

PRESIDENTIAL AND EXECUTIVE OFFICE ACCOUNTABILITY  
ACT

SEPTEMBER 24, 1996.—Ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and  
Oversight, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3452]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3452) to make certain laws applicable to the Executive Office of the President, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. Background and Need for the Legislation .....	15
II. Legislative Hearings and Committee Actions .....	23
III. Committee Hearings and Written Testimony .....	24
IV. Explanation of the Bill .....	26
V. Compliance with Rule XI .....	39
VI. Budget Analysis and Projections .....	39
VII. Cost Estimate of the Congressional Budget Office .....	39
VIII. Inflationary Impact Statement .....	44
IX. Changes in Existing Law .....	44
X. Committee Recommendation .....	64
XI. Congressional Accountability Act: Public Law 104-1 .....	64
XII. Additional Views .....	65

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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

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

(b) **TABLE OF CONTENTS.**—The table of contents for 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. Repeal of section 320 of the Government Employee Rights Act of 1991.
- Sec. 7. Political affiliation.
- Sec. 8. Establishment of Inspector General for Executive Office of the President.

**SEC. 2. EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES.**

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

**“CHAPTER 5—EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES**

“SUBCHAPTER I—GENERAL PROVISIONS

- “Sec.
- “401. Definitions.
- “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

- “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.
- “412. Rights and protections under the Family and Medical Leave Act of 1993.
- “413. Rights and protections under the Fair Labor Standards Act of 1938.
- “414. Rights and protections under the Employee Polygraph Protection Act of 1988.
- “415. Rights and protections under the Worker Adjustment and Retraining Notification Act.
- “416. Rights and protections relating to veterans’ employment and reemployment.
- “417. Prohibition of intimidation or reprisal.

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

- “420. Rights and protections under the Americans with Disabilities Act of 1990.

“PART C—OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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

“PART D—LABOR-MANAGEMENT RELATIONS

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

“PART E—GENERAL

- “435. Generally applicable remedies and limitations.

“SUBCHAPTER III—ADMINISTRATIVE AND JUDICIAL DISPUTE-RESOLUTION PROCEDURES

- “451. Procedure for consideration of alleged violations.
- “452. Counseling and mediation.
- “453. Election of proceeding.
- “454. Appropriate agencies.
- “455. Judicial review.
- “456. Civil action.
- “457. Judicial review of regulations.
- “458. Other judicial review prohibited.
- “459. Effect of failure to issue regulations.
- “460. Expedited review of certain appeals.
- “461. Payments.
- “462. Confidentiality.
- “463. Definitions.

“SUBCHAPTER IV—EFFECTIVE DATE

- “471. Effective date.

**“Subchapter I—General Provisions**

**“SEC. 401. DEFINITIONS.**

“Except as otherwise specifically provided in this chapter, as used in this chapter:

- “**(1) BOARD.**—The term ‘Board’ means the Merit Systems Protection Board under chapter 12 of title 5.

“(2) COVERED EMPLOYEE.—The term ‘covered employee’ means any employee of an employing office.

“(3) EMPLOYEE.—The term ‘employee’ includes an applicant for employment and a former employee.

“(4) EMPLOYING OFFICE.—The term ‘employing office’ means—

“(A) each office, agency, or other component of the Executive Office of the President;

“(B) the Executive Residence at the White House; and

“(C) the official residence (temporary or otherwise) of the Vice President.

**“SEC. 402. APPLICATION OF LAWS.**

“The following laws shall apply, as prescribed by this chapter, to all employing offices (including employing offices within the meaning of section 411, to the extent prescribed therein):

“(1) The Fair Labor Standards Act of 1938.

“(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 Family and Medical Leave Act of 1993.

“(6) The Occupational Safety and Health Act of 1970.

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

“(8) The Employee Polygraph Protection Act of 1988.

“(9) The Worker Adjustment and Retraining Notification Act.

“(10) The Rehabilitation Act of 1973.

“(11) Chapter 43 (relating to veterans’ employment and reemployment) of title 38.

**“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.**

“(a) DISCRIMINATORY PRACTICES PROHIBITED.—All personnel actions affecting covered employees shall be made free from any discrimination based on—

“(1) race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964;

“(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967; or

“(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 and sections 102 through 104 of the Americans with Disabilities Act of 1990.

“(b) REMEDY.—

“(1) CIVIL RIGHTS.—The remedy for a violation of subsection (a)(1) shall be—

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

“(B) such compensatory damages as would be appropriate if awarded under section 1977 of the Revised Statutes, or as would be appropriate if awarded under sections 1977A(a)(1), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes.

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

“(A) such damages as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967; and

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

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

“(3) DISABILITIES DISCRIMINATION.—The remedy for a violation of subsection (a)(3) shall be—

“(A) such damages as would be appropriate if awarded under section 505(a)(1) of the Rehabilitation Act of 1973 or section 107(a) of the Americans with Disabilities Act of 1990; and

“(B) such compensatory damages as would be appropriate if awarded under sections 1977A(a)(2), 1977A(a)(3), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes.

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

“(1) COVERED EMPLOYEE.—The term ‘covered employee’ means any employee of a unit of the executive branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the executive branch, who is not otherwise entitled to bring an action under any of the statutes referred to in subsection (a), but does not include any individual—

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

“(B) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act; or

“(C) who is a member of the uniformed services.

“(2) EMPLOYING OFFICE.—The term ‘employing office’, with respect to a covered employee, means the office, agency, or other entity in which the covered employee is employed (or sought employment or was employed in the case of an applicant or former employee, respectively).

