the *Contract with America* -- requires Congress to follow the same rules as the rest of America.

"The Presidential and Executive Office Accountability Act will work to strengthen the American people's faith in their government. As a government 'of the people, by the people and for the people,' it is incumbent upon the people's elected representatives to ensure that the federal government is run in an open and fair manner. The Presidential and Executive Office Accountability Act will do just that.

"One of the provisions in this legislation mirrors a proposal which the subcommittee has been considering: the establishment of an independent Office of Chief Financial Officer in the Executive Office of the President. An autonomous Chief Financial Officer in the White House will enable the Executive Office to demonstrate clearly and unambiguously that:

- its financial house is in order;
- its management control systems are in place to correct mistakes -- intended or otherwise; and
- its staff cannot override those controls and abuse power.

"The Act will hold the Executive Office of the President to the same standards of financial management and accountability already required of the major agencies and improve management in the Executive Branch. It is good government legislation which deserves support."

PRESS STATEMENT
Representative John L. Mica
Presidential and Executive Office Accountability Act
Friday, May 10, 1996

Thank you all for coming today. Today I will introduce the "Presidential and Executive Office Accountability Act," joined by 104 cosponsors. These cosponsors include the distinguished colleagues who have joined me today: Bill Clinger, Chairman of the House Committee on Government Reform and Oversight and Steve Horn, Chairman of the Subcommittee on Government Management, Information, and Technology.

This Congress took an historic step during its first 100 days when it made itself live under laws that had been imposed on the private sector. Now, it's time to close the loop by putting the White House under those same laws, to end the last plantation. When we do that, the political branches of government will be required to wrestle with the same knotty problems that private businesses face every day. They will face compliance with the same laws and edicts imposed on all Americans.

This bill will also tighten financial management at the White House by requiring the President to appoint a Chief Financial Officer. Through the hearing process during the past year we observed that the White House financial operations lacked both accountability and structure. The Travelgate hearings highlighted some of the shortcomings in White House financial responsibility.

This legislation will also tighten the definition of special government employee. With this action the array of so-called special employees and unpaid advisors to the President must comply with conflict of interests laws. ~~White House operatives will not be able to work to eliminate dedicated civil servants while maneuvering to feather their own nests.~~ Hopefully, this legislation will also stop the parade of lobbyists going through a revolving door at the White House who escape public accountability.

Under this bill, White House and congressional employees who prove violations of equal employment opportunity laws would be eligible for punitive damages just like their private sector counterparts.

The bill applies the following laws to the White House: The Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the Occupational Safety and Health Act of 1970, Chapter 71 of title 5, regulating Federal Labor-Management Relations, the Employee Polygraph Protection Act of 1988, the Worker Adjustment and Retraining Notification Act, and Chapter 43 of title 38, regulating veterans' employment and reemployment rights.

FOR IMMEDIATE RELEASE**U.S. Congressman****John L. Mica****Florida's Seventh District****427 Cannon H.O.B. Washington, D.C. 20515 (202) 225-4035****Contact:****Media Advisory**

May 10, 1996

For Immediate Release

Contact: Garry M. Ewing

(202) 225-6427

**LEGISLATION PLACES WHITE HOUSE UNDER SAME LAWS AS PRIVATE
EMPLOYERS AND CONGRESS**

Today, Rep. John L. Mica (R-FL), the Chairman of the House Subcommittee on Civil Service, will introduce the "Presidential and Executive Office Accountability Act." The bill is being introduced with 104 cosponsors.

"This bill will subject the White House to the same employment laws Congress imposed on itself in the Congressional Accountability Act and that the private sector has had to live with for years," said Mica. All future employment laws would automatically apply to the White House unless it is specifically exempted. In addition, the Mica bill would tighten financial management at the White House by requiring the President to appoint a Chief Financial Officer for the Executive Office of the President, and it would tighten the definition of special government employees to make them more accountable. Under the bill, White House and congressional employees who prove violations of equal employment opportunity laws would be eligible for punitive damages just like their private sector counterparts.

Mica explained, "This Congress took an historic step during its first 100 days when it made itself live under laws that had been imposed on the private sector. Now, it's time to close the loop by putting the White House under those same laws. When we do that, the political branches of government will have to wrestle with the same knotty problems that private businesses - the backbone of this country - have been dealing with for years. Maybe then we won't be so cavalier about imposing new burdens on others."

"The House 'Travelgate' hearings," Mica continued, "have also demonstrated the need to get control over White House finances. That's why this bill establishes a Chief Financial Officer for the White House. It is inconceivable that a CFO would have permitted the unorthodox accounting practices that prevailed in the Travel Office, and which the White House used as justification for firing those long-time employees. A CFO would have provided

the Travel Office managers with the guidance and expert advice they sorely needed, but never received. Likewise, those hearings also demonstrated that Congress must require more public accountability by 'volunteers' who advise the President and employees in the Executive Office of the President. My bill does this by clarifying the definition of 'Special Government Employee.'"

The bill applies the following laws to the White House: The Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the Occupational Safety and Health Act of 1970, Chapter 71 of title 5, regulating Federal Labor-Management Relations, the Employee Polygraph Protection Act of 1988, the Worker Adjustment and Retraining Notification Act, and Chapter 43 of title 38, regulating veterans' employment and reemployment rights.

COSPONSORS
PRESIDENTIAL AND EXECUTIVE OFFICE ACCOUNTABILITY ACT

1. William F. Clinger, Jr.
2. Stephen Horn
3. Spencer Bacchus
4. Andrea Seastrand
5. Gerald B. H. Solomon
6. Charles Norwood
7. Dave Weldon
8. Jack Kingston
9. J. D. Hayworth
10. Richard Burr
11. John Ensign
12. Sam Johnson
13. John Duncan
14. Ben Gilman
15. Charles F. Bass
16. Enid Greene Waldholtz
17. Jim Kolbe
18. Zach Wamp
19. William H. Zeliff, Jr.
20. Bob Inglis
21. John Hoestettler
22. Ray LaHood
23. Saxby Chambliss
24. Sue Kelly
25. Phil English
26. Steven Schiff
27. Bill McCullom
28. Chris Cox
29. Dick Chrysler
30. Jon Christensen
31. Rick Lazio
32. Mike Forbes
33. Ron Lewis
34. Howard Coble
35. Dan Miller
36. Jim Saxton
37. Joe Barton
38. Deborah Pryce
39. Frank Riggs
40. Ricahrd Pombo
41. Mac Collins
42. Terry Everett

