

103^D CONGRESS
1ST SESSION

H. R. 2721

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 discriminations claims made by Federal employees; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1993

Mr. MARTINEZ (for himself, Ms. NORTON, Mr. FORD of Michigan, Mr. CLAY, Mr. OWENS, Mr. McCLOSKEY, Mrs. SCHROEDER, Mr. MILLER of California, Mr. KILDEE, Mrs. MORELLA, Mr. SAWYER, Mrs. MINK, Mr. DELLUMS, Mr. CONYERS, Mr. STOKES, Mr. FOGLIETTA, Mrs. COLLINS of Illinois, Mr. FRANK of Massachusetts, Mr. SERRANO, Mr. TOWNS, Mr. OLVER, Mr. SANDERS, Mr. JEFFERSON, Mr. BLACKWELL, Mr. HASTINGS, Mr. FILNER, and Mr. RUSH) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Post Office and Civil Service

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 discriminations 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) by inserting “(1)” after “(b)”,

6 (B) in the second sentence—

7 (i) by redesignating paragraphs (1),
8 (2), and (3), as subparagraphs (A), (B),
9 and (C), respectively,

10 (ii) in the subparagraph (B), as so re-
11 designated, by striking “and” at the end,

12 (iii) in subparagraph (C), as so redesi-
13 gnated, by striking the period at the end
14 and inserting “; and”, and

15 (iv) by inserting after subparagraph
16 (C), as so redesignated, the following:

17 “(D) require each entity of the Federal Govern-
18 ment—

19 “(i) to make counseling available to Fed-
20 eral employees who choose to notify such entity
21 that they believe such entity has discriminated
22 against them in violation of subsection (a), for
23 the purpose of trying to resolve the matters
24 with respect to which such discrimination is al-
25 leged (Such entity shall assist such employee to

1 identify the respondent required by subsection
2 (c)(1) to be named in a complaint alleging such
3 violation, shall inform such Federal employee
4 individually of the procedures and deadlines
5 that apply under this section to a claim alleging
6 such discrimination, and shall make such coun-
7 seling available throughout the administrative
8 process.);

9 “(ii) to establish a voluntary alternative
10 dispute process to resolve complaints, except
11 that a Federal employee’s decision to forgo such
12 process shall not affect the rights of such em-
13 ployee under this title;

14 “(iii) not to discourage Federal employees
15 from filing complaints on any matter relating to
16 discrimination in violation of this section; and

17 “(iv) not to require Federal employees to
18 participate in counseling made available under
19 clause (i) or in a dispute resolution process
20 made available under clause (ii).”,

21 (C) in the third sentence by striking “The”
22 and inserting the following:

23 “(2) The”,

1 (D) in the fourth sentence by redesignating
2 paragraphs (1) and (2) as subparagraphs (A)
3 and (B), respectively,

4 (E) in the last sentence by striking “With”
5 and inserting the following:

6 “(3) With”, and

7 (F) by adding at the end the following:

8 “(4)(A) Subject to subparagraph (B), an unlawful
9 employment practice of the kind described in section
10 704(a) is established under this section if an employee or
11 applicant for employment demonstrates that his making
12 a charge, testifying, assisting, or participating in any man-
13 ner in an investigation, proceeding, or hearing under this
14 title was a contributing factor in an adverse personnel ac-
15 tion that was taken or is to be taken against such em-
16 ployee or applicant.

17 “(B) Relief under this section may not be granted
18 if the respondent demonstrates by clear and convincing
19 evidence that it would have taken the same personnel ac-
20 tion in the absence of such disclosure.”,

21 (2) by striking subsection (c),

22 (3) in subsection (d)—

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

24 (B) by striking “(k)” and inserting “(j)”,

1 (C) by striking “brought hereunder” and
2 inserting “commenced under this section”, and

3 (D) by adding at the end the following:

4 “(2) The head of the department, agency, or unit in
5 which discrimination in violation of subsection (a) is al-
6 leged to have occurred shall be the defendant in a civil
7 action alleging such violation. If a department, unit, or
8 agency is named as the defendant, the court shall freely
9 grant leave to amend the complaint to name the head of
10 such department, agency, or unit.