“(d) APPLICABILITY.—Subsections (a) through (c), and section 417 (to the extent that it relates to any matter under this section), shall apply with respect to violations occurring on or after the effective date of this chapter.

**“SEC. 412. RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993.**

“(a) FAMILY AND MEDICAL LEAVE RIGHTS AND PROTECTIONS PROVIDED.—

“(1) IN GENERAL.—The rights and protections established by sections 101 through 105 of the Family and Medical Leave Act of 1993 shall apply to covered employees.

“(2) DEFINITIONS.—For purposes of the application described in paragraph (1)—

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

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

“(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages, including liquidated damages, as would be appropriate if awarded under paragraph (1) of section 107(a) of the Family and Medical Leave Act of 1993.

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

“(a) FAIR LABOR STANDARDS.—

“(1) IN GENERAL.—The rights and protections established by subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 shall apply to covered employees.

“(2) INTERNS AND VOLUNTEERS.—For the purposes of this section, the term ‘covered employee’ does not include an intern or a volunteer as defined in regulations under subsection (c).

“(3) COMPENSATORY TIME.—Except as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation.

“(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938.

“(c) REGULATIONS TO IMPLEMENT SECTION.—

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

“(2) AGENCY REGULATIONS.—Except as provided in paragraph (3), the regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

“(3) IRREGULAR WORK SCHEDULES.—The President shall issue regulations for covered employees whose work schedules directly depend on the schedule of the President or the Vice President that shall be comparable to the provisions in the Fair Labor Standards Act of 1938 that apply to employees who have irregular work schedules.

**“SEC. 414. RIGHTS AND PROTECTIONS UNDER THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988.**

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

“(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under section 6(c)(1) of the Employee Polygraph Protection Act of 1988.

“(c) REGULATIONS TO IMPLEMENT SECTION.—

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

“(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except insofar as the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

**“SEC. 415. RIGHTS AND PROTECTIONS UNDER THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.**

“(a) WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no employing office shall be closed or mass layoff ordered within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees.

“(2) EXCEPTION.—

“(A) IN GENERAL.—In the event that a President (hereinafter in this paragraph referred to as the ‘previous President’) does not succeed himself in office as a result of the election of a new President, no notice or waiting period shall be required under paragraph (1) with respect to the separation of any individual described in subparagraph (B), if such separation occurs pursuant to a closure or mass layoff ordered after the term of the new President commences.

“(B) DESCRIPTION OF INDIVIDUALS.—An individual described in this subparagraph is any covered employee serving pursuant to an appointment made during—

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

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

“(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under paragraphs (1), (2), and (4) of section 5(a) of the Worker Adjustment and Retraining Notification Act.

“(c) REGULATIONS TO IMPLEMENT SECTION.—

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

“(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

**“SEC. 416. RIGHTS AND PROTECTIONS RELATING TO VETERANS’ EMPLOYMENT AND REEMPLOYMENT.**

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

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

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

“(B) deny to an eligible employee reemployment rights within the meaning of sections 4312 and 4313 of title 38; or

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

“(2) DEFINITION.—For purposes of this section, the term ‘eligible employee’ means a covered employee performing service in the uniformed services, within the meaning of section 4303(13) of title 38, whose service has not been terminated upon the occurrence of any of the events enumerated in section 4304 of such title.

“(b) REMEDY.—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under paragraphs (1) and (2)(A) of section 4323(c) of title 38.

“(c) REGULATIONS TO IMPLEMENT SECTION.—

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

“(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

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

“(a) IN GENERAL.—It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this chapter.

“(b) REMEDY.—A violation of subsection (a) may be remedied by any legal remedy available to redress the practice opposed by the covered employee or other violation of law as to which the covered employee initiated proceedings, made a charge, or engaged in other conduct protected under subsection (a).

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

**“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.**

“(a) RIGHTS AND PROTECTIONS.—The rights and protections against discrimination in the provision of public services and accommodations established by sections 201, 202, and 204, and sections 302, 303, and 309, of the Americans with Disabilities Act of 1990 shall apply, to the extent that public services, programs, or activities are provided, with respect to the White House and its appurtenant grounds and gardens, the Old Executive Office Building, the New Executive Office Buildings, and any other facility to the extent that offices are provided for employees of the Executive Office of the President.

“(b) REMEDY.—The remedy for a violation of subsection (a) shall be such remedy as would be appropriate if awarded under sections 203 or 308 of the Americans with Disabilities Act of 1990, as the case may be, except that, with respect to any claim of employment discrimination, the exclusive remedy shall be under section 411 of this title. A remedy under the preceding sentence shall be enforced in accordance with applicable provisions of such sections 203 or 308, as the case may be.

“(c) DEFINITION.—For purposes of the application under this section of the Americans with Disabilities Act of 1990, the term ‘public entity’ as used in such Act, means, to the extent that public services, programs, or activities are provided, the White House and its appurtenant grounds and gardens, the Old Executive Office Building, the New Executive Office Buildings, and any other facility to the extent that offices are provided for employees of the Executive Office of the President.

**“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.**

**“(a) OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS.—**

**“(1) IN GENERAL.—**Each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970.

**“(2) DEFINITIONS.—**For purposes of the application under this section of the Occupational Safety and Health Act of 1970—

**“(A)** the term ‘employer’ as used in such Act means an employing office; and

**“(B)** the term ‘employee’ as used in such Act means a covered employee.

**“(b) REMEDY.—**The remedy for a violation of subsection (a) shall be an order to correct the violation, including such order as would be appropriate if issued under section 13(a) of the Occupational Safety and Health Act of 1970.