43. John Doolittle
44. Jim Lightfoot
45. Vernon Ehlers
46. Jim Talent
47. Joe Skeen
48. J.C. Watts
49. Mike Castle
50. David Drier
51. J. Dennis Hastert
52. Bill Emerson
53. Nick Smith
54. Fred Upton
55. Nathan Deal
56. Ken Calvert
57. Bob Livingston
58. Peter Torkilsen
59. Jim McCrery
60. Randy Tate
61. Martin Hoke
62. James Hayes
63. David Funderburk
64. Wes Cooley
65. Roscoe Barlett
66. Mike Crapo
67. Tom Campbell
68. Donald Manzullo
69. Doc Hastings
70. Robert Dorman
71. Walter Jones
72. Rob Portman
73. Harris Fawell
74. Dan Burton
75. Pat Roberts
76. Mark Sanford
77. Todd Tiarht
78. David McIntosh
79. John Shadegg
80. Fred Heineman
81. Sam Brownback
82. Dana Rohrbacher
83. Ed Bryant
84. Steve Largent
85. Mark Souder
86. Tom Davis
87. Toby Roth

88. Billy Tauzin
89. Lindsey Graham
90. Bill Baker
91. George Nethercutt
92. Joe McDade
93. Jan Meyers
94. Jon Fox
95. Nancy Johnson
96. Mark Neumann
97. Jay Kim
98. Mark Foley
99. Wayne Allard
100. Wally Herger
101. Cliff Stearns
102. William O. Lipinski
103. Dan Schaffer
104. Lincoln Diaz-Balart

104TH CONGRESS
2D SESSION

H. R. 3452

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

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1996

Mr. MICA (for himself, Mr. CLINGER, Mr. HORN, Mr. BACHUS, Mrs. SEASTRAND, Mr. SOLOMON, Mr. NORWOOD, Mr. WELDON of Florida, Mr. KINGSTON, Mr. HAYWORTH, Mr. BURR, Mr. ENSIGN, Mr. SAM JOHNSON of Texas, Mr. DUNCAN, Mr. GILMAN, Mr. BASS, Ms. GREENE of Utah, Mr. KOLBE, Mr. WAMP, Mr. ZELIFF, Mr. INGLIS of South Carolina, Mr. HOSTETTLER, Mr. LAHOOD, Mr. CHAMBLISS, Mrs. KELLY, Mr. ENGLISH of Pennsylvania, Mr. SCHIFF, Mr. MCCOLLUM, Mr. COX of California, Mr. CHRYSLER, Mr. CHRISTENSEN, Mr. LAZIO of New York, Mr. FORBES, Mr. LEWIS of Kentucky, Mr. COBLE, Mr. MILLER of Florida, Mr. SAXTON, Mr. BARTON of Texas, Ms. PRYCE, Mr. RIGGS, Mr. POMBO, Mr. COLLINS of Georgia, Mr. EVERETT, Mr. DOOLITTLE, Mr. LIGHTFOOT, Mr. EHLERS, Mr. TALENT, Mr. SKEEN, Mr. WATTS of Oklahoma, Mr. CASTLE, Mr. DREIER, Mr. HASTERT, Mr. EMERSON, Mr. SMITH of Michigan, Mr. UPTON, Mr. DEAL of Georgia, Mr. CALVERT, Mr. LIVINGSTON, Mr. TORKILDSEN, Mr. MCCRERY, Mr. TATE, Mr. HOKE, Mr. HAYES, Mr. FUNDERBURK, Mr. COOLEY of Oregon, Mr. BARTLETT of Maryland, Mr. CRAPO, Mr. CAMPBELL, Mr. MANZULLO, Mr. HASTINGS of Washington, Mr. DORNAN, Mr. JONES, Mr. PORTMAN, Mr. FAWELL, Mr. BURTON of Indiana, Mr. ROBERTS, Mr. SANFORD, Mr. TIAHRT, Mr. MCINTOSH, Mr. SHADEGG, Mr. HEINEMAN, Mr. BROWNBACK, Mr. ROHRABACHER, Mr. BRYANT of Tennessee, Mr. LARGENT, Mr. SOUDER, Mr. DAVIS, Mr. ROTH, Mr. TAUZIN, Mr. GRAHAM, Mr. BAKER of California, Mr. NETHERCUTT, Mr. MCDADE, Mrs. MEYERS of Kansas, Mr. FOX of Pennsylvania, Mrs. JOHNSON of Connecticut, Mr. NEUMANN, Mr. KIM, Mr. FOLEY, Mr. ALLARD, Mr. HERGER, Mr. STEARNS, Mr. LIPINSKI, Mr. SCHAEFER, Mr. DIAZ-BALART, Mr. SHAYS, and Mr. TAYLOR of North Carolina) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on Economic and Educational Opportunities, the Judiciary, and Veterans' Affairs, for a period to be subsequently determined by the

Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Presidential and Executive Office Accountability Act”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Extension of certain rights and protections to presidential offices.
- Sec. 3. Financial officers within the Executive Office of the President.
- Sec. 4. Amendment to definition of “special government employee”.
- Sec. 5. Applicability of future employment laws.
- Sec. 6. Amendments to the Congressional Accountability Act of 1995.
- Sec. 7. Repeal of section 320 of the Government Employee Rights Act of 1991.

8 **SEC. 2. EXTENSION OF CERTAIN RIGHTS AND PROTEC-**
9 **TIONS TO PRESIDENTIAL OFFICES.**

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

12 **“CHAPTER 5—EXTENSION OF CERTAIN**
13 **RIGHTS AND PROTECTIONS TO PRESI-**
14 **DENTIAL OFFICES**

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec. 401. Definitions.

"Sec. 402. Application of laws.

"SUBCHAPTER II—EXTENSION OF RIGHTS AND PROTECTIONS

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

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

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

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

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

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

"Sec. 416. Rights and protections relating to veterans' employment and re-employment.

"Sec. 417. Prohibition of intimidation or reprisal.

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

"Sec. 420. Rights and protections under the Americans with Disabilities Act of 1990.

"PART C—OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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

"PART D—LABOR-MANAGEMENT RELATIONS

"Sec. 430. Application of chapter 71 of title 5, relating to Federal service labor-management relations; procedures for remedy of violations.