11 “(3) In any action or proceeding under this section,
12 the court, in its discretion, may allow the prevailing party
13 (other than an entity of the Federal Government) a rea-
14 sonable attorney’s fee (including expert fees) and costs as
15 a court has authority to award under section 706(k), as
16 amended from time to time, and the same interest to com-
17 pensate for delay in payment as in cases involving
18 nonpublic parties.”,

19 (4) by redesignating subsections (d) and (e) as
20 subsections (o) and (p), respectively, and

21 (5) by inserting after subsection (b) the follow-
22 ing:

23 “(c)(1)(A) Except as provided in subparagraph (B),
24 a complaint filed by or on behalf of a Federal employee
25 or a class of Federal employees and alleging a claim of

1 discrimination arising under subsection (a) shall name as
2 the respondent, and be filed with, the head of the depart-
3 ment, agency, or unit in which such discrimination is al-
4 leged to have occurred, or with the Commission, not later
5 than 180 days after the alleged discrimination occurs.

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

8 “(i) with such department, agency, or unit and
9 fails to name the head of the department, agency, or
10 unit as the respondent; or

11 “(ii) with any other entity of the Federal Gov-
12 ernment, regardless of the respondent named;

13 the complaint shall be considered to be filed in compliance
14 with subparagraph (A).

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

19 “(i) such entity (other than the Commission)
20 shall transmit the complaint to the Commission, not
21 later than 15 days after receiving the complaint; and

22 “(ii) the Commission shall transmit a copy of
23 the complaint, not later than 10 days after receiving
24 the complaint, to the head of the department, agen-
25 cy, or unit in which such discrimination is alleged to

1 have occurred (hereinafter in this section referred to
2 as the ‘respondent’).

3 “(3)(A) Not later than 3 days after the respondent
4 receives the complaint from a source other than the Com-
5 mission, the respondent shall notify the Commission that
6 the respondent has received the complaint and shall in-
7 form the Commission of the identity of the Federal em-
8 ployee aggrieved by the discrimination alleged in the
9 complaint.

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

15 “(d) Throughout the period beginning on the date the
16 respondent receives the complaint and ending on the latest
17 date by which all administrative and judicial proceedings
18 available under this section have been concluded with re-
19 spect to such claim, the respondent shall collect and pre-
20 serve documents and information (including the com-
21 plaint) that are relevant to such claim, including the docu-
22 ments and information that comply with rules issued by
23 the Commission.

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

1 “(A) the 30-day period; or

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

3 Federal employee, the 60-day period;

4 beginning on the date the respondent receives the
5 complaint.

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

9 “(A) enter into a settlement agreement with
10 such Federal employee; or

11 “(B) give formal written notice to such Federal
12 employee that such Federal employee may, before
13 the expiration of the 90-day period beginning on the
14 date such Federal employee receives such notice, ei-
15 ther—

16 “(i) file with the Commission—

17 “(I) a written request for a deter-
18 mination of such claim under subsection
19 (f) by an administrative judge of the
20 Commission;

21 “(II) if such claim alleges discrimina-
22 tion in the Commission or alleges an action
23 appealable to the Merit Systems Protection
24 Board, a written request electing that a
25 determination of such claim be made under

1 the procedures specified in either subpara-
2 graph (A) or (B) of section 7702(a)(2) of
3 title 5, United States Code, or a request
4 described in subclause (I); or

5 “(III) if such claim alleges a grievance
6 that is subject to section 7121 of title 5,
7 United States Code, but not appealable to
8 the Merit Systems Protection Board, a
9 written request to raise such claim under
10 the administrative and judicial procedures
11 provided in such section 7121 or a request
12 described in subclause (I); or

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

16 “(3)(A) Such Federal employee may file a written re-
17 quest described in paragraph (2)(B)(i), or commence a
18 civil action described in paragraph (2)(B)(ii), at any
19 time—

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

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

24 “(B) If such Federal employee files a written request
25 under subclause (II) or (III) of paragraph (2)(B)(i) and

1 in accordance with subparagraph (A), the Commission
2 shall transmit, not later than 10 days after receipt of such
3 request, the complaint to the appropriate agency for
4 determination.