**“(c) PROCEDURES.—**

**“(1) REQUESTS FOR INSPECTIONS.—**Upon written request of any employing office or covered employee, the Secretary of Labor shall have the authority to inspect and investigate places of employment under the jurisdiction of employing offices in accordance with subsections (a), (d), (e), and (f) of section 8 of the Occupational Safety and Health Act of 1970.

**“(2) CITATIONS, NOTICES, AND NOTIFICATIONS.—**The Secretary of Labor shall have the authority, in accordance with sections 9 and 10 of the Occupational Safety and Health Act of 1970, to issue—

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

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

**“(3) HEARINGS AND REVIEW.—**If after issuing a citation or notification, the Secretary of Labor determines that a violation has not been corrected—

**“(A)** the citation and notification shall be deemed a final order (within the meaning of section 10(b) of the Occupational Safety and Health Act of 1970) if the employer fails to notify the Secretary of Labor within 15 days (excluding Saturdays, Sundays, and Federal holidays) after receipt of the notice that he intends to contest the citation or notification; or

**“(B)** opportunity for a hearing before the Occupational Safety and Health Review Commission shall be afforded in accordance with section 10(c) of the Occupational Safety and Health Act of 1970, if the employer gives timely notice to the Secretary that he intends to contest the citation or notification.

**“(4) VARIANCE PROCEDURES.—**An employing office may request from the Secretary of Labor an order granting a variance from a standard made applicable by this section, in accordance with sections 6(b)(6) and 6(d) of the Occupational Safety and Health Act of 1970.

**“(5) JUDICIAL REVIEW.—**Any person or employing office aggrieved by a final decision of the Occupational Safety and Health Review Commission under paragraph (3) or the Secretary of Labor under paragraph (4) may file a petition for review with the United States Court of Appeals for the Federal Circuit pursuant to section 455.

**“(6) COMPLIANCE DATE.—**If new appropriated funds are necessary to correct a violation of subsection (a) for which a citation is issued, or to comply with an order requiring correction of such a violation, correction or compliance shall take place as soon as possible, but not later than the end of the fiscal year following the fiscal year in which the citation is issued or the order requiring correction becomes final and not subject to further review.

**“(d) REGULATIONS TO IMPLEMENT SECTION.—**

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

**“(2) AGENCY REGULATIONS.—**The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be

more effective for the implementation of the rights and protections under this section.

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

## “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.

“(a) LABOR-MANAGEMENT RIGHTS.—Chapter 71 of title 5 shall apply to employing offices and to covered employees and representatives of those employees, except that covered employees shall not have a right to reinstatement pursuant to section 7118(a)(7)(C) or 7123 of title 5.

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

## “PART E—GENERAL

### “SEC. 435. GENERALLY APPLICABLE REMEDIES AND LIMITATIONS.

“(a) ATTORNEY’S FEES.—If a covered employee, with respect to any claim under this chapter, or a qualified person with a disability, with respect to any claim under section 420, is a prevailing party in any proceeding under section 453(1), 455, or 456, the administrative agency or court, as the case may be, may award attorney’s fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

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

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

“(d) EXCLUSIVE PROCEDURE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no person may commence an administrative or judicial proceeding to seek a remedy for the rights and protections afforded by this chapter except as provided in this chapter.

“(2) VETERANS.—A covered employee under section 416 may also utilize any provisions of chapter 43 of title 38 that are applicable to that employee.

“(e) SCOPE OF REMEDY.—Only a covered employee who has undertaken and completed the procedures described in section 452 may be granted a remedy under part A of this subchapter.

“(f) CONSTRUCTION.—

“(1) DEFINITIONS AND EXEMPTIONS.—Except where inconsistent with definitions and exemptions provided in this chapter, the definitions and exemptions in the laws made applicable by this chapter shall apply under this chapter.

“(2) SIZE LIMITATIONS.—Notwithstanding paragraph (1), provisions in the laws made applicable under this chapter (other than paragraphs (2) and (3) of section 2(a) of the Worker Adjustment and Retraining Notification Act) determining coverage based on size, whether expressed in terms of numbers of employees, amount of business transacted, or other measure, shall not apply in determining coverage under this chapter.

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

### “Subchapter III—Administrative and Judicial Dispute-Resolution Procedures

#### “SEC. 451. PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.

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

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

“(2) election, as provided in section 453, of either—

“(A) an administrative proceeding as provided in section 453(1) and judicial review as provided in section 455; or

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

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

“(a) IN GENERAL.—The President shall by regulation establish procedures substantially similar to those under sections 402 and 403 of the Congressional Accountability Act of 1995 for the counseling and mediation of alleged violations of a law made applicable under part A of subchapter II.

“(b) EXHAUSTION REQUIREMENT.—A covered employee who has not exhausted counseling and mediation under subsection (a) shall be ineligible to make any election under section 453 or otherwise pursue any further form of relief under this subchapter.

**“SEC. 453. ELECTION OF PROCEEDING.**

“Not later than 90 days after a covered employee receives notice of the end of the period of mediation, but no sooner than 30 days after receipt of such notification, such covered employee may either—

“(1) file a complaint with the appropriate administrative agency, as determined under section 454; or

“(2) file a civil action in accordance with section 456 in the United States district court for the district in which the employee is employed or for the District of Columbia.