"PART E—GENERAL

"Sec. 435. Generally applicable remedies and limitations.

"SUBCHAPTER III—ADMINISTRATIVE AND JUDICIAL DISPUTE-RESOLUTION PROCEDURES

"Sec. 451. Procedure for consideration of alleged violations.

"Sec. 452. Counseling and mediation.

"Sec. 453. Election of proceeding.

"Sec. 454. Appropriate agencies.

"Sec. 455. Judicial review.

"Sec. 456. Civil action.

"Sec. 457. Judicial review of regulations.

"Sec. 458. Other judicial review prohibited.

"Sec. 459. Effect of failure to issue regulations.

"Sec. 460. Expedited review of certain appeals.

"Sec. 461. Payments.

"Sec. 462. Confidentiality.

"Sec. 463. Definitions.

"SUBCHAPTER IV—EFFECTIVE DATE

"Sec. 471. Effective date.

1 **"Subchapter I—General Provisions**

2 **"SEC. 401. DEFINITIONS.**

3 "Except as otherwise specifically provided in this
4 chapter, as used in this chapter:

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

8 "(2) COVERED EMPLOYEE.—The term 'covered
9 employee' means any employee of an employing of-
10 fice.

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

13 "(4) EMPLOYING OFFICE.—The term 'employ-
14 ing office' means—

15 "(A) each office, agency, or other compo-
16 nent of the Executive Office of the President;

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

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

1 **"SEC. 402. APPLICATION OF LAWS.**

2 "The following laws shall apply, as prescribed by this
3 chapter, to all employing offices (including employing of-
4 fices within the meaning of section 411, to the extent pre-
5 scribed therein):

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

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

8 "(3) The Americans with Disabilities Act of
9 1990.

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

12 "(5) The Family and Medical Leave Act of
13 1993.

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

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

18 "(8) The Employee Polygraph Protection Act of
19 1988.

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

22 "(10) The Rehabilitation Act of 1973.

23 "(11) Chapter 43 (relating to veterans' employ-
24 ment and reemployment) of title 38.

1 102 through 104 of the Americans with Disabilities
2 Act of 1990.

3 “(b) REMEDY.—

4 “(1) CIVIL RIGHTS.—The remedy for a viola-
5 tion of subsection (a)(1) shall be—

6 “(A) such remedy as would be appropriate
7 if awarded under section 706(g) of the Civil
8 Rights Act of 1964; and

9 “(B) such compensatory or punitive dam-
10 ages as would be appropriate if awarded under
11 section 1977 of the Revised Statutes, or as
12 would be appropriate if awarded under sections
13 1977A(a)(1), 1977A(b)(2), and, irrespective of
14 the size of the employing office,
15 1977A(b)(3)(D) of the Revised Statutes.

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

18 “(A) such remedy as would be appropriate
19 if awarded under section 15(c) of the Age Dis-
20 crimination in Employment Act of 1967; and

21 “(B) such liquidated damages as would be
22 appropriate if awarded under section 7(b) of
23 such Act.

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

1 “(3) **DISABILITIES DISCRIMINATION.**—The rem-
2 edy for a violation of subsection (a)(3) shall be—

3 “(A) such remedy as would be appropriate
4 if awarded under section 505(a)(1) of the Reha-
5 bilitation Act of 1973 or section 107(a) of the
6 Americans with Disabilities Act of 1990; and

7 “(B) such compensatory or punitive dam-
8 ages as would be appropriate if awarded under
9 sections 1977A(a)(2), 1977A(a)(3),
10 1977A(b)(2), and, irrespective of the size of the
11 employing office, 1977A(b)(3)(D) of the Re-
12 vised Statutes.

13 “(c) **DEFINITIONS.**—Except as otherwise specifically
14 provided in this section, as used in this section:

15 “(1) **COVERED EMPLOYEE.**—The term ‘covered
16 employee’ means any employee of a unit of the exec-
17 utive branch, including the Executive Office of the
18 President, whether appointed by the President or by
19 any other appointing authority in the executive
20 branch, who is not otherwise entitled to bring an ac-
21 tion under any of the statutes referred to in sub-
22 section (a), but does not include any individual—

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

1 “(A) the term ‘employer’ as used in the
2 Family and Medical Leave Act of 1993 means
3 any employing office; and

4 “(B) the term ‘eligible employee’ as used
5 in the Family and Medical Leave Act of 1993
6 means a covered employee who has been em-
7 ployed in any employing office for 12 months
8 and for at least 1,250 hours of employment
9 during the previous 12 months.

10 “(b) REMEDY.—The remedy for a violation of sub-
11 section (a) shall be such remedy, including liquidated dam-
12 ages, as would be appropriate if awarded under paragraph
13 (1) of section 107(a) of the Family and Medical Leave
14 Act of 1993.

15 **“SEC. 413. RIGHTS AND PROTECTIONS UNDER THE FAIR**
16 **LABOR STANDARDS ACT OF 1938.**

17 “(a) FAIR LABOR STANDARDS.—

18 “(1) IN GENERAL.—The rights and protections
19 established by subsections (a)(1) and (d) of section
20 6, section 7, and section 12(c) of the Fair Labor
21 Standards Act of 1938 shall apply to covered em-
22 ployees.

23 “(2) INTERNS.—For the purposes of this sec-
24 tion, the term ‘covered employee’ does not include an
25 intern as defined in regulations under subsection (c).

1 “(3) COMPENSATORY TIME.—Except as pro-
2 vided in regulations under subsection (c)(3), covered
3 employees may not receive compensatory time in lieu
4 of overtime compensation.

5 “(b) REMEDY.—The remedy for a violation of sub-
6 section (a) shall be such remedy, including liquidated dam-
7 ages, as would be appropriate if awarded under section
8 16(b) of the Fair Labor Standards Act of 1938.

9 “(c) REGULATIONS TO IMPLEMENT SECTION.—

10 “(1) IN GENERAL.—The President shall issue
11 regulations to implement this section.

12 “(2) AGENCY REGULATIONS.—Except as pro-
13 vided in paragraph (3), the regulations issued under
14 paragraph (1) shall be the same as substantive regu-
15 lations promulgated by the Secretary of Labor to
16 implement the statutory provisions referred to in
17 subsection (a) except insofar as the President may
18 determine, for good cause shown and stated together
19 with the regulation, that a modification of such reg-
20 ulations would be more effective for the implementa-
21 tion of the rights and protections under this section.