5 “(f)(1) If such Federal employee files a written re-
6 quest under subsection (e)(2)(B)(i)(I) and in accordance
7 with subsection (e)(3)(A) with the Commission for a deter-
8 mination under this subsection of a claim with respect to
9 which notice is required by subsection (e)(2), then the
10 Commission shall transmit a copy of such request to the
11 respondent and shall appoint an administrative judge of
12 the Commission to determine such claim.

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

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

18 “(B) to the Merit Systems Protection Board if
19 such request is for a determination be made under
20 the procedures specified in section 7702(a)(2)(A) of
21 title 5, United States Code;

22 a copy of all documents and information collected by the
23 respondent under subsection (d) with respect to such
24 claim.

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

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

10 “(I) the order of such member; and

11 “(II) the fourth calendar day (excluding Satur-
12 day, Sunday, and any legal public holiday) following
13 the date on which such stay is requested unless the
14 request is denied before the expiration of the 15-day
15 period beginning on such fourth day.

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

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

24 “(D)(i) Members of the Commission shall have au-
25 thority to issue and extend a stay for the periods referred

1 to in subparagraphs (A) and (B). The Commission shall
2 have authority to extend a stay in accordance with sub-
3 paragraph (C) for any period.

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

6 “(4) The administrative judge shall determine wheth-
7 er the documents and information received under para-
8 graph (2) comply with subsection (d) and are complete
9 and accurate. If the administrative judge finds that the
10 respondent has failed to produce the documents and infor-
11 mation necessary to comply with such subsection, the ad-
12 ministrative judge shall, in the absence of good cause
13 shown by the respondent, impose any of the sanctions
14 specified in paragraph (6)(C) and shall require the re-
15 spondent—

16 “(A) to obtain any additional documents and
17 information necessary to comply with such sub-
18 section; and

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

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

24 “(i) any frivolous claim alleged in the com-
25 plaint; and

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

4 “(B)(i) If a claim or the complaint is dismissed under
5 subparagraph (A), the administrative judge shall give for-
6 mal written notice to the aggrieved Federal employee that
7 such Federal employee may, before the expiration of the
8 90-day period beginning on the date such Federal em-
9 ployee receives such notice—

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

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

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

17 “(6)(A)(i) If the complaint is not dismissed under
18 paragraph (5)(A), the administrative judge shall make a
19 determination, after an opportunity for a hearing, on the
20 merits of each claim that is not dismissed under such
21 paragraph. The administrative judge shall make a deter-
22 mination on the merits of any other nonfrivolous claim
23 under this title, and on any action such Federal employee
24 may appeal to the Merit Systems Protection Board, rea-

1 sonably expected to arise from the facts on which the com-
2 plaint is based.

3 “(ii) On the request of the aggrieved Federal em-
4 ployee, the administrative judge shall—

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

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

11 “(B) With respect to such claim, a party may conduct
12 discovery by such means as may be available in a civil ac-
13 tion to the extent deemed appropriate by the administra-
14 tive judge.

15 “(C) If the aggrieved Federal employee or the re-
16 spondent fails without good cause to respond fully and in
17 a timely fashion to a request made or approved by the
18 administrative judge for information or the attendance of
19 a witness, and if such information or such witness is solely
20 in the control of the party who so fails to respond, then
21 the administrative judge shall—

22 “(i) draw an adverse inference that the re-
23 quested information, or the testimony of the re-
24 quested witness, would have reflected unfavorably on
25 the party who so fails to respond;

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

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

6 “(iv) grant full or partial relief, including—

7 “(I) relief of the kinds described in section
8 706(g); and

9 “(II) compensatory damages for unlawful
10 intentional discrimination (not an employment
11 practice that is unlawful because of its dispar-
12 ate impact) prohibited under this section, sub-
13 ject to the limitations specified in section
14 1977A(b)(3) of the Revised Statutes of the
15 United States;

16 to the aggrieved Federal employee; or

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

19 “(D) In a hearing on a claim, the administrative
20 judge shall—

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

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

1 “(I) exclude irrelevant or unduly repeti-
2 tious information; and

3 “(II) not apply the Federal Rules of Evi-
4 dence strictly;

5 “(iii) permit all parties to examine and cross
6 examine witnesses; and

7 “(iv) require that testimony be given under
8 oath or affirmation.

