

103^D CONGRESS
2^D SESSION

H. R. 1111

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1993

Mr. MARTINEZ (for himself, Mr. FORD of Michigan, Mr. KILDEE, Mr. OWENS, Ms. WOOLSEY, Mr. CONYERS, Mr. HOYER, Mrs. SCHROEDER, Mr. MILLER of California, Mrs. MORELLA, Mrs. MINK, Mr. DELLUMS, Mr. STOKES, Mr. ACKERMAN, Mrs. COLLINS of Illinois, Mr. FRANK of Massachusetts, Mr. FAZIO, Mr. MORAN, Mr. PAYNE of New Jersey, and Mr. SANDERS) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Post Office and Civil Service

MARCH 9, 1994

Additional sponsors: Mr. BAESLER, Ms. PELOSI, Mr. TOWNS, Mr. SAWYER, Ms. SLAUGHTER, Mr. RUSH, Mr. JEFFERSON, Mr. BLACKWELL, Mr. OLVER, Mr. HASTINGS, Ms. SNOWE, Mr. SMITH of New Jersey, Mr. FOGLIETTA, Mr. SERRANO, and Mr. MINETA

A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees; 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,*

1 **SECTION 1. SHORT TITLE**

2 This Act may be cited as the “Federal Employee
3 Fairness Act of 1993”.

4 **SEC. 2. AMENDMENTS RELATING TO ADMINISTRATIVE DE-**
5 **TERMINATION OF FEDERAL EMPLOYEE DIS-**
6 **CRIMINATION CLAIMS.**

7 (a) DEFINITIONS.—Section 701 of the Civil Rights
8 Act of 1964 (42 U.S.C. 2000e) is amended—

9 (1) in paragraph (f) by striking “The term”
10 and inserting “Except when it appears as part of the
11 term ‘Federal employee’, the term”, and

12 (2) by adding at the end the following:

13 “(o) The term ‘Commission’ means the Equal Em-
14 ployment Opportunity Commission.

15 “(p) The term ‘entity of the Federal Government’
16 means an entity to which section 717(a) applies, except
17 that such term does not include the Library of Congress.

18 “(q) The term ‘Federal employee’ means an individ-
19 ual employed by, or who applies for employment with, an
20 entity of the Federal Government.

21 “(r) The term ‘Federal employment’ means employ-
22 ment by an entity of the Federal Government.

23 “(s) The terms ‘government’, ‘government agency’,
24 and ‘political subdivision’ do not include an entity of the
25 Federal Government.”.

1 (b) EEOC DETERMINATION OF FEDERAL EMPLOY-
2 MENT DISCRIMINATION CLAIMS.—Section 717 of the Civil
3 Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

4 (1) in subsection (b)—

5 (A) in the first paragraph (2) by striking
6 “and” at the end,

7 (B) in paragraph (3) by striking the period
8 and inserting “; and”, and

9 (C) by inserting after paragraph (3) the
10 following:

11 “(4) require each entity of the Federal Govern-
12 ment—

13 “(A) to make counseling available to Fed-
14 eral employees who choose to notify such entity
15 that they believe such entity has discriminated
16 against them in violation of subsection (a), for
17 the purpose of trying to resolve the matters
18 with respect to which such discrimination is al-
19 leged (Such entity shall assist such employee to
20 identify the respondent required by subsection
21 (c)(1) to be named in a complaint alleging such
22 violation, shall inform such Federal employee
23 individually of the procedures and deadlines
24 that apply under this section to a claim alleging
25 such discrimination, and shall make such coun-

1 seling available throughout the administrative
2 process.);

3 “(B) to establish a voluntary alternative
4 dispute process to resolve complaints, except
5 that a Federal employee’s decision to forgo such
6 process shall not affect the rights of such em-
7 ployee under this title;

8 “(C) not to discourage Federal employees
9 from filing complaints on any matter relating to
10 discrimination in violation of this section; and

11 “(D) not to require Federal employees to
12 participate in counseling made available under
13 subparagraph (A) or in a dispute resolution
14 process made available under subparagraph
15 (B).”;

16 (2) by striking subsection (c),

17 (3) in subsection (d)—

18 (A) by striking “(k)” and inserting “(j)”,

19 (B) by striking “brought hereunder” and
20 inserting “commenced under this section”, and

21 (C) by adding at the end the following:

22 “The head of the department, unit, or agency in which
23 discrimination in violation of subsection (a) is alleged to
24 have occurred shall be the defendant in a civil action alleg-
25 ing such violation. In any action or proceeding under this