22 “(3) IRREGULAR WORK SCHEDULES.—The
23 President shall issue regulations for covered employ-
24 ees whose work schedules directly depend on the
25 schedule of the President or the Vice President that

1 shall be comparable to the provisions in the Fair
2 Labor Standards Act of 1938 that apply to employ-
3 ees who have irregular work schedules.

4 **“SEC. 414. RIGHTS AND PROTECTIONS UNDER THE EM-**
5 **PLOYEE POLYGRAPH PROTECTION ACT OF**
6 **1988.**

7 **“(a) POLYGRAPH PRACTICES PROHIBITED.—**No em-
8 ploying office may require a covered employee to take a
9 lie detector test where such a test would be prohibited if
10 required by an employer under paragraph (1), (2), or (3)
11 of section 3 of the Employee Polygraph Protection Act of
12 1988. In addition, the waiver provisions of section 6(d)
13 of such Act shall apply to covered employees.

14 **“(b) REMEDY.—**The remedy for a violation of sub-
15 section (a) shall be such remedy as would be appropriate
16 if awarded under section 6(c)(1) of the Employee Poly-
17 graph Protection Act of 1988.

18 **“(c) REGULATIONS TO IMPLEMENT SECTION.—**

19 **“(1) IN GENERAL.—**The President shall issue
20 regulations to implement this section.

21 **“(2) AGENCY REGULATIONS.—**The regulations
22 issued under paragraph (1) shall be the same as
23 substantive regulations promulgated by the Sec-
24 retary of Labor to implement the statutory provi-
25 sions referred to in subsections (a) and (b) except

1 insofar as the President may determine, for good
2 cause shown and stated together with the regulation,
3 that a modification of such regulations would be
4 more effective for the implementation of the rights
5 and protections under this section.

6 **"SEC. 415. RIGHTS AND PROTECTIONS UNDER THE WORK-**
7 **ER ADJUSTMENT AND RETRAINING NOTIFI-**
8 **CATION ACT.**

9 **"(a) WORKER ADJUSTMENT AND RETRAINING NOTI-**
10 **FICATION RIGHTS.—**

11 **"(1) IN GENERAL.—**Except as provided in para-
12 graph (2), no employing office shall be closed or
13 mass layoff ordered within the meaning of section 3
14 of the Worker Adjustment and Retraining Notifica-
15 tion Act until the end of a 60-day period after the
16 employing office serves written notice of such pro-
17 spective closing or layoff to representatives of cov-
18 ered employees or, if there are no representatives, to
19 covered employees.

20 **"(2) EXCEPTION.—**

21 **"(A) IN GENERAL.—**In the event that a
22 President (hereinafter in this paragraph re-
23 ferred to as the 'previous President') does not
24 succeed himself in office as a result of the elec-
25 tion of a new President, no notice or waiting

1 period shall be required under paragraph (1)
2 with respect to the separation of any individual
3 described in subparagraph (B), if such separa-
4 tion occurs pursuant to a closure or mass layoff
5 ordered after the term of the new President
6 commences.

7 “(B) DESCRIPTION OF INDIVIDUALS.—An
8 individual described in this subparagraph is any
9 covered employee serving pursuant to an ap-
10 pointment made during—

11 “(i) the term of office of the previous
12 President; or

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

17 “(b) REMEDY.—The remedy for a violation of sub-
18 section (a) shall be such remedy as would be appropriate
19 if awarded under paragraphs (1), (2), and (4) of section
20 5(a) of the Worker Adjustment and Retraining Notifica-
21 tion Act.

22 “(c) REGULATIONS TO IMPLEMENT SECTION.—

23 “(1) IN GENERAL.—The President shall issue
24 regulations to implement this section.

1 “(2) AGENCY REGULATIONS.—The regulations
2 issued under paragraph (1) shall be the same as
3 substantive regulations promulgated by the Sec-
4 retary of Labor to implement the statutory provi-
5 sions referred to in subsection (a) except insofar as
6 the President may determine, for good cause shown
7 and stated together with the regulation, that a modi-
8 fication of such regulations would be more effective
9 for the implementation of the rights and protections
10 under this section.

11 **“SEC. 416. RIGHTS AND PROTECTIONS RELATING TO VET-**
12 **ERANS’ EMPLOYMENT AND REEMPLOYMENT.**

13 “(a) EMPLOYMENT AND REEMPLOYMENT RIGHTS OF
14 MEMBERS OF THE UNIFORMED SERVICES.—

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

17 “(A) discriminate, within the meaning of
18 subsections (a) and (b) of section 4311 of title
19 38, against an eligible employee;

20 “(B) deny to an eligible employee reem-
21 ployment rights within the meaning of sections
22 4312 and 4313 of title 38; or

23 “(C) deny to an eligible employee benefits
24 within the meaning of sections 4316, 4317, and
25 4318 of title 38.

1 “(2) DEFINITION.—For purposes of this sec-
2 tion, the term ‘eligible employee’ means a covered
3 employee performing service in the uniformed serv-
4 ices, within the meaning of section 4303(13) of title
5 38, whose service has not been terminated upon the
6 occurrence of any of the events enumerated in sec-
7 tion 4304 of such title.

8 “(b) REMEDY.—The remedy for a violation of sub-
9 section (a) shall be such remedy as would be appropriate
10 if awarded under paragraphs (1), (2)(A), and (3) of sec-
11 tion 4323(c) of title 38.

12 “(c) REGULATIONS TO IMPLEMENT SECTION.—

13 “(1) IN GENERAL.—The President shall issue
14 regulations to implement this section.

15 “(2) AGENCY REGULATIONS.—The regulations
16 issued under paragraph (1) shall be the same as
17 substantive regulations promulgated by the Sec-
18 retary of Labor to implement the statutory provi-
19 sions referred to in subsection (a) except to the ex-
20 tent that the President may determine, for good
21 cause shown and stated together with the regulation,
22 that a modification of such regulations would be
23 more effective for the implementation of the rights
24 and protections under this section.