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

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

15 “(i) to administer oaths and affirmations;

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

17 “(iii) to rule on offers of proof and receive
18 evidence;

19 “(iv) to issue subpoenas to compel—

20 “(I) the production of documents or infor-
21 mation by the entity of the Federal Government
22 in which discrimination is alleged to have oc-
23 curred; and

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

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

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

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

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

18 “(vi) to exclude witnesses whose testimony
19 would be unduly repetitious;

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

23 “(viii) to grant full or partial relief, including—

24 “(I) relief of the kinds described in section
25 706(g); and

1 “(II) compensatory damages for unlawful
2 intentional discrimination (not an employment
3 practice that is unlawful because of its dispar-
4 ate impact) prohibited under this section, sub-
5 ject to the limitations specified in section
6 1977A(b)(3) of the Revised Statutes of the
7 United States.

8 “(G) The administrative judge and the Commission
9 shall have authority to award—

10 “(i) a reasonable attorney’s fee (including ex-
11 pert fees) and costs as a court has authority to
12 award under section 706(k), as amended from time
13 to time; and

14 “(ii) the same interest to compensate for delay
15 in payment as in cases involving nonpublic parties.

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

18 “(I) In the case of contumacy or failure to obey a
19 subpoena issued under subparagraph (F) or (H), the
20 United States district court for the judicial district in
21 which the person to whom the subpoena is addressed re-
22 sides or is served may issue an order requiring such person
23 to appear at any designated place to testify or to produce
24 documentary or other evidence.

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

5 “(i) 210 days after the complaint containing
6 such claim is filed on behalf of a Federal employee;
7 or

8 “(ii) 270 days after the complaint containing
9 such claim is filed on behalf of a class of Federal
10 employees;

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

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

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

24 “(ii) the particular and unusual circumstances
25 that prevent the administrative judge from comply-

1 ing with the applicable period specified in subpara-
2 graph (A).

3 “(C) The administrative judge may apply to the Com-
4 mission to extend any period applicable under subpara-
5 graph (A) or (B) if manifest injustice would occur in the
6 absence of such an extension.

7 “(D) The Commission—

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

9 “(ii) shall terminate such extension;

10 if the aggrieved Federal employee shows that such exten-
11 sion would prejudice a claim of, or otherwise harm, such
12 Federal employee.

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

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

21 “(ii) unless and until a civil action is com-
22 menced in such 90-day period under clause (i) with
23 respect to such claim, any party may file with the
24 Commission a written request for appellate review of

1 the determination made, and relief granted or de-
2 nied, in such order with respect to such claim.

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

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

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

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

12 “(i) commences a civil action in accordance with
13 subparagraph (E) (i); nor

14 “(ii) requests appellate review in accordance
15 with subparagraph (E) (ii);

16 with respect to a particular claim, then the determination
17 made, and relief granted, in such order with respect to
18 such particular claim shall be enforceable immediately.

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

1 involved and to the administrative judge who issued such
2 order.

3 “(2) Not later than 7 days after receiving a copy of
4 such request, the administrative judge shall transmit to
5 the Commission the record of the proceeding on which
6 such order is based, including all documents and informa-
7 tion collected by the respondent under subsection (d).

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

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

14 “(ii) 30 days after such 150-day period if the
15 Commission certifies in writing, before the expiration
16 of such 150-day period—

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

19 “(II) the particular and unusual cir-
20 cumstances that prevent the Commission from
21 complying with clause (i).

22 “(B) The Commission shall affirm the determination
23 made, and relief granted or denied, by the administrative
24 judge with respect to such claim if such determination and
25 such relief are supported by substantial evidence in the

1 record taken as a whole and are otherwise in accordance
2 with law. The findings of fact of the administrative judge
3 shall be conclusive unless the Commission determines that
4 they are clearly erroneous.

5 “(C) In addition to findings of fact and conclusions
6 of law, the Commission shall include in its order formal
7 written notice to the aggrieved Federal employee that, be-
8 fore the expiration of the 90-day period beginning on the
9 date such Federal employee receives such order, such Fed-
10 eral employee may commence a civil action in an appro-
11 priate district court of the United States for de novo re-
12 view of a claim with respect to which such order is issued.