1 section, the court, in its discretion, may allow the prevail-
2 ing party (other than an entity of the Federal Govern-
3 ment) a reasonable attorney’s fee (including expert fees
4 and other litigation expenses), costs, and the same interest
5 to compensate for delay in payment as a court has author-
6 ity to award under section 706(k), as amended from time
7 to time.”,

8 (4) by redesignating subsections (d) and (e) as
9 subsections (m) and (n), respectively, and

10 (5) by inserting after subsection (b) the follow-
11 ing:

12 “(c)(1)(A) Except as provided in subparagraph (B),
13 a complaint filed by or on behalf of a Federal employee
14 or a class of Federal employees and alleging a claim of
15 discrimination arising under subsection (a) shall name as
16 the respondent, and be filed with, the head of the depart-
17 ment, agency, or unit in which such discrimination is al-
18 leged to have occurred, or with the Commission, not later
19 than 180 days after the alleged discrimination occurs.

20 “(B) If, not later than 180 days after the alleged dis-
21 crimination occurs, the complaint is filed—

22 “(i) with such department, agency, or unit and
23 fails to name the head of the department, agency, or
24 unit as the respondent; or

1 “(ii) with any other entity of the Federal Gov-
2 ernment, regardless of the respondent named;
3 the complaint shall be considered to be filed in compliance
4 with subparagraph (A).

5 “(2)(A) If the complaint is filed with an entity of the
6 Federal Government other than the department, agency,
7 or unit in which such discrimination is alleged to have oc-
8 curred, then—

9 “(i) such entity (other than the Commission)
10 shall transmit the complaint to the Commission, not
11 later than 15 days after receiving the complaint; and

12 “(ii) the Commission shall transmit a copy of
13 the complaint, not later than 10 days after receiving
14 the complaint, to the head of the department, agen-
15 cy, or unit in which such discrimination is alleged to
16 have occurred (hereinafter in this section referred to
17 as the ‘respondent’).

18 “(3)(A) Not later than 3 days after the respondent
19 receives the complaint from a source other than the Com-
20 mission, the respondent shall notify the Commission that
21 the respondent has received the complaint and shall in-
22 form the Commission of the identity of the Federal em-
23 ployee aggrieved by the discrimination alleged in the com-
24 plaint.

1 “(B) Not later than 10 days after the respondent or
2 the Merit Systems Protection Board receives the com-
3 plaint from a source other than the Commission, the re-
4 spondent or the Board shall transmit to the Commission
5 a copy of the complaint.

6 “(d) Throughout the period beginning on the date the
7 respondent receives the complaint and ending on the latest
8 date by which all administrative and judicial proceedings
9 available under this section have been concluded with re-
10 spect to such claim, the respondent shall collect and pre-
11 serve documents and information (including the com-
12 plaint) that are relevant to such claim, including the docu-
13 ments and information that comply with rules issued by
14 the Commission.

15 “(e)(1) The respondent shall make reasonable efforts
16 to conciliate each claim alleged in the complaint during—

17 “(A) the 30-day period; or

18 “(B) with the written consent of the aggrieved

19 Federal employee, the 60-day period;

20 beginning on the date the respondent receives the com-
21 plaint.

22 “(2) Before the expiration of the applicable period
23 specified in paragraph (1) and with respect to such claim,
24 the respondent shall—

1 “(A) enter into a settlement agreement with
2 such Federal employee; or

3 “(B) give formal written notice to such Federal
4 employee that such Federal employee may, before
5 the expiration of the 90-day period beginning on the
6 date such Federal employee receives such notice, ei-
7 ther—

8 “(i) file with the Commission—

9 “(I) a written request for a deter-
10 mination of such claim under subsection
11 (f) by an administrative judge of the Com-
12 mission;

13 “(II) if such claim alleges an action
14 appealable to the Merit System Protection
15 Board, a written request electing that a
16 determination of such claim be made under
17 the procedures specified in either subpara-
18 graph (A) or (B) of section 7702(a)(2) of
19 title 5, United States Code, or a request
20 described in subclause (I); or

21 “(III) if such claim alleges a grievance
22 that is subject to section 7121 of title 5,
23 United States Code, but not appealable to
24 the Merit Systems Protection Board, a
25 written request to raise such claim under

1 the administrative and judicial procedures
2 provided in such section 7121 or a request
3 described in subclause (I); or

4 “(ii) commence a civil action in an appro-
5 priate district court of the United States for de
6 novo review of such claim.