**“SEC. 454. APPROPRIATE AGENCIES.**

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

“(b) EXCEPTIONS.—

“(1) DISCRIMINATION.—For purposes of any action arising under section 411 (or any action alleging intimidation, reprisal, or discrimination under section 417 relating to any practice made unlawful under section 411), the appropriate agency shall be the Equal Employment Opportunity Commission, and the complaint in any such action shall be processed under the same administrative procedures as any such complaint filed by any other Federal employee.

“(2) MIXED CASES.—However, in the case of any covered employee (within the meaning of section 411(c)(1)) who has been affected by an action which an employee of an executive agency may appeal to the Board and who alleges that a basis for the action was discrimination prohibited by section 411 (or any action alleging intimidation, reprisal, or discrimination under section 417 relating to any practice made unlawful under section 411), the initial appropriate agency shall be the Board, and such matter shall thereafter be processed in accordance with section 7702 (a)–(d) (disregarding paragraph (2) of such subsection (a)) and (f) of title 5.

“(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law (including any provision of law referenced in paragraph (1) or (2)), judicial review of any administrative decision under this subsection shall be by the court specified in section 455.

**“SEC. 455. JUDICIAL REVIEW.**

“(a) IN GENERAL.—The United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under this chapter of—

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

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

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

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

**“SEC. 456. CIVIL ACTION.**

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

“(b) PARTIES.—The defendant shall be the employing office alleged to have committed the violation, or in which the violation is alleged to have occurred.

“(c) JURY TRIAL.—Any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made

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

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

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

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

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

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

“In any proceeding under section 453(1), 455, or 456, if the President has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the administrative agency or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

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

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

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

**“SEC. 461. PAYMENTS.**

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

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

“(2) out of amounts otherwise appropriated or available to such office, if it arises out of an administrative proceeding under this chapter (or any appeal therefrom).

**“SEC. 462. CONFIDENTIALITY.**

“(a) COUNSELING.—All counseling under section 452 shall be strictly confidential, except that, with the consent of the covered employee, the employing office may be notified.

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

**“SEC. 463. DEFINITIONS.**

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

**“Subchapter IV—Effective Date**

**“SEC. 471. EFFECTIVE DATE.**

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

(b) REGULATIONS.—Appropriate measures shall be taken to ensure that any regulations needed to implement chapter 5 of title 3, United States Code, as amended by this section, shall be in effect by the effective date of such chapter.

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

“5. Extension of Certain Rights and Protections to Presidential Offices ..... 401”.

**SEC. 3. FINANCIAL OFFICERS WITHIN THE EXECUTIVE OFFICE OF THE PRESIDENT.**

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

“(c)(1) There shall be within the Executive Office of the President a Chief Financial Officer, who shall be appointed by the President from among individuals meeting the standards described in subsection (a)(3).

“(2) The Chief Financial Officer under this subsection shall have the same authority and shall perform the same functions as apply in the case of a Chief Financial Officer under section 902.

“(3) The Director of the Office of Management and Budget shall prescribe any regulations which may be necessary to ensure that, for purposes of implementing paragraph (2), the Executive Office of the President shall, to the extent practicable and appropriate, be treated (including for purposes of financial statements under section 3515) in the same way as an agency described in subsection (b).”

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

“(c)(1) There shall be within the Executive Office of the President a Deputy Chief Financial Officer, who, notwithstanding any provision of subsection (b), shall be appointed by the President from among individuals meeting the standards described in section 901(a)(3).

“(2) The Deputy Chief Financial Officer under this subsection shall have the same authority and shall perform the same functions as apply in the case of the Deputy Chief Financial Officer of an agency described in subsection (b).”

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 31, UNITED STATES CODE.—Section 503(a) of title 31, United States Code, is amended—

(A) in paragraph (7) by striking “respectively.” and inserting “respectively (excluding any officer appointed under section 901(c) or 903(c)).”; and

(B) in paragraph (8) by striking “Officers.” and inserting “Officers (excluding any officer appointed under section 901(c) or 903(c)).”

(2) DESIGNATION OF AGENCY HEAD.—The President shall designate an employee of the Executive Office of the President (other than the Chief Financial Officer or Deputy Chief Financial Officer appointed under the amendments made by subsections (a) and (b), respectively), who shall be deemed “the head of the agency” for purposes of carrying out section 902 of title 31, United States Code, with respect to the Executive Office of the President.

#### SEC. 4. AMENDMENT TO DEFINITION OF “SPECIAL GOVERNMENT EMPLOYEE”.

(a) AMENDMENT TO SECTION 202(a).—Subsection (a) of section 202 of title 18, United States Code, is amended to read as follows:

“(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ‘special Government employee’ shall mean—

“(1) an officer or employee as defined in subsection (c) who is retained, designated, appointed, or employed in the legislative or executive branch of the United States Government, in any independent agency of the United States, or in the government of the District of Columbia, and who, at the time of retention, designation, appointment or employment, is expected to perform temporary duties on a full-time or intermittent basis for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days;

“(2) a part-time United States commissioner;

“(3) a part-time United States magistrate;

“(4) an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28;

“(5) a person serving as a part-time local representative of a Member of Congress in the Member’s home district or State; and

“(6) a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, who is not otherwise an officer or employee as defined in subsection (c) who is—

“(A) on active duty solely for training (notwithstanding section 2105(d) of title 5);

“(B) serving voluntarily for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days; or

“(C) serving involuntarily.”