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

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

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

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

21 “(A) during the period beginning 300 days
22 after an aggrieved Federal employee timely requests
23 an administrative determination under subsection (f)
24 with respect to a claim and ending on the date the

1 administrative judge issues an order under such sub-
2 section with respect to such claim; and

3 “(B) during the period beginning 180 days
4 after such Federal employee timely requests appel-
5 late review under subsection (g) of such determina-
6 tion with respect to such claim and ending on the
7 date the Commission issues an order under such
8 subsection with respect to such claim;

9 such Federal employee may commence a civil action in an
10 appropriate district court of the United States for de novo
11 review of such claim.

12 “(2) Whenever a civil action is commenced timely and
13 otherwise in accordance with this section to determine the
14 merits of a claim arising under this section, the jurisdic-
15 tion of the administrative judge or the Commission (as
16 the case may be) to determine the merits of such claim
17 shall terminate.

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

22 “(1) the provisions of a settlement agreement
23 applicable to such claim;

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

4 “(A) a request is not filed timely under
5 subsection (g)(1) for appellate review by the
6 Commission; and

7 “(B) a civil action is not commenced time-
8 ly under subsection (g)(3)(D) for de novo
9 review;
10 of such claim; or

11 “(3) the provisions of an order issued by the
12 Commission under subsection (g)(3)(A) applicable to
13 such claim if a civil action is not commenced timely
14 under subsection (g)(3)(D) for de novo review of
15 such claim.

16 “(j) Any amount awarded under this section (includ-
17 ing fees, costs, and interest awarded under subsection
18 (f)(6)(G)), or under title 28 of the United States Code,
19 with respect to a violation of subsection (a), shall be paid
20 by the entity of the Federal Government that violated such
21 subsection from any funds made available to such entity
22 by appropriation or otherwise.

23 “(k) An entity of the Federal Government against
24 which a claim of discrimination is alleged in a complaint
25 filed in an administrative proceeding or a civil action

1 under this section shall grant the aggrieved Federal em-
2 ployee paid administrative leave for time reasonably ex-
3 pended to prepare for, and participate in, such proceeding
4 or action. Such leave shall be granted in accordance with
5 regulations issued by the Commission, except that such
6 leave shall include reasonable time for—

7 “(1) preparation of a complaint based on such
8 allegation;

9 “(2) attendance at such proceeding or action;

10 “(3) attendance at depositions;

11 “(4) meetings with counsel; and

12 “(5) other ordinary and legitimate undertakings
13 in such proceeding or action, that require the pres-
14 ence of such Federal employee.

15 “(l)(1) In enforcing compliance with an order issued
16 by an administrative judge or the Commission, the Com-
17 mission may make a written determination that—

18 “(A) any officer or employee of the agency, de-
19 partment, or unit charged with complying with such
20 order, or

21 “(B) any officer or employee of the United
22 States determined to be responsible for the failure of
23 the agency, department, or unit to comply with such
24 order,

1 who is not an officer or employee appointed by the Presi-
2 dent by and with the advice and consent of the Senate,
3 shall not be entitled to receive payment for service as an
4 officer or employee for the period during which such order
5 has not been complied with. The Commission shall certify
6 to the Comptroller General of the United States that a
7 determination under this paragraph has been made, and
8 no payment shall be made out of the Treasury of the
9 United States for any service specified in such determina-
10 tion.

11 “(2) In enforcing compliance with such order with re-
12 spect to any officer or employee described in subparagraph
13 (A) or (B) of paragraph (1) who is an officer or employee
14 appointed by the President by and with the advice and
15 consent of the Senate, the Commission may notify the
16 President that such officer or employee has failed to obey
17 such order.

18 “(m) If with respect to the merits of a claim of inten-
19 tional discrimination (other than an employment practice
20 that is unlawful because of its disparate impact) prohib-
21 ited by this section, a Federal employee prevails in a pro-
22 ceeding under subsection (f) or a civil action commenced
23 under this section, the finder of fact in such proceeding
24 shall identify each individual believed to have engaged in
25 conduct that is the basis of such discrimination. Not later

1 than 15 days after issuing an order finding liability under
2 this section, the administrative judge or the district court
3 involved shall notify the Office of Special Counsel of the
4 identity of such individual and the fact that such individ-
5 ual is believed to have engaged in conduct that is the basis
6 of liability found on such claim in such proceeding or
7 action.