7 “(3)(A) Such Federal employee may file a written re-
8 quest described in paragraph (2)(B)(i), or commence a
9 civil action described in paragraph (2)(B)(ii), at any
10 time—

11 “(i) after the expiration of the applicable period
12 specified in paragraph (1); and

13 “(ii) before the expiration of the 90-day period
14 specified in paragraph (2).

15 “(B) If such Federal employee files a written request
16 under subclause (II) or (III) of paragraph (2)(B)(i) and
17 in accordance with subparagraph (A), the Commission
18 shall transmit, not later than 10 days after receipt of such
19 request, the complaint to the appropriate agency for deter-
20 mination.

21 “(f)(1) If such Federal employee files a written re-
22 quest under subsection (e)(2)(B)(i)(I) and in accordance
23 with subsection (e)(3)(A) with the Commission for a deter-
24 mination under this subsection of a claim with respect to
25 which notice is required by subsection (e)(2), then the

1 Commission shall transmit a copy of such request to the
2 respondent and shall appoint an administrative judge of
3 the Commission to determine such claim.

4 “(2) Immediately after receiving a copy of a request
5 under subsection (e)(2)(B)(i), the respondent shall trans-
6 mit—

7 “(A) to the Commission if such request is for
8 a determination under this subsection; or

9 “(B) to the Merit Systems Protection Board if
10 such request is for a determination be made under
11 the procedures specified in section 7702(a)(2)(A) of
12 title 5 of the United States Code;

13 a copy of all documents and information collected by the
14 respondent under subsection (d) with respect to such
15 claim.

16 “(3)(A)(i) If the administrative judge determines
17 there are reasonable grounds to believe that to carry out
18 the purposes of this section it is necessary to stay a per-
19 sonnel action by the respondent against the aggrieved
20 Federal employee, the administrative judge may request
21 any member of the Commission to issue a stay against
22 such personnel action for 15 calendar days.

23 “(ii) A stay requested under clause (i) shall take ef-
24 fect on the earlier of—

25 “(I) the order of such member; and

1 “(II) the fourth calendar day (excluding Satur-
2 day, Sunday, and any legal public holiday) following
3 the date on which such stay is requested.

4 “(B) The administrative judge may request any
5 member of the Commission to extend, for a period not to
6 exceed 30 calendar days, a stay issued under subpara-
7 graph (A).

8 “(C) The administrative judge may request the Com-
9 mission to extend such stay for any period the Commission
10 considers to be appropriate beyond the period in effect
11 under subparagraph (A) or (B).

12 “(D)(i) Members of the Commission shall have au-
13 thority to issue and extend a stay for the periods referred
14 to in subparagraphs (A) and (B). The Commission shall
15 have authority to extend a stay in accordance with sub-
16 paragraph (C) for any period.

17 “(ii) The respondent shall comply with a stay in ef-
18 fect under this paragraph.

19 “(4) The administrative judge shall determine wheth-
20 er the documents and information received under para-
21 graph (2) comply with subsection (d) and are complete
22 and accurate. If the administrative judge finds that the
23 respondent has failed to produce the documents and infor-
24 mation necessary to comply with such subsection, the ad-
25 ministrative judge shall, in the absence of good cause

1 shown by the respondent, impose any of the sanctions
2 specified in paragraph (6)(C) and shall require the re-
3 spondent—

4 “(A) to obtain any additional documents and
5 information necessary to comply with such sub-
6 section; and

7 “(B) to correct any inaccuracy in the docu-
8 ments and information so received.

9 “(5)(A) After examining the documents and informa-
10 tion received under paragraph (4), the administrative
11 judge shall issue an order dismissing—

12 “(i) any frivolous claim alleged in the com-
13 plaint; and

14 “(ii) the complaint if it fails to state a
15 nonfrivolous claim for which relief may be granted
16 under this section.

17 “(B)(i) If a claim or the complaint is dismissed under
18 subparagraph (A), the administrative judge shall give for-
19 mal written notice to the aggrieved Federal employee that
20 such Federal employee may, before the expiration of the
21 90-day period beginning on the date such Federal em-
22 ployee receives such notice—

23 “(I) file with the Commission a written request
24 for appellate review of such order; or

1 “(II) commence a civil action in an appropriate
2 district court of the United States for de novo review
3 of such claim or such complaint.

4 “(ii) Such Federal employee may commence such civil
5 action in 90-day period specified in clause (i).