1 **“SEC. 417. PROHIBITION OF INTIMIDATION OR REPRISAL.**

2 “(a) **IN GENERAL.**—It shall be unlawful for an em-
3 ploying office to intimidate, take reprisal against, or other-
4 wise discriminate against, any covered employee because
5 the covered employee has opposed any practice made un-
6 lawful by this chapter, or because the covered employee
7 has initiated proceedings, made a charge, or testified, as-
8 sisted, or participated in any manner in a hearing or other
9 proceeding under this chapter.

10 “(b) **REMEDY.**—A violation of subsection (a) may be
11 remedied by any legal or equitable remedy available to re-
12 dress the practice opposed by the covered employee or
13 other violation of law as to which the covered employee
14 initiated proceedings, made a charge, or engaged in other
15 conduct protected under subsection (a).

16 “(c) **DEFINITIONS.**—For purposes of applying this
17 section with respect to any practice or other matter to
18 which section 411 relates, the terms ‘employing office’ and
19 ‘covered employee’ shall each be considered to have the
20 meaning given to it by such section.

21 **“PART B—PUBLIC ACCESS PROVISIONS UNDER**
22 **THE AMERICANS WITH DISABILITIES ACT OF 1990**

23 **“SEC. 420. RIGHTS AND PROTECTIONS UNDER THE AMERI-**
24 **CANS WITH DISABILITIES ACT OF 1990.**

25 “(a) **RIGHTS AND PROTECTIONS.**—The rights and
26 protections against discrimination in the provision of pub-

1 lie services and accommodations established by sections
2 201, 202, and 204, and sections 302, 303, and 309, of
3 the Americans with Disabilities Act of 1990 shall apply,
4 to the extent that public services, programs, or activities
5 are provided, with respect to the White House and its ap-
6 purtenant grounds and gardens, the Old Executive Office
7 Building, the New Executive Office Buildings, and any
8 other facility to the extent that offices are provided for
9 employees of the Executive Office of the President.

10 “(b) REMEDY.—The remedy for a violation of sub-
11 section (a) shall be such remedy as would be appropriate
12 if awarded under section 203 or 308 of the Americans
13 with Disabilities Act of 1990, as the case may be, except
14 that, with respect to any claim of employment discrimina-
15 tion, the exclusive remedy shall be under section 411 of
16 this title. A remedy under the preceding sentence shall be
17 enforced in accordance with applicable provisions of such
18 section 203 or 308, as the case may be.

19 “(c) DEFINITION.—For purposes of the application
20 under this section of the Americans with Disabilities Act
21 of 1990, the term ‘public entity’ as used in such Act,
22 means, to the extent that public services, programs, or ac-
23 tivities are provided, the White House and its appurtenant
24 grounds and gardens, the Old Executive Office Building,
25 the New Executive Office Buildings, and any other facility

1 to the extent that offices are provided for employees of
2 the Executive Office of the President.

3 **"PART C—OCCUPATIONAL SAFETY AND HEALTH**

4 **ACT OF 1970**

5 **"SEC. 425. RIGHTS AND PROTECTIONS UNDER THE OCCU-**
6 **PATIONAL SAFETY AND HEALTH ACT OF 1970;**
7 **PROCEDURES FOR REMEDY OF VIOLATIONS.**

8 **"(a) OCCUPATIONAL SAFETY AND HEALTH PROTEC-**
9 **TIONS.—**

10 **"(1) IN GENERAL.—**Each employing office and
11 each covered employee shall comply with the provi-
12 sions of section 5 of the Occupational Safety and
13 Health Act of 1970.

14 **"(2) DEFINITIONS.—**For purposes of the appli-
15 cation under this section of the Occupational Safety
16 and Health Act of 1970—

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

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

21 **"(b) REMEDY.—**The remedy for a violation of sub-
22 section (a) shall be an order to correct the violation, in-
23 cluding such order as would be appropriate if issued under
24 section 13(a) of the Occupational Safety and Health Act
25 of 1970.

1 “(c) PROCEDURES.—

2 “(1) REQUESTS FOR INSPECTIONS.—Upon writ-
3 ten request of any employing office or covered em-
4 ployee, the Secretary of Labor shall have the author-
5 ity to inspect and investigate places of employment
6 under the jurisdiction of employing offices in accord-
7 ance with subsections (a), (d), (e), and (f) of section
8 8 of the Occupational Safety and Health Act of
9 1970.

10 “(2) CITATIONS, NOTICES, AND NOTIFICA-
11 TIONS.—The Secretary of Labor shall have the au-
12 thority, in accordance with sections 9 and 10 of the
13 Occupational Safety and Health Act of 1970, to
14 issue—

15 “(A) a citation or notice to any employing
16 office responsible for correcting a violation of
17 subsection (a); or

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

23 “(3) HEARINGS AND REVIEW.—If after issuing
24 a citation or notification, the Secretary of Labor de-
25 termines that a violation has not been corrected—

1 “(A) the citation and notification shall be
2 deemed a final order (within the meaning of
3 section 10(b) of the Occupational Safety and
4 Health Act of 1970, if the employer fails to no-
5 tify the Secretary of Labor within 15 days (ex-
6 cluding Saturdays, Sundays, and Federal holi-
7 days) after receipt of the notice that he intends
8 to contest the citation or notification; or

9 “(B) opportunity for a hearing before the
10 Occupational Safety and Health Review Com-
11 mission shall be afforded in accordance with
12 section 10(c) of the Occupational Safety and
13 Health Act of 1970, if the employer gives time-
14 ly notice to the Secretary that he intends to
15 contest the citation or notification.

16 “(4) VARIANCE PROCEDURES.—An employing
17 office may request from the Secretary of Labor an
18 order granting a variance from a standard made ap-
19 plicable by this section, in accordance with sections
20 6(b)(6) and 6(d) of the Occupational Safety and
21 Health Act of 1970.

22 “(5) JUDICIAL REVIEW.—Any person or em-
23 ploying office aggrieved by a final decision of the Oc-
24 cupational Safety and Health Review Commission
25 under paragraph (3) or the Secretary of Labor

1 under (4) may file a petition for review with the
2 United States Court of Appeals for the Federal Cir-
3 cuit pursuant to section 455.

4 “(6) COMPLIANCE DATE.—If new appropriated
5 funds are necessary to correct a violation of sub-
6 section (a) for which a citation is issued, or to com-
7 ply with an order requiring correction of such a vio-
8 lation, correction or compliance shall take place as
9 soon as possible, but not later than the end of the
10 fiscal year following the fiscal year in which the cita-
11 tion is issued or the order requiring correction be-
12 comes final and not subject to further review.