8 “(n) 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
11 Library of Congress.”.

12 **SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EM-**
13 **PLOYMENT ACT AND THE REHABILITATION**
14 **ACT OF 1973.**

15 (a) ENFORCEMENT BY EEOC.—(1) Section 15 of the
16 Age Discrimination in Employment Act of 1967 (29
17 U.S.C. 633a) is amended—

18 (A) by striking subsections (c) and (d), and

19 (B) by inserting after subsection (b) the follow-
20 ing:

21 “(c)(1)(A) Except as provided in subparagraph (B),
22 any individual aggrieved by a violation of subsection (a)
23 of this section may file a complaint with the Commission
24 in accordance with section 717 of the Civil Rights Act of
25 1964.

1 “(B) Subsections (c) and (d) of this section, as in
2 effect immediately before the effective date of the Federal
3 Employee Fairness Act of 1993, shall apply with respect
4 to employment in the Library of Congress.

5 “(2) Except as provided in paragraph (1)(B) and
6 subsection (d), such section 717 shall apply to a violation
7 alleged in a complaint filed under paragraph (1) in the
8 same manner as such section applies to a claim arising
9 under section 717 of such Act.

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

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

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

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

20 “(2) On receiving such notice, the Commission
21 shall—

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

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

1 “(3) Section 717(o) of the Civil Rights Act of 1964
2 (42 U.S.C. 2000e–16(o)) shall apply to civil actions com-
3 menced under this subsection in the same manner as such
4 section applies to civil actions commenced under section
5 717 of the Civil Rights Act of 1964.”.

6 (2) Section 505 of the Rehabilitation Act of 1973 (29
7 U.S.C. 794a) is amended—

8 (A) in subsection (a)(1)—

9 (i) by inserting “(A)” after “(a)(1)”,

10 (ii) by striking “706(k)” and inserting
11 “706(j)”,

12 (iii) by striking “through (k)” and insert-
13 ing “through (j)”, and

14 (iv) by adding at the end the following:

15 “(B) The first sentence of this paragraph, as in effect
16 immediately before the effective date of the Federal Em-
17 ployee Fairness Act of 1993, shall apply with respect to
18 employment in the Library of Congress.”, and

19 (B) in subsection (b) by striking “In” and in-
20 serting “Except as provided in subsection (a)(1),
21 in”.

22 (b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—
23 If a complaint filed under section 15 of the Age Discrimi-
24 nation in Employment Act of 1967 (29 U.S.C. 633a), or
25 section 501 of the Rehabilitation Act of 1973 (29 U.S.C.

1 791)), with the Equal Employment Opportunity Commis-
2 sion is pending in the period beginning on the date of the
3 enactment of this Act and ending on December 31, 1994,
4 the individual who filed such complaint may commence a
5 civil action under such section not later than June 30,
6 1995.

7 **SEC. 4. AMENDMENTS TO TITLE 5 OF THE UNITED STATES**
8 **CODE.**

9 (a) GRIEVANCE PROCEDURES.—Section 7121 of title
10 5, United States Code, is amended—

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

13 (2) in subsection (d)—

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

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

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

21 “(3) An employee may commence, not later than 120
22 days after a final decision, a civil action in an appropriate
23 district court of the United States for de novo review of
24 a”, and

1 (D) by inserting after the second sentence
2 the following:

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

9 (b) ACTIONS INVOLVING DISCRIMINATION.—Section
10 7702 of title 5, United States Code, is amended to read
11 as follows:

12 **“§ 7702. Actions involving discrimination**

13 “(a)(1) Notwithstanding any other provision of law,
14 in the case of any employee or applicant for employment
15 who—

16 “(A) is affected by—

17 “(i) an action which the employee or appli-
18 cant may appeal to the Merit Systems Protec-
19 tion Board, or

20 “(ii) an action, not described in clause
21 (i)—

22 “(I) on the part the Equal Employ-
23 ment Opportunity Commission, and

24 “(II) with respect to which the em-
25 ployee or applicant makes an election

1 under section 717(e)(2)(B)(i)(II) of the
2 Civil Rights Act of 1964, and

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

5 “(i) section 717 of the Civil Rights Act of
6 1964 (42 U.S.C. 2000a-16),

7 “(ii) section 6(d) of the Fair Labor Stand-
8 ards Act of 1938 (29 U.S.C. 206(d)),

9 “(iii) section 501 of the Rehabilitation Act
10 of 1973 (29 U.S.C. 791),

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

14 “(v) any rule, regulation, or policy directive
15 prescribed under any provision of law described
16 in clauses (i) through (iv) of this subparagraph,
17 the employee or applicant may raise the action as provided
18 in paragraph (2).