(b) AMENDMENT TO SECTION 202(c).—Subsection (c) of 202 of title 18, United States Code, is amended to read as follows:

“(c) The terms ‘officer’ and ‘employee’ in sections 203, 205, 207 through 209, and 218 of this title shall include—

“(1) an individual who is retained, designated, appointed or employed in the United States Government or in the government of the District of Columbia, to perform, with or without compensation and subject to the supervision of the President, the Vice President, a Member of Congress, a Federal judge or an offi-

cer or employee of the United States or of the government of the District of Columbia, a Federal or District of Columbia function under authority of law or an Executive act. As used in this section, a Federal or District of Columbia function shall include, but not be limited to—

“(A) supervising, managing, directing or overseeing a Federal or District of Columbia officer or employee in the performance of such officer’s or employee’s official duties;

“(B) providing regular advice, counsel, or recommendations to the President, the Vice President, a Member of Congress, or any Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals, as part of the Federal or District of Columbia government’s internal deliberative process; or

“(C) obligating funds of the United States or the District of Columbia;

“(2) a Reserve officer or officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of 130 days; and

“(3) the President, the Vice President, a Member of Congress or a Federal judge only if specified in the section.”

(c) NEW SECTION 202(f).—Section 202 of title 18, United States Code, is amended by adding at the end the following:

“(f) The terms ‘officer or employee’ and ‘special Government employee’ as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces, nor shall they include an individual who is retained, designated or appointed without compensation specifically to act as a representative of a non-Federal (or non-District of Columbia) interest on an advisory committee established pursuant to the Federal Advisory Committee Act or any similarly established committee whose meetings are generally open to the public. The non-Federal interest to be represented must be specifically set forth in the statute, charter, or Executive act establishing the committee.”

#### SEC. 5. APPLICABILITY OF FUTURE EMPLOYMENT LAWS.

Each Federal law governing employment in the private sector, enacted later than 12 months after the date of the enactment of this Act, shall be deemed to apply with respect to “employing offices” and “covered employees” (within the meaning of section 401 of title 3, United States Code, as amended by this Act), unless such law specifically provides otherwise and expressly cites this section.

#### SEC. 6. REPEAL OF SECTION 320 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.

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

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

(c) SAVINGS PROVISION.—The repeal under this section shall not affect proceedings in which the complaint was filed before the effective date of this section, and orders shall be issued in such proceedings and appeals shall be taken therefrom as if this section had not been enacted.

#### SEC. 7. POLITICAL AFFILIATION.

It shall not be a violation of any provision of section 411 of title 3, United States Code, as amended by this Act, to consider the party affiliation, or political compatibility with the employing office, of an employee who is a “covered employee” for purposes of such section 411 with respect to employment decisions.

#### SEC. 8. ESTABLISHMENT OF INSPECTOR GENERAL FOR EXECUTIVE OFFICE OF THE PRESIDENT.

(a) ESTABLISHMENT OF OFFICE.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1) by inserting “the President (with respect only to the Executive Office of the President),” after “means”; and

(2) in paragraph (2) by inserting “the Executive Office of the President,” after “means”.

(b) APPOINTMENT OF INSPECTOR GENERAL.—Not later than 120 days after the effective date of this section, the President shall nominate an individual as the Inspector General of the Executive Office of the President pursuant to the amendments made by subsection (a).

(c) SPECIAL PROVISIONS CONCERNING INSPECTOR GENERAL OF THE EXECUTIVE OFFICE OF THE PRESIDENT.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the second section 8G (regarding a rule of construction) as section 8I; and

(2) by inserting after the first section 8G (regarding requirements for Federal entities and designated Federal entities) the following:

**“SEC. 8H. SPECIAL PROVISIONS CONCERNING INSPECTOR GENERAL OF THE EXECUTIVE OFFICE OF THE PRESIDENT.**

“(a) **AUTHORITY, DIRECTION, AND CONTROL OF PRESIDENT.**—Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Executive Office of the President shall be under the authority, direction, and control of the President with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

“(1) ongoing criminal investigations or proceedings;

“(2) undercover operations;

“(3) the identity of confidential sources, including protected witnesses;

“(4) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions;

“(5) intelligence or counterintelligence matters; or

“(6) other matters the disclosure of which would constitute a serious threat to the national security, or would cause significant impairment to the national interests (including interests in foreign trade negotiations), of the United States.

“(b) **PROHIBITING ACTIVITIES OF INSPECTOR GENERAL.**—With respect to information described in subsection (a), the President may prohibit the Inspector General of the Executive Office of the President from carrying out or completing any audit or investigation, or issuing any subpoena, after the Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the President determines that—

“(1) the disclosure of that information would interfere with the core functions of the constitutional responsibilities of the President; and

“(2) the prohibition is necessary to prevent the disclosure of that information.

“(c) **NOTICE.**—

“(1) **NOTICE TO INSPECTOR GENERAL.**—If the President makes a determination referred to in subsection (b)(1) or (2), the President shall within 30 days notify the Inspector General in writing stating the reasons for that determination.

“(2) **NOTICE TO CONGRESS.**—Within 30 days after receiving a notice under paragraph (1), the Inspector General shall transmit a copy of the notice to each of the Chairman and the ranking minority party member of the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and other appropriate committees or subcommittees of the Congress.