6 “(6)(A)(i) If the complaint is not dismissed under
7 paragraph (5)(A), the administrative judge shall make a
8 determination, after an opportunity for a hearing, on the
9 merits of each claim that is not dismissed under such
10 paragraph. The administrative judge shall make a deter-
11 mination on the merits of any other nonfrivolous claim
12 under this title, and on any action such Federal employee
13 may appeal to the Merit Systems Protection Board, rea-
14 sonably expected to arise from the facts on which the com-
15 plaint is based.

16 “(ii) As soon as practicable, the administrative judge
17 shall—

18 “(I) determine whether the administrative pro-
19 ceeding with respect to such claim may be main-
20 tained as a class proceeding; and

21 “(II) if the administrative proceeding may be so
22 maintained, shall describe those whom the adminis-
23 trative judge finds to be members of such class.

24 “(B) With respect to such claim, a party may conduct
25 discovery by such means as may be available in a civil ac-

1 tion to the extent deemed appropriate by the administra-
2 tive judge.

3 “(C) If the aggrieved Federal employee or the re-
4 spondent fails without good cause to respond fully and in
5 a timely fashion to a request made or approved by the
6 administrative judge for information or the attendance of
7 a witness, and if such information or such witness is solely
8 in the control of the party who so fails to respond, then
9 the administrative judge may, in appropriate cir-
10 cumstances—

11 “(i) draw an adverse inference that the re-
12 quested information, or the testimony of the re-
13 quested witness, would have reflected unfavorably on
14 the party who so fails to respond;

15 “(ii) consider the matters to which such infor-
16 mation or such testimony pertains to be established
17 in favor of the opposing party;

18 “(iii) exclude other evidence offered by the
19 party who so fails to respond;

20 “(iv) grant full or partial relief to the aggrieved
21 Federal employee; or

22 “(v) take such other action the administrative
23 judge considers to be appropriate.

24 “(D) In a hearing on a claim, the administrative
25 judge shall—

1 “(i) limit attendance to persons who have a di-
2 rect connection with such claim;

3 “(ii) bring out pertinent facts and relevant em-
4 ployment practices and policies, but—

5 “(I) exclude irrelevant or unduly repeti-
6 tious information; and

7 “(II) not apply the Federal Rules of Evi-
8 dence strictly;

9 “(iii) permit all parties to examine and cross-
10 examine witnesses; and

11 “(iv) require that testimony be given under
12 oath or affirmation.

13 “(E) At the request of any party or the administra-
14 tive judge, a transcript of all or part of such hearing shall
15 be provided in a timely manner and simultaneously to the
16 parties and the Commission. The respondent shall bear
17 the cost of providing such transcript.

18 “(F) The administrative judge shall have authority—

19 “(i) to administer oaths and affirmation;

20 “(ii) to regulate the course of hearings;

21 “(iii) to rule on offers of proof and receive evi-
22 dence;

23 “(iv) to issue subpoenas to compel—

24 “(I) the production of documents or infor-
25 mation by the entity of the Federal Government

1 in which discrimination is alleged to have oc-
2 curred; and

3 “(II) the attendance of witnesses who are
4 Federal officers or employees of such entity;

5 “(v) to request the Commission to issue subpoe-
6 nas to compel the production of documents or infor-
7 mation by any other entity of the Federal Govern-
8 ment and the attendance of other witnesses, except
9 that any witness who is not an officer or employee
10 of an entity of the Federal Government may be com-
11 pelled only to attend any place—

12 “(I) less than 100 miles from the place
13 where such witness resides, is employed, trans-
14 acts business in person, or is served; or

15 “(II) at such other convenient place as is
16 fixed by the administrative judge;

17 and shall be paid fees and allowances, by the party
18 that requests the subpoena, to the same extent that
19 fees and allowances are paid to witnesses under
20 chapter 119 of title 28, United States Code, as
21 amended from time to time;

22 “(vi) to exclude witnesses whose testimony
23 would be unduly repetitious;

1 “(vii) to exclude any person from a hearing for
2 contumacious conduct, or for misbehavior, that ob-
3 structs such hearing; and

4 “(viii) to grant any and all relief of a kind de-
5 scribed in subsections (g) and (k) of section 706, as
6 amended from time to time.

7 “(G) The administrative judge and Commission shall
8 have authority to award a reasonable attorney’s fee (in-
9 cluding expert fees and other litigation expenses), costs,
10 and the same interest to compensate for delay in payment
11 as a court has authority to award under section 706(k),
12 as amended from time to time.

13 “(H) The Commission shall have authority to issue
14 subpoenas described in subparagraph (F)(v).