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

1 “(A) The administrative and judicial procedures
2 provided under sections 7701 and 7703.

3 “(B) The administrative and judicial procedures
4 provided under section 7121.

5 “(C) The administrative and judicial procedures
6 provided under section 717 of the Civil Rights Act
7 of 1964.

8 “(3) The agency (including the Board and the Equal
9 Employment Opportunity Commission) that carries out
10 such procedures shall apply the substantive law that is ap-
11 plied by the agency that administers the particular law
12 referred to in subsection (a)(1) that prohibits the conduct
13 alleged to be the basis of the action referred to in sub-
14 section (a)(1)(A).

15 “(b) If—

16 “(1) an employee elects the procedures specified
17 in subsection (a)(2)(C), and

18 “(2) the Equal Employment Opportunity Com-
19 mission dismisses under section 717(f)(5)(A) of the
20 Civil Rights Act of 1964 a claim that is based on
21 the action raised by the employee,

22 then the employee shall have 20 days in which to raise
23 the action under the procedures specified in subparagraph
24 (A) or (B) of subsection (a)(2), except that no allegation

1 of a kind described in subsection (a)(1)(B) may be raised
2 under this subsection.

3 “(c) If at any time after the 120th day following an
4 election made under section 717(e)(2)(B)(i) of the Civil
5 Rights Act of 1964 to raise an action under the proce-
6 dures specified in subsection (a)(2)(A) there is no judi-
7 cially reviewable action, an employee shall be entitled to
8 file, not later than 240 days after making such election,
9 a civil action in an appropriate district court of the United
10 States for de novo review of the action raised under sub-
11 section (a).

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

16 (c) DISCIPLINARY ACTION.—(1) Section 1214 of title
17 5, United States Code, is amended by adding at the end
18 the following:

19 “(g)(1) Whenever the Office of Special Counsel re-
20 ceives any notification, in accordance with section 717(m)
21 of the Civil Rights Act of 1964, with respect to a claim
22 arising under section 717(a) of the Civil Rights Act of
23 1964, section 15(a) of the Age Discrimination in Employ-
24 ment Act of 1967, or section 501 of the Rehabilitation
25 Act of 1973, the Special Counsel shall investigate the mat-

1 ter to the extent necessary to determine whether there are
2 reasonable grounds to believe that a prohibited personnel
3 practice described in section 2302(b)(1) has occurred and,
4 if so, shall seek the appropriate disciplinary action under
5 section 1215.

6 “(2) A determination under this subsection shall be
7 made not later than 180 days after the appropriate date
8 under paragraph (3) for the last applicable event described
9 in such paragraph.

10 “(3)(A) With respect to a claim—

11 “(i) to which an order issued by an administra-
12 tive judge of the Equal Employment Opportunity
13 Commission applies, and

14 “(ii) with respect to which the aggrieved em-
15 ployee neither—

16 “(I) commences a civil action in accord-
17 ance with section 717(f)(7)(E)(i) of the Civil
18 Rights Act of 1964, nor

19 “(II) requests appellate review in accord-
20 ance with section 717(f)(7)(E)(ii) of the Civil
21 Rights Act of 1964,

22 the appropriate date is the date on which the Office of
23 Special Counsel receives notification (referred to in para-
24 graph (1)) from the administrative judge.

25 “(B) With respect to a claim—

1 “(i) to which an order issued by the Equal Em-
2 ployment Opportunity Commission applies, and

3 “(ii) with respect to which the aggrieved em-
4 ployee does not commence a civil action in accord-
5 ance with section 717(g)(3)(D),

6 the appropriate date is the date on which the Office of
7 Special Counsel receives notification (referred to in para-
8 graph (1)) from the Commission.