13 “(d) REGULATIONS TO IMPLEMENT SECTION.—

14 “(1) IN GENERAL.—The President shall issue
15 regulations to implement this section.

16 “(2) AGENCY REGULATIONS.—The regulations
17 issued under paragraph (1) shall be the same as
18 substantive regulations promulgated by the Sec-
19 retary of Labor to implement the statutory provi-
20 sions referred to in subsection (a) except to the ex-
21 tent that the President may determine, for good
22 cause shown and stated together with the regulation,
23 that a modification of such regulations would be
24 more effective for the implementation of the rights
25 and protections under this section.

1 “(3) EMPLOYING OFFICE RESPONSIBLE FOR
2 CORRECTION.—The regulations issued under para-
3 graph (1) shall include a method of identifying, for
4 purposes of this section and for different categories
5 of violations of subsection (a), the employing office
6 responsible for correction of a particular violation.

7 **“PART D—LABOR-MANAGEMENT RELATIONS**

8 **“SEC. 430. APPLICATION OF CHAPTER 71 OF TITLE 5, RE-**
9 **LATING TO FEDERAL SERVICE LABOR-MAN-**
10 **AGEMENT RELATIONS; PROCEDURES FOR**
11 **REMEDY OF VIOLATIONS.**

12 “(a) LABOR-MANAGEMENT RIGHTS.—Chapter 71 of
13 title 5 shall apply to employing offices and to covered em-
14 ployees and representatives of those employees.

15 “(b) DEFINITION.—For purposes of the application
16 under this section of chapter 71 of title 5, the term ‘agen-
17 cy’ as used in such chapter means an employing office.

18 **“PART E—GENERAL**

19 **“SEC. 435. GENERALLY APPLICABLE REMEDIES AND LIM-**
20 **TATIONS.**

21 “(a) ATTORNEY’S FEES.—If a covered employee,
22 with respect to any claim under this chapter, or a qualified
23 person with a disability, with respect to any claim under
24 section 420, is a prevailing party in any proceeding under
25 section 453(1), 455, or 456, the administrative agency or

1 court, as the case may be, may award attorney's fees, ex-
2 pert fees, and any other costs as would be appropriate if
3 awarded under section 706(k) of the Civil Rights Act of
4 1964.

5 “(b) INTEREST.—In any proceeding under section
6 453(1), 455, or 456, the same interest to compensate for
7 delay in payment shall be made available as would be ap-
8 propriate if awarded under section 717(d) of the Civil
9 Rights Act of 1964.

10 “(c) CIVIL PENALTIES AND PUNITIVE DAMAGES.—
11 Except as otherwise provided in this chapter, no civil pen-
12 alty or punitive damages may be awarded with respect to
13 any claim under this chapter.

14 “(d) EXCLUSIVE PROCEDURE.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), no person may commence an administra-
17 tive or judicial proceeding to seek a remedy for the
18 rights and protections afforded by this chapter ex-
19 cept as provided in this chapter.

20 “(2) VETERANS.—A covered employee under
21 section 416 may also utilize any provisions of chap-
22 ter 43 of title 38 that are applicable to that em-
23 ployee.

24 “(e) SCOPE OF REMEDY.—Only a covered employee
25 who has undertaken and completed the procedures de-

1 scribed in section 452 may be granted a remedy under
2 part A of this subchapter.

3 “(f) CONSTRUCTION.—

4 “(1) DEFINITIONS AND EXEMPTIONS.—Except
5 where inconsistent with definitions and exemptions
6 provided in this chapter, the definitions and exemp-
7 tions in the laws made applicable by this chapter
8 shall apply under this chapter.

9 “(2) SIZE LIMITATIONS.—Notwithstanding
10 paragraph (1), provisions in the laws made applica-
11 ble under this chapter (other than paragraphs (2)
12 and (3) of section 2(a) of the Worker Adjustment
13 and Retraining Notification Act) determining cov-
14 erage based on size, whether expressed in terms of
15 numbers of employees, amount of business trans-
16 acted, or other measure, shall not apply in determin-
17 ing coverage under this chapter.

18 “(g) DEFINITIONS RELATING TO SECTION 411.—For
19 purposes of applying this section with respect to any prac-
20 tice or other matter to which section 411 relates, the terms
21 ‘employing office’ and ‘covered employee’ shall each be
22 considered to have the meaning given to it by such section.

1 **“Subchapter III—Administrative and Judicial**
2 **Dispute-Resolution Procedures**

3 **“SEC. 451. PROCEDURE FOR CONSIDERATION OF ALLEGED**
4 **VIOLATIONS.**

5 “The procedure for consideration of alleged violations
6 of part A of subchapter II consists of—

7 “(1) counseling and mediation as provided in
8 section 452; and

9 “(2) election, as provided in section 453, of ei-
10 ther—

11 “(A) an administrative proceeding as pro-
12 vided in section 453(1) and judicial review as
13 provided in section 455; or

14 “(B) a civil action in a district court of the
15 United States as provided in section 456.

16 **“SEC. 452. COUNSELING AND MEDIATION.**

17 “(a) **IN GENERAL.**—The President shall by regula-
18 tion establish procedures substantially similar to those
19 under sections 402 and 403 of the Congressional Account-
20 ability Act of 1995 for the counseling and mediation of
21 alleged violations of a law made applicable under part A
22 of subchapter II.

23 “(b) **EXHAUSTION REQUIREMENT.**—A covered em-
24 ployee who has not exhausted counseling and mediation
25 under subsection (a) shall be ineligible to make any elec-

1 tion under section 453 or otherwise pursue any further
2 form of relief under this subchapter.

3 **"SEC. 453. ELECTION OF PROCEEDING.**

4 "Not later than 90 days after a covered employee re-
5 ceives notice of the end of the period of mediation, but
6 no sooner than 30 days after receipt of such notification,
7 such covered employee may either—

8 " (1) file a complaint with the appropriate ad-
9 ministrative agency, as determined under section
10 454; or

11 " (2) file a civil action in accordance with sec-
12 tion 456 in the United States district court for the
13 district in which the employee is employed or for the
14 District of Columbia.