15 “(I) In the case of contumacy or failure to obey a
16 subpoena issued under subparagraph (F) or (H), the Unit-
17 ed States district court for the judicial district in which
18 the person to whom the subpoena is addressed resides or
19 is served may issue an order requiring such person to ap-
20 pear at any designated place to testify or to produce docu-
21 mentary or other evidence.

22 “(7)(A) Except as provided in subparagraph (B), the
23 administrative judge shall issue a written order making
24 the determination required by paragraph (6)(A), and
25 granting or denying relief, not later than—

1 “(i) 210 days after the complaint containing
2 such claim is filed on behalf of a Federal employee;
3 or

4 “(ii) 270 days after the complaint containing
5 such claim is filed on behalf of a class of Federal
6 employees;

7 except that these time periods shall not begin running
8 until 30 days after the administrative judge is assigned
9 to the case if the administrative judge certifies, in writing,
10 that such 30-day period is needed to secure additional doc-
11 uments or information from the respondent to have a com-
12 plete administrative record.

13 “(B) The administrative judge shall issue such order
14 not later than 30 days after the applicable period specified
15 in subparagraph (A) if the administrative judge certifies
16 in writing, before the expiration of such applicable pe-
17 riod—

18 “(i) that such 30-day period is necessary to
19 make such determination; and

20 “(ii) the particular and unusual circumstances
21 that prevent the administrative judge from comply-
22 ing with the applicable period specified in subpara-
23 graph (A).

24 “(C) The administrative judge may apply to the Com-
25 mission to extend any period applicable under subpara-

1 graph (A) or (B) if manifest injustice would occur in the
2 absence of such an extension.

3 “(D) The Commission—

4 “(i) may not grant such extension; or

5 “(ii) shall terminate such extension;

6 if the aggrieved Federal employee shows that such exten-
7 sion would prejudice a claim of, or otherwise harm, such
8 Federal employee.

9 “(E) In addition to findings of fact and conclusions
10 of law, such order shall include formal written notice to
11 each party that before the expiration of the 90-day period
12 beginning on the date such party receives such order—

13 “(i) the aggrieved Federal employee may com-
14 mence a civil action in an appropriate district court
15 of the United States for de novo review of a claim
16 with respect to which such order is issued; and

17 “(ii) unless and until a civil action is com-
18 menced in such 90-day period under clause (i) with
19 respect to such claim, any party may file with the
20 Commission a written request for appellate review of
21 the determination made, and relief granted or de-
22 nied, in such order with respect to such claim.

23 “(F) Such Federal employee may commence such
24 civil action at any time—

1 “(i) after the expiration of the applicable period
2 specified in subparagraph (A) or (B); and

3 “(ii) before the expiration of the 90-day period
4 beginning on the date such Federal employee re-
5 ceives an order described in subparagraph (A).

6 “(G) If such order applies to more than one claim
7 and if such employee neither—

8 “(i) commences a civil action in accordance with
9 subparagraph (E)(i); nor

10 “(ii) requests appellate review in accordance
11 with subparagraph (E)(ii);

12 with respect to a particular claim, then the determination
13 made, and relief granted, in such order with respect to
14 such particular claim shall be enforceable immediately.

15 “(g)(1) If a party files timely a written request in
16 accordance with subsection (f)(5)(B)(i) or (f)(7)(E)(ii)
17 with the Commission for appellate review of the deter-
18 mination made, and relief granted or denied, with respect
19 to a claim in such order, then the Commission shall imme-
20 diately transmit a copy of such request to the other parties
21 involved and to the administrative judge who issued such
22 order.

23 “(2) Not later than 7 days after receiving a copy of
24 such request, the administrative judge shall transmit to
25 the Commission the record of the proceeding on which

1 such order is based, including all documents and informa-
2 tion collected by the respondent under subsection (d).

3 “(3)(A) After allowing the parties to file briefs with
4 respect to such determination, the Commission shall issue
5 an order applicable with respect to such claim affirming,
6 reversing, or modifying the applicable provisions of the
7 order of the administrative judge not later than—

8 “(i) 150 days after receiving such request; or

9 “(ii) 30 days after such 150-day period if the
10 Commission certifies in writing, before the expiration
11 of such 150-day period—

12 “(I) that such 30-day period is necessary
13 to review such claim; and

14 “(II) the particular and unusual cir-
15 cumstances that prevent the Commission from
16 complying with clause (i).

17 “(B) The Commission shall affirm the determination
18 made, and relief granted or denied, by the administrative
19 judge with respect to such claim if such determination and
20 such relief are supported by substantial evidence in the
21 record taken as a whole. The findings of fact of the admin-
22 istrative judge shall be conclusive unless the Commission
23 determines that they are clearly erroneous.