9 “(C) With respect to a claim to which a final judg-
10 ment issued by a court of the United States applies, the
11 appropriate date is the date on which the Office of Special
12 Counsel receives notification (referred to in paragraph (1))
13 from such court.

14 “(4) For the purpose of this subsection—

15 “(A) the term ‘order’ means an order issued on
16 the merits;

17 “(B) the term ‘judgment’ means a judgment is-
18 sued on the merits; and

19 “(C) the term ‘final judgment’ means a judg-
20 ment that is either—

21 “(i) not reviewed by any other court that
22 has authority to review such judgment; or

23 “(ii) not reviewable by any other court.”.

24 (2) Section 1218 of title 5, United States Code, is
25 amended—

1 (A) by inserting “(a)” before the first sentence;

2 and

3 (B) by adding at the end the following:

4 “(b) Any statistical or other information provided
5 under the first sentence of subsection (a) shall specify the
6 extent to which such information relates to any matter re-
7 ferred to in section 1214(g).”.

8 (d) RECORDKEEPING.—(1) Chapter 23 of title 5,
9 United States Code, is amended by adding at the end the
10 following:

11 **“§ 2306. Federal personnel records**

12 “(a) For the purpose of this section—

13 “(1) the term ‘personnel action’ has the mean-
14 ing given such term in section 2302(a)(2)(A);

15 “(2) the term ‘record’ has the meaning given
16 such term in section 552a(a)(4); and

17 “(3) the term ‘employee’ means—

18 “(A) an employee as defined by section
19 2105; and

20 “(B) an employee of the United States
21 Postal Service or the Postal Rate Commission;
22 but does not include any employee with respect to
23 whom section 117, or title III (excluding section
24 320), of the Civil Rights Act of 1991 applies.

1 “(b) Records relating to any personnel action taken
2 with respect to an employee shall be maintained by the
3 employing authority for at least the greater of—

4 “(1) 270 days after the effective date of the
5 personnel action to which they relate; or

6 “(2) the period of time otherwise required
7 under applicable provisions of law, rule, or regula-
8 tion, if any.

9 “(c) The Office of Personnel Management shall pre-
10 scribe regulations for the implementation of this section
11 by an Executive agency.”.

12 (2) The table of sections for chapter 23 of title 5,
13 United States Code, is amended by adding at the end the
14 following:

“2306. Federal personnel records.”.

15 (e) FILING DEADLINE.—Section 7703(b)(2) of title
16 5, United States Code, is amended by striking “30 days”
17 and inserting “90 days”.

18 (f) RIGHT TO INTERVENE.—Section 1212(c)(2) of
19 title 5, United States Code, is amended—

20 (1) by striking “(2)” and inserting “(2)(A)”;

21 and

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

23 “(B) Consent under subparagraph (A) shall not be
24 required, in the case of an appeal from an action, if—

1 “(i) section 7513(d) is the provision making the
2 action appealable to the Board;

3 “(ii) the appeal is brought by an individual with
4 respect to whom notification has been received by
5 the Office of Special Counsel under section 717(m)
6 of the Civil Rights Act of 1964; and

7 “(iii) 1 of the grounds for the action being ap-
8 pealed is discrimination of a type described in sec-
9 tion 2302(b)(1).”.

10 **SEC. 5. TECHNICAL AMENDMENTS.**

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

15 **SEC. 6. ISSUANCE OF PROCEDURAL GUIDELINES AND NO-**
16 **TICE RULES.**

17 After providing notice in accordance with section
18 553(b) of title 5, United States Code, and not later than
19 1 year after the date of the enactment of this Act, the
20 Equal Employment Opportunity Commission shall issue—

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

25 (2) rules establishing—

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

4 (B) detailed requirements applicable to col-
5 lecting and preserving documents and informa-
6 tion under section 717(d), as added by section
7 2 of this Act.

8 **SEC. 7. RULES OF CONSTRUCTION.**

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

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

15 (a) EFFECTIVE DATE.—Except as provided in sub-
16 section (b), this Act and the amendments made by this
17 Act shall take effect on January 1, 1995.

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

○

HR 2721 IH—2

HR 2721 IH—3

HR 2721 IH—4

HR 2721 IH—5