“(d) **SEMIANNUAL REPORTS.**—

“(1) **INFORMATION TO BE INCLUDED.**—The Inspector General of the Executive Office of the President shall include in each semiannual report to the President under section 5, at a minimum—

“(A) a list of the title or subject of each inspection, investigation, or audit conducted during the reporting period;

“(B) a statement of whether corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action;

“(C) a certification that the Inspector General has had full and direct access to all information relevant to the performance of functions of the Inspector General;

“(D) a description of all cases occurring during the reporting period in which the Inspector General could not obtain documentary evidence relevant to any inspection, audit, or investigation due to a determination of the President under subsection (b); and

“(E) such recommendations as the Inspector General considers appropriate concerning legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Executive Office of the President, and to detect and eliminate fraud, waste, and abuse in such programs and operations.

“(2) **TRANSMISSION TO CONGRESS.**—Within 30 days after receiving a semiannual report under section 5 from the Inspector General of the Executive Office of the President, the President shall transmit the report to each of the Chairman and the ranking minority party member of the Committee on Government Reform and Oversight of the House of Representatives and the Com-

mittee on Governmental Affairs of the Senate with any comments the President considers appropriate.”

(d) EFFECTIVE DATE.—This section shall take effect on January 21, 1997.

#### SHORT SUMMARY OF LEGISLATION

H.R. 3452, the “Presidential and Executive Office Accountability Act,” amends titles 3, 5, 18, and 31 of the United States Code (U.S.C.) and repeals title 2 U.S.C. § 1219. It subjects the White House to the same laws that are applicable to Congress and the private sector. Eleven civil rights, labor and employment laws are made applicable to the Executive Office of the President, extending rights and protections under these laws to covered employees, and permitting administrative and judicial dispute-resolution procedures. The bill requires that in the future, all such laws will automatically apply to the White House unless they are specifically exempted.

H.R. 3452 will improve accountability and oversight in the White House. It improves financial management by requiring the President to appoint a Chief Financial Officer for the Executive Office of the President. It provides the President with needed investigative and oversight skills by establishing an Office of Inspector General in the Executive Office of the President, with an Inspector General appointed by the President. It tightens the definition of “special Government employee” to make unofficial advisers more accountable to the American people.

Major provisions of the bill include:

**Equal Employment.**—White House employees and certain other Presidential appointees will be protected from discrimination based upon race, color, religion, sex, national origin, age and disability. The applicable laws are Title VII of the Civil Rights Act of 1964,<sup>1</sup> the Age Discrimination in Employment Act of 1967,<sup>2</sup> the Rehabilitation Act of 1973,<sup>3</sup> and Title I of the Americans with Disabilities Act of 1990.<sup>4</sup>

**Fair Labor Standards.**—White House employees would be protected by the Fair Labor Standards Act<sup>5</sup> (FLSA) which regulates minimum wages and overtime pay. The bill includes an exception from the provisions of the FLSA for interns and volunteers.

**Administrative and Judicial Dispute-Resolution Procedures.**—Counseling, mediation, and the election of either administrative remedies or civil action remedies before a United States District Court would be allowed. Complaints would be filed with the Equal Employment Opportunity Commission or the Merit Systems Protection Board, as applicable.

**Generally Applicable Remedies and Limitations.**—Employees whose rights are violated are entitled to the same remedies, including, where applicable, liquidated damages and compensatory damages, as in the private sector. Remedies available to covered employees include attorney fees, expert fees, and costs and interest where applicable, in accordance with the Civil

<sup>1</sup> 42 U.S.C. 2000e et seq.

<sup>2</sup> 29 U.S.C. 621 et seq.

<sup>3</sup> 29 U.S.C. 701 et seq.

<sup>4</sup> 42 U.S.C. 12101 et seq.

<sup>5</sup> 29 U.S.C. 201 et seq.

Rights Act. Remedies available do not include injunctive relief or punitive damages.

Chief Financial Officer.—The President would be required to appoint a Chief Financial Officer and a Deputy Chief Financial Officer for the Executive Office of the President. The bill provides that, to the extent practicable and appropriate, the provisions of the Chief Financial Officers Act of 1990,<sup>6</sup> as amended by the Government Management Reform Act of 1994,<sup>7</sup> would apply.

Inspector General.—The President would be required to appoint an Inspector General for the Executive Office of the President, and otherwise comply with the Inspector General Act of 1978,<sup>8</sup> as amended. The bill allows the President to prohibit certain actions by the Inspector General based on constitutional powers, national interest, national security or other relevant considerations.

Special Government Employee (SGE).—The bill amends the definition of “special Government employee” in section 202 of title 18, United States Code. It tightens the definition to make it clear that informal advisers may be subject to conflict-of-interest and financial-disclosure statutes.

## BACKGROUND AND NEED FOR LEGISLATION

### A. BACKGROUND

There is a general consensus that all employees of public institutions in the United States must be held accountable for their actions, including the White House. H.R. 3452 will help provide accountability. It will also ensure that the Executive Office of the President has to comply with the same laws that the rest of the country and Congress have to follow. The bill applies the following civil rights, labor, and employment laws to the Executive Office of the President:

The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.);

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

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

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

The Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.);

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

Chapter 71 of title 5, United States Code, regulating Federal Labor-Management relations;

The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.);

<sup>6</sup>31 U.S.C. 502(b-f)-504; 901-903.

<sup>7</sup>Pub. L. No. 103-356.

<sup>8</sup>5 U.S.C. App. 3.

The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.); and

Chapter 43 of title 38, United States Code, regulating veterans' employment and reemployment rights.