24 “(C) In addition to findings of fact and conclusions
25 of law, the Commission shall include in its order formal

1 written notice to the aggrieved Federal employee that, be-
2 fore the expiration of the 90-day period beginning on the
3 date such Federal employee receives such order, such Fed-
4 eral employee may commence a civil action in an appro-
5 priate district court of the United States for de novo re-
6 view of a claim with respect to which such order is issued.

7 “(D) Such Federal employee may commence such
8 civil action at any time—

9 “(i) after the expiration of the applicable period
10 specified in subparagraph (A); and

11 “(ii) before the expiration of the 90-day period
12 specified in subparagraph (C).

13 “(h)(1) In addition to the periods authorized by sub-
14 sections (f)(7)(E) and (g)(3)(D)—

15 “(A) during the period beginning 300 days
16 after an aggrieved Federal employee timely requests
17 an administrative determination under subsection (f)
18 with respect to a claim and ending on the date the
19 administrative judge issues an order under such sub-
20 section with respect to such claim; and

21 “(B) during the period beginning 180 days
22 after such Federal employee timely requests appel-
23 late review under subsection (g) of such determina-
24 tion with respect to such claim and ending on the

1 date the Commission issues an order under such
2 subsection with respect to such claim;
3 such Federal employee may commence a civil action in an
4 appropriate district court of the United States for de novo
5 review of such claim.

6 “(2) Whenever a civil action is commenced timely and
7 otherwise in accordance with this section to determine the
8 merits of a claim arising under this section, the jurisdic-
9 tion of the administrative judge or the Commission (as
10 the case may be) to determine the merits of such claim
11 shall terminate.

12 “(i) A Federal employee who prevails on a claim aris-
13 ing under this section, or the Commission, may bring a
14 civil action in an appropriate district court of the United
15 States to enforce—

16 “(1) the provisions of a settlement agreement
17 applicable to such claim;

18 “(2) the provisions of an order issued by an ad-
19 ministrative judge under subsection (f)(7)(A) appli-
20 cable to such claim if—

21 “(A) a request is not filed timely under
22 subsection (g)(1) for appellate review by the
23 Commission; and

1 “(B) a civil action is not commenced time-
2 ly under subsection (g)(3)(D) for de novo re-
3 view;

4 of such claim; or

5 “(3) the provisions of an order issued by the
6 Commission under subsection (g)(3)(A) applicable to
7 such claim if a civil action is not commenced timely
8 under subsection (g)(3)(D) for de novo review of
9 such claim.

10 “(j) Any amount awarded under this section (includ-
11 ing fees, costs, and interest awarded under subsection
12 (f)(6)(G)), or under title 28 of the United States Code,
13 with respect to a violation of subsection (a) shall be paid
14 by the entity of the Federal Government that violated such
15 subsection (a) from any funds made available to such en-
16 tity by appropriation or otherwise.

17 “(k)(1) An entity of the Federal Government against
18 which a claim of discrimination or retaliation is alleged
19 under this section shall grant the aggrieved Federal em-
20 ployee a reasonable amount of official time, in accordance
21 with regulations issued by the Commission, to prepare an
22 administrative complaint based on such allegation and to
23 participate in administrative proceedings relating to such
24 claim.

1 “(2) An entity of the Federal Government against
2 which a claim of discrimination is alleged in complaint
3 filed in a civil action under this section shall grant the
4 aggrieved Federal employee paid leave for time reasonably
5 expended to prepare for, and participate in, such civil ac-
6 tion. Such leave shall be granted in accordance with regu-
7 lations issued by the Commission, except that such leave
8 shall include reasonable time for—

9 “(A) attendance at depositions;

10 “(B) meetings with counsel;

11 “(C) other ordinary and legitimate undertak-
12 ings in such civil action, that require the presence of
13 such Federal employee; and

14 “(D) attendance at such civil action.

15 “(3) Whenever the administrative judge or the Com-
16 mission (as the case may be), or a court, finds that a Fed-
17 eral employee has engaged in discrimination prohibited by
18 this section, the employing authority of such Federal em-
19 ployee shall—

20 “(A) impose appropriate sanctions on such Fed-
21 eral employee; and

22 “(B) report to the Commission the sanctions
23 imposed on such Federal employee.

24 “(4)(A) If the Commission finds that such sanctions
25 are inadequate, the Commission shall refer the matter to

1 the Special Counsel for disciplinary action under section
2 1215 of title 5, United States Code.