15 **"SEC. 454. APPROPRIATE AGENCIES.**

16 "(a) IN GENERAL.—Except as provided in subsection
17 (b), the appropriate agency under this section with respect
18 to an alleged violation of part A of subchapter II shall
19 be the Board.

20 "(b) EXCEPTIONS.—

21 "(1) DISCRIMINATION.—For purposes of any
22 action arising under section 411 (or any action al-
23 leging intimidation, reprisal, or discrimination under
24 section 417 relating to any practice made unlawful
25 under section 411), the appropriate agency shall be

1 the Equal Employment Opportunity Commission,
2 and the complaint in any such action shall be proc-
3 essed under the same administrative procedures as
4 any such complaint filed by any other Federal em-
5 ployee.

6 “(2) MIXED CASES.—However, in the case of
7 any covered employee (within the meaning of section
8 411(c)(1)) who has been affected by an action which
9 an employee of an executive agency may appeal to
10 the Board and who alleges that a basis for the ac-
11 tion was discrimination prohibited by section 411 (or
12 any action alleging intimidation, reprisal, or dis-
13 crimination under section 417 relating to any prac-
14 tice made unlawful under section 411), the initial
15 appropriate agency shall be the Board, and such
16 matter shall thereafter be processed in accordance
17 with section 7702 (a)–(d) (disregarding paragraph
18 (2) of such subsection (a)) and (f) of title 5.

19 “(3) JUDICIAL REVIEW.—Notwithstanding any
20 other provision of law (including any provision of
21 law referenced in paragraph (1) or (2)), judicial re-
22 view of any administrative decision under this sub-
23 section shall be by the court specified in section 455.

1 **“SEC. 455. JUDICIAL REVIEW.**

2 “(a) **IN GENERAL.**—The United States Court of Ap-
3 peals for the Federal Circuit shall have jurisdiction over
4 a petition for review of a final decision under this chapter
5 of—

6 “(1) an appropriate agency (as determined
7 under section 454);

8 “(2) the Federal Labor Relations Authority
9 under chapter 71 of title 5, notwithstanding section
10 7123 of such title; or

11 “(3) the Secretary of Labor or the Occupational
12 Safety and Health Review Commission, made under
13 part C of subchapter II.

14 “(b) **FILING DEADLINE.**—Any petition for review
15 under this section must be filed within 30 days after the
16 date the petitioner receives notice of the final decision.

17 **“SEC. 456. CIVIL ACTION.**

18 “(a) **JURISDICTION.**—The district courts of the
19 United States shall have jurisdiction over any civil action
20 commenced under section 453(2) and this section by a
21 covered employee.

22 “(b) **PARTIES.**—The defendant shall be the employ-
23 ing office alleged to have committed the violation, or in
24 which the violation is alleged to have occurred.

25 “(c) **JURY TRIAL.**—Any party may demand a jury
26 trial where a jury trial would be available in an action

1 against a private defendant under the relevant law made
2 applicable by this chapter. In any case in which a violation
3 of section 411 is alleged, the court shall not inform the
4 jury of the maximum amount of compensatory damages
5 available under section 411(b)(1) or 411(b)(3).

6 **“SEC. 457. JUDICIAL REVIEW OF REGULATIONS.**

7 “In any proceeding brought under section 455 or 456
8 in which the application of a regulation issued under this
9 chapter is at issue, the court may review the validity of
10 the regulation in accordance with the provisions of sub-
11 paragraphs (A) through (D) of section 706(2) of title 5.
12 If the court determines that the regulation is invalid, the
13 court shall apply, to the extent necessary and appropriate,
14 the most relevant substantive executive agency regulation
15 promulgated to implement the statutory provisions with
16 respect to which the invalid regulation was issued. Except
17 as provided in this section, the validity of regulations is-
18 sued under this chapter is not subject to judicial review.

19 **“SEC. 458. OTHER JUDICIAL REVIEW PROHIBITED.**

20 “Except as expressly authorized by this chapter, the
21 compliance or noncompliance with the provisions of this
22 chapter and any action taken pursuant to this chapter
23 shall not be subject to judicial review.

1 **“SEC. 459. EFFECT OF FAILURE TO ISSUE REGULATIONS.**

2 “In any proceeding under section 453(1), 455, or
3 456, if the President has not issued a regulation on a mat-
4 ter for which this chapter requires a regulation to be is-
5 sued, the administrative agency or court, as the case may
6 be, shall apply, to the extent necessary and appropriate,
7 the most relevant substantive executive agency regulation
8 promulgated to implement the statutory provision at issue
9 in the proceeding.

10 **“SEC. 460. EXPEDITED REVIEW OF CERTAIN APPEALS.**

11 “(a) IN GENERAL.—An appeal may be taken directly
12 to the Supreme Court of the United States from any inter-
13 locutory or final judgment, decree, or order of a court
14 upon the constitutionality of any provision of this chapter.

15 “(b) JURISDICTION.—The Supreme Court shall, if it
16 has not previously ruled on the question, accept jurisdic-
17 tion over the appeal referred to in subsection (a), advance
18 the appeal on the docket, and expedite the appeal to the
19 greatest extent possible.

20 **“SEC. 461. PAYMENTS.**

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

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

1 “(2) out of amounts otherwise appropriated or
2 available to such office, if it arises out of an admin-
3 istrative proceeding under this chapter (or any ap-
4 peal therefrom).

5 **“SEC. 462. CONFIDENTIALITY.**

6 “(a) COUNSELING.—All counseling under section 452
7 shall be strictly confidential, except that, with the consent
8 of the covered employee, the employing office may be noti-
9 fied.

10 “(b) MEDIATION.—All mediation under section 452
11 shall be strictly confidential.

12 **“SEC. 463. DEFINITIONS.**

13 “‘For purposes of applying this subchapter, the terms
14 ‘employing office’ and ‘covered employee’ shall each, to the
15 extent that section 411 is involved, be considered to have
16 the meaning given to it by such section.

17 **“Subchapter IV—Effective Date**

18 **“SEC. 471. EFFECTIVE DATE.**

19 “‘This chapter shall take effect 1 year after the date
20 of the enactment of the Presidential and Executive Office
21 Accountability Act.’”.

22 (b) REGULATIONS.—Appropriate measures shall be
23 taken to ensure that any regulations needed to implement
24 chapter 5 of title 3, United States Code, as amended by

1 this section, shall be in effect by the effective date of such
2 chapter.