The Executive Office of the President is a collection of separate, disparate divisions. Executive Order 8248, of September 8, 1939 established the divisions of the Executive Office and defined their functions. Various agencies had been transferred to the Executive Office of the President by the President's Reorganization Plans I and II of 1939,<sup>9</sup> effective July 1, 1939 under authority of the Reorganization Act of 1939.<sup>10</sup> At present there are twelve divisions. They are:

- The White House Office;
- The Executive Residence at the White House;
- The Office of the Vice President;
- The Office of Policy Development;
- The Council of Economic Advisors,
- The Council on Environmental Quality and Office of Environmental Quality;
- The National Security Council;
- The Office of Administration;
- The Office of Management and Budget;
- The Office of National Drug Control Policy;
- The Office of Science and Technology; and
- The Office of the United States Trade Representative.

It is not clear how many employees at the White House are already covered by civil rights or employment laws. About one third (currently approximately 550 employees) work in the four offices closest to the President: the White House Office; the Office of the Vice President; the Office of Policy Development; and the Executive Residence. These employees are hired "without regard to any other provision of law regulating employment or compensation of persons in the government service,"<sup>11</sup> and serve at the pleasure of the President. They are often referred to as "Title 3" employees. Some Title 3 employees work in the eight other divisions, but most are Title 5 employees who are covered by most of the workplace laws, according to testimony provided the committee by the Director of the Office of Administration, Executive Office of the President.

The Fair Labor Standards Act does not apply to the White House. A Congressional Research Service American Law Division (CRS/ALD) memorandum<sup>12</sup> states that, "Under the enforcement scheme of the Act, the Office of Personnel Management (OPM) would make the initial administrative determination whether the Act covered any elements of the White House or the Executive Office of the President. It does not appear that OPM has made any formal determination of such coverage."

The Family and Medical Leave Act of 1993 may already apply to some White House employees, but a recent judicial application of Title 3 United States Code § 105 raises questions about the Act's

<sup>9</sup> 5 U.S.C. App.

<sup>10</sup> 5 U.S.C. 133-133r, 133t note.

<sup>11</sup> 3 U.S.C. 105(b).

<sup>12</sup> Memorandum on "Proposed Presidential and Executive Office Accountability Act," June 21, 1996, Congressional Research Service American Law Division.

applicability to the White House.<sup>13</sup> Franklin Reeder, Director of the Office of Administration, Executive Office of the President, stated in testimony provided to the committee that, as a matter of policy, the White House complies with the Family and Medical Leave Act.<sup>14</sup>

At the same hearing, Mr. Reeder also testified that, as a matter of policy, the White House is “already compliant with the Polygraph Protection Act.”

It is the committee’s opinion that these laws from which the White House is currently exempt should apply as a matter of law, not only as a matter of policy. It is ironic that at the very time that President Clinton is pushing to expand the Family and Medical Leave Act and the Fair Labor Standards Act, his own employees are not entitled by law to the rights afforded private sector and Congressional employees.

H.R. 3452 is modeled on the Congressional Accountability Act of 1995.<sup>15</sup> This applied the eleven civil rights, labor, and workplace laws to employees of the Legislative Branch of the Federal Government, and established remedies and procedures for aggrieved employees in instances of violations of the laws. Some of the eleven laws had previously been extended to certain employees of the legislative branch, but the Congressional Accountability Act expanded the scope of employees covered by the laws and granted a right of judicial review to all covered employees.

The Government Employee Rights Act of 1991<sup>16</sup> had applied certain provisions of four of the laws to some officers or employees in the Executive Office of the President. These were:

- Title VII of the Civil Rights Act of 1964;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act of 1967; and
- The Rehabilitation Act of 1973.

H.R. 3452 repeals the section in the Government Employee Rights Act of 1991 that provided coverage under the four laws listed above, since it is, in effect, reapplying them.

Coverage under H.R. 3452 would extend to most Presidential appointees, except those appointed by the President with Senate confirmation, those appointed to advisory committees, and members of a uniformed service. Most White House employees would be entitled to the same remedies as a private sector worker, not including injunctive relief or punitive damages. Employees would have the option (1) of filing an administrative complaint with the Merit Systems Protection Board, the Federal Labor Relations Board, the Equal Employment Opportunity Commission or (2) of seeking redress in Federal court.

This bill also establishes effective redress systems for employees who believe their rights under any of these laws have been violated. Following a mandatory period of counseling and mediation,

<sup>13</sup>Memorandum on “Application of Certain Rights and Labor Laws to White House Employees,” February 13, 1996, Congressional Research Service American Law Division.

<sup>14</sup>Hearing on H.R. 3452 Before the House Committee on Government Reform and Oversight Subcommittee on Government Management, Information, and Technology, 104th Cong., 2nd Sess. (1996) (Statement of Franklin S. Reeder, Director, Office of Administration, Executive Office of the President).

<sup>15</sup>2 U.S.C. 1301 et seq.

<sup>16</sup>2 U.S.C. 1219.

the employee may choose between an administrative remedy with judicial review by the United States Court of Appeals for the Federal Circuit or a judicial remedy before the appropriate United States district court. The administrative remedy will be an appeal to the Merit Systems Protection Board or, in some discrimination cases, the Equal Employment Opportunity Commission.

H.R. 3452, as originally drafted, included punitive damages as an available remedy and amended the Congressional Accountability Act to include punitive damages in the range of remedies available to employees who could show discrimination. The Congressional Accountability Act did not include a provision to allow the award of punitive damages. Employee grievances under the Congressional Accountability Act are filed against the office of the Member, not the Member individually. H.R. 3452 is intended to provide the same treatment to the Congress and to the Executive Office of the President. Accordingly, it was unanimously decided that the provisions to allow punitive damages should be eliminated, both as they applied to Congress and to the White House.