3 “(B) For purposes of section 1215(a)(1) of such title,
4 the Commission’s referral of such matter to the Special
5 Counsel shall be deemed to be a determination by the Spe-
6 cial Counsel that disciplinary action should be taken
7 against such Federal employee.

8 “(l) This section, as in effect immediately before the
9 effective date of the Federal Employee Fairness Act of
10 1993, shall apply with respect to employment in the Li-
11 brary of Congress.”.

12 **SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-**
13 **PLOYMENT ACT.**

14 (a) ENFORCEMENT BY EEOC.—Section 15 of the
15 Age Discrimination in Employment Act of 1967 (29
16 U.S.C. 633a) is amended—

17 (1) by striking subsections (c) and (d), and

18 (2) by inserting after subsection (b) the follow-
19 ing:

20 “(c)(1) Any individual aggrieved by a violation of
21 subsection (a) of this section may file a complaint with
22 the Commission in accordance with section 717 of the Civil
23 Rights Act of 1964.

24 “(2) Except as provided in subsection (d), such sec-
25 tion 717 shall apply to a violation alleged in a complaint

1 filed under paragraph (1) in the same manner as such
2 section applies to a claim arising under section 717 of
3 such Act.

4 “(d)(1) If an individual aggrieved by a violation of
5 this section does not file a complaint under subsection
6 (c)(1), such individual may commence a civil action—

7 “(A) not less than 30 days after filing with the
8 Commission a notice of intent to commence such ac-
9 tion; and

10 “(B) not more than 2 years after the alleged
11 violation of this section occurs;

12 in an appropriate district court of the United States for
13 de novo review of such violation.

14 “(2) On receiving such notice, the Commission
15 shall—

16 “(A) promptly notify all persons named in such
17 notice as prospective defendants in such action; and

18 “(B) take any appropriate action to ensure the
19 elimination of any unlawful practice.

20 “(3) Sections 717(m) of the Civil Rights Act of 1964
21 (42 U.S.C. 2000e-16(m)) shall apply to civil actions com-
22 menced under this subsection in the same manner as such
23 section applies to civil actions commenced under section
24 717 of the Civil Rights Act of 1964.”.

1 (b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—
2 If a complaint filed under section 15 of the Age Discrimi-
3 nation in Employment Act of 1967 (29 U.S.C. 633a) with
4 the Equal Employment Opportunity Commission is pend-
5 ing in the period beginning on the date of the enactment
6 of this Act and ending on December 31, 1993, the individ-
7 ual who filed such complaint may commence a civil action
8 under such section not later than June 30, 1994.

9 **SEC. 4. AMENDMENTS TO TITLE 5 OF THE UNITED STATES**
10 **CODE.**

11 (a) GRIEVANCE PROCEDURES.—Section 7121 of title
12 5, United States Code, is amended—

13 (1) in subsection (a)(1) by inserting “adminis-
14 trative” after “exclusive”, and

15 (2) in subsection (d)—

16 (A) by inserting “(1)” after “(d)”,

17 (B) in the first and second sentences by
18 striking “An” and inserting “Except as pro-
19 vided in paragraph (2), an”,

20 (C) in the last sentence by striking “Selec-
21 tion” and all that follows through “any other”,
22 and inserting the following:

23 “(3) An employee may commence, not later than 120
24 days after a final decision, a civil action in an appropriate

1 district court of the United States for de novo review of
2 a”, and

3 (D) by inserting after the second sentence
4 the following:

5 “(2) Matters covered under section 7702 of this title,
6 or under a law administered by the Equal Employment
7 Opportunity Commission, may be raised under the nego-
8 tiated grievance procedure in accordance with this section
9 only if an employee elects under section
10 717(e)(2)(B)(i)(III) of the Civil Rights Act of 1964 to
11 proceed under this section.”.

12 (b) ACTIONS INVOLVING DISCRIMINATION.—Section
13 7702 of title 5, United States Code, is amended to read
14 as follows:

15 **“§ 7702. Actions involving discrimination**

16 “(a)(1) Notwithstanding any other provision of law,
17 in the case of any employee or applicant for employment
18 who—

19 “(A) is affected by an action which the em-
20 ployee or applicant may appeal to the Merit System
21 Protection Board, and

22 “(B) alleges that a basis for the action was dis-
23 crimination prohibited by—

24 “(i) section 717 of the Civil Rights Act of
25 1964 (42 U.S.C. 2000a-16);

1 “(ii) section 6(d) of the Fair Labor Stand-
2 ards Act of 1938 (29 U.S.C. 206(d));

3 “(iii) section 501 of the Rehabilitation Act
4 of 1973 (29 U.S.C. 791);

5 “(iv) sections 12 and 13 of the Age Dis-
6 crimination in Employment Act of 1967 (29
7 U.S.C. 631, 633a); or

8 “(v) any rule, regulation, or policy directive
9 prescribed under any provision of law described
10 in clauses (i) through (iv) of this subparagraph;
11 the employee or applicant may raise the action as provided
12 in paragraph (2).