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

“5. Extension of Certain Rights and Protections to Presidential Offices.”.

6 **SEC. 3. FINANCIAL OFFICERS WITHIN THE EXECUTIVE OF-**
7 **FICE OF THE PRESIDENT.**

8 (a) CHIEF FINANCIAL OFFICER.—Section 901 of
9 title 31, United States Code, is amended by adding at the
10 end the following:

11 “(c)(1) There shall be within the Executive Office of
12 the President a Chief Financial Officer, who shall be ap-
13 pointed by the President from among individuals meeting
14 the standards described in subsection (a)(3).

15 “(2) The Chief Financial Officer under this sub-
16 section shall have the same authority and shall perform
17 the same functions as apply in the case of a Chief Finan-
18 cial Officer under section 902.

19 “(3) The Director of the Office of Management and
20 Budget shall prescribe any regulations which may be nec-
21 essary to ensure that, for purposes of implementing para-
22 graph (2), the Executive Office of the President shall, to
23 the extent practicable and appropriate, be treated (includ-
24 ing for purposes of financial statements under section

1 3515) in the same way as an agency described in sub-
2 section (b).”.

3 (b) DEPUTY CHIEF FINANCIAL OFFICER.—Section
4 903 of title 31, United States Code, is amended by adding
5 at the end the following:

6 “(c)(1) There shall be within the Executive Office of
7 the President a Deputy Chief Financial Officer, who, not-
8 withstanding any provision of subsection (b), shall be ap-
9 pointed by the President from among individuals meeting
10 the standards described in section 901(a)(3).

11 “(2) The Deputy Chief Financial Officer under this
12 subsection shall have the same authority and shall perform
13 the same functions as apply in the case of the Deputy
14 Chief Financial Officer of an agency described in sub-
15 section (b).”.

16 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) TITLE 31, UNITED STATES CODE.—Section
18 503(a) of title 31, United States Code, is amend-
19 ed—

20 (A) in paragraph (7) by striking “respec-
21 tively.” and inserting “respectively (excluding
22 any officer appointed under section 901(c) or
23 903(c).”;

24 (B) in paragraph (8) by striking “Offi-
25 cers.” and inserting “Officers (excluding any

1 officer appointed under section 901(c) or
2 903(c)).”.

3 (2) DESIGNATION OF AGENCY HEAD.—The
4 President shall designate an employee of the Execu-
5 tive Office of the President (other than the Chief Fi-
6 nancial Officer or Deputy Chief Financial Officer
7 appointed under the amendments made by sub-
8 sections (a) and (b), respectively), who shall be
9 deemed “the head of the agency” for purposes of
10 carrying out section 902 of title 31, United States
11 Code, with respect to the Executive Office of the
12 President.

13 **SEC. 4. AMENDMENT TO DEFINITION OF “SPECIAL GOV-
14 ERNMENT EMPLOYEE”.**

15 (a) IN GENERAL.—Section 202 of title 18, United
16 States Code, is amended by adding at the end the follow-
17 ing:

18 “(e) For purposes of the first sentence of subsection
19 (a), an individual shall be considered ‘retained, designated,
20 appointed, or employed’ by the Executive Office of the
21 President if such individual—

22 “(1) is retained, designated, appointed, or em-
23 ployed by the President or the Vice President, or
24 any other authorized individual (including the spouse
25 of the President or the Vice President), to provide

1 advice, counsel, or recommendations to employees of
2 the Executive Office of the President; and

3 “(2)(A) is furnished the use (exclusive or other-
4 wise) of an office or equipment at Government ex-
5 pense;

6 “(B) owns at least 10 percent of the outstand-
7 ing capital stock of a corporation, or an equivalent
8 interest in any other entity, that such individual
9 knows or reasonably should know is doing business
10 or attempting to do business with the United States
11 Government;

12 “(C) is a lobbyist, within the meaning of section
13 3(10) of the Lobbying Disclosure Act of 1995; or

14 “(D) provides advice, counsel, or recommenda-
15 tions on any of the following:

16 “(i) Personnel, organization, or reorganiza-
17 tion of the Executive Office of the President.

18 “(ii) The contracting or privatization of
19 any function of the United States Government.

20 “(iii) Contracts to provide goods or serv-
21 ices to the United States Government.

22 “(iv) Congressional hearings or proceed-
23 ings.”.

1 **SEC. 5. APPLICABILITY OF FUTURE EMPLOYMENT LAWS.**

2 Each Federal law governing employment in the pri-
3 vate sector, enacted later than 12 months after the date
4 of the enactment of this Act, shall be deemed to apply
5 with respect to "employing offices" and "covered employ-
6 ees" (within the meaning of section 401 of title 3, United
7 States Code, as amended by this Act), unless such law
8 specifically provides otherwise and expressly cites this sec-
9 tion.

10 **SEC. 6. AMENDMENTS TO THE CONGRESSIONAL ACCOUNT-**
11 **ABILITY ACT OF 1995.**

12 (a) **IN GENERAL.**—The Congressional Accountability
13 Act of 1995 (Public Law 104–1; 2 U.S.C. 1301 et seq.)
14 is amended—

15 (1) in paragraphs (1)(B) and (3)(B) of section
16 201(b) by inserting "or punitive" after "compen-
17 satory"; and

18 (2) in section 225(c) by striking "No" and in-
19 sserting "Except as expressly provided in this Act,
20 no".

21 (b) **EFFECTIVE DATE.**—This section shall take effect
22 1 year after the date of the enactment of this Act, and
23 the amendments made by this section shall apply with re-
24 spect to actions brought on or after the effective date of
25 this section.

1 **SEC. 7. REPEAL OF SECTION 320 OF THE GOVERNMENT EM-**
2 **PLOYEE RIGHTS ACT OF 1991.**

3 (a) **IN GENERAL.**—Section 320 of the Government
4 Employee Rights Act of 1991 is repealed.

5 (b) **EFFECTIVE DATE.**—This section shall take effect
6 1 year after the date of the enactment of this Act.

7 (c) **SAVINGS PROVISION.**—The repeal under this sec-
8 tion shall not affect proceedings in which the complaint
9 was filed before the effective date of this section, and or-
10 ders shall be issued in such proceedings and appeals shall
11 be taken therefrom as if this section had not been enacted.

○