13 “(2) For purposes of paragraph (1), the employee
14 shall raise the action by filing a complaint with the Equal
15 Employment Opportunity Commission in accordance with
16 section 717 of the Civil Rights Act of 1964 and shall make
17 a request under section 717(e)(2)(B)(i) selecting the pro-
18 cedures specified in one of the following subparagraphs:

19 “(A) The administrative and judicial procedures
20 provided under sections 7701 and 7703.

21 “(B) The administrative and judicial procedures
22 provided under section 7121.

23 “(C) The administrative and judicial procedures
24 provided under section 717 of title VII of the Civil
25 Rights Act of 1964.

1 “(3) The agency (including the Board and the Equal
2 Employment Opportunity Commission) that carries out
3 such procedures shall apply the substantive law that is ap-
4 plied by the agency that administers the particular law
5 referred to in subsection (a)(1) of this section that pro-
6 hibits the conduct alleged to be the basis of the action
7 referred to in subsection (a)(1)(A).

8 “(b) If—

9 “(1) an employee elects the procedures specified
10 in subsection (a)(2)(C); and

11 “(2) the Equal Employment Opportunity Com-
12 mission dismisses under section 717(f)(5)(A) of the
13 Civil Rights Act of 1964 a claim that is based on
14 the action raised by the employee;

15 then the employee shall have 90 days in which to raise
16 the action under the procedures specified in subparagraph
17 (A) or (B) of subsection (a)(2), except that no allegation
18 of a kind described in paragraph (a)(1)(B) may be raised
19 under this subsection.

20 “(c) If at any time after the 120th day following an
21 election made under section 717(e)(2)(B)(i) of the Civil
22 Rights Act of 1964 to raise an action under the proce-
23 dures specified in subsection (a)(2)(A) of this section there
24 is no judicially reviewable action, an employee shall be en-
25 titled to file, not later than 240 days after making such

1 election, a civil action in an appropriate district court of
2 the United States for de novo review of the action raised
3 under subsection (a) of this section.

4 “(d) Nothing in this section shall be construed to af-
5 fect the right to trial de novo under any provision of law
6 described in subsection (a)(1) after a judicially reviewable
7 action.”.

8 **SEC. 5. TECHNICAL AMENDMENTS.**

9 Section 717(b) of the Civil Rights Act of 1964 (42
10 U.S.C. 2000e–16(b)) is amended by striking “Civil Service
11 Commission” each place it appears and inserting “Com-
12 mission”.

13 **SEC. 6. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-**
14 **TICE RULES.**

15 Not later than 1 year after the date of the enactment
16 of this Act, the Equal Employment Opportunity Commis-
17 sion shall issue—

18 (1) rules to assist entities of the Federal Gov-
19 ernment to comply with section 717(d) of the Civil
20 Rights Act of 1964, as added by section 2 of this
21 Act, and

22 (2) rules establishing—

23 (A) a uniform written official notice to be
24 used to comply with section 717 of such Act, as
25 added by section 2 of this Act, and

1 (B) requirements applicable to collecting
2 and preserving documents and information
3 under section 717(d), as added by section 2 of
4 this Act.

5 **SEC. 7. RULES OF CONSTRUCTION.**

6 Any reference in any law (other than title VII of the
7 Civil Rights Act of 1964) to any provision of title VII of
8 the Civil Rights Act of 1964 amended by this Act shall
9 be deemed to be a reference to such provision as amended
10 by this Act.

11 **SEC. 8. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

12 (a) EFFECTIVE DATE.—Except as provided in sub-
13 section (b), this Act and the amendments made by this
14 Act shall take effect on January 1, 1994.

15 (b) APPLICATION OF AMENDMENTS.—Except as pro-
16 vided in section 7, the amendments made by this Act
17 (other than sections 3 and 4) shall apply only with respect
18 to complaints filed under section 717 of the Civil Rights
19 Act of 1964 (42 U.S.C. 2000e-16) on or after the effective
20 date of this Act.

○

HR 1111 SC—2

HR 1111 SC—3