The Federal Labor Relations Authority will administer labor-management relations at the White House. The Occupational Safety and Health Act will be administered by the Secretary of Labor and the Occupational Safety and Health Review Commission, as it is in the private sector.

Finally, the bill also places the White House under the public access provisions of the Americans With Disabilities Act (ADA). The remedies and enforcement under the ADA would be the same as if the White House were a private entity.

The bill strengthens accountability by requiring improvement in management practices. It does this in three ways. First, it improves financial management by setting up an office of Chief Financial Officer. Second, it gives the President a tool to uncover waste, fraud, and abuse by setting up an Office of Inspector General. Third, it heightens awareness of conflict-of-interest and other ethical considerations by clarifying the definition of a "special Government employee."

It applies the Chief Financial Officers Act (CFO Act) to the White House. H.R. 3452 requires the President to appoint a Chief Financial Officer (CFO) and, to the fullest extent practicable, requires compliance by the Executive Office of the President with the requirements of the CFO Act. The CFO Act allows departments and agencies flexibility in setting up the Office of the CFO, and the Executive Office of the President would have similar flexibility, so long as accountability is retained, and reports are produced, by a single CFO Office. The CFO should hold a position in the organization sufficiently elevated to have access to the President.

On July 23, 1996, Representative Bass (R-NH) introduced H.R. 3872, the "White House Inspector General Act of 1996," which amends the Inspector General Act of 1978 and would establish an Office of Inspector General in the Executive Office of President. At the committee mark-up of H.R. 3452 on July 25, 1996, Mr. Bass offered H.R. 3872 as an amendment to H.R. 3452. Mr. Bass explained that the White House Inspector General (IG), like other IGs in the Executive Branch, would serve as the principal watchdog of White House financial management and fiscal resources. He

felt that it complemented H.R. 3452's existing provision applying the Chief Financial Officer Act to the White House. Establishing a White House IG will provide future Presidents with a useful tool. The IG will act as a watchdog, bringing to the President's attention situations which could cause problems before such problems arise, and ensuring that controls are in place to prevent waste, fraud, or abuse.

The bill includes a revised definition of a special Government employee which would tighten the application of the definition. It uses a functional test rather than a series of application criteria. The bill makes it clear that informal, unpaid advisers would be covered by conflict-of-interest and financial-disclosure laws.

#### B. LEGISLATIVE HISTORY

On May 14, 1996, Representative John L. Mica (R-FL), Chairman of the Government Reform and Oversight Committee's Subcommittee on Civil Service, introduced H.R. 3452 with more than one hundred cosponsors. The Subcommittee on Government Management, Information and Technology held a legislative hearing on the bill on June 15, 1996, and on July 16, marked up the bill. Several amendments were offered and adopted at the subcommittee mark-up, and the bill, as amended was approved by voice vote. Subsequently, the Committee on Government Reform and Oversight marked up the bill on July 25, approving two amendments, and reporting it favorably, as amended, on a voice vote, for consideration by the House of Representatives.

#### C. NEED FOR THE LEGISLATION

The legislation is intended to satisfy two needs: the need to improve financial management practices and accountability in the White House; and the need for the White House to live under the same laws as Congress and the private sector.

Recent congressional hearings have highlighted some of the shortcomings in White House financial responsibility. The White House is not now required to comply with workplace laws that the rest of the country has to follow. The White House has little or no controls over its financial and other management activities. The White House has a history of retaining informal advisers to the President who are present in the White House on a regular basis and who affect public policy without having accountability to the public.

The White House financial operations lack both accountability and structure.<sup>17</sup> The committee believes that the analysis and reorganization necessary to establish an Office of Chief Financial Officer in the White House would provide organizational structure for financial operations.

The Chief Financial Officers Act was intended to help Executive Branch agencies improve their financial operations, and it has been effective in doing so, although much remains to be done. Extending

<sup>17</sup>Hearing on H.R. 3452 Before the House Committee on Government Reform and Oversight Subcommittee on Government Management, Information and Technology, 104th Cong., 2nd Sess. (1996)(Statement of Representative John L. Mica).

the application of the CFO Act to the White House would bring about accountability to financial operations in the White House.

If there had been a Chief Financial Officer (CFO) and an Inspector General (IG) in the White House, the unorthodox accounting practices that prevailed in the White House Travel Office, which the White House used as justification for firing longtime employees, would not have been allowed to continue. A CFO would have provided the Travel Office managers with the guidance and expert advice they sorely needed, but never received. An IG would provide oversight and conduct audits and investigations to root out waste, fraud and abuse.

The White House Communications Agency is one of the entities contained in the White House complex although it is not a division of the Executive Office of the President. It is staffed primarily with personnel from the Department of Defense and is under the operational direction and control of the White House Military Office, a White House entity that controls military activities that directly support the President. A recent IG audit requested jointly by this committee and the Department of Defense uncovered serious financial management problems in the White House Communications Agency.<sup>18</sup>

Having both an IG and a CFO would act as an effective control to prevent incidences of waste, fraud and abuse, whether minor, as in petty stealing, or serious, as in destroying records of national interest.

Once H.R. 3452 is enacted, the Executive Office of the President would have to prepare and submit to Congress annual audited financial statements and semiannual Inspector General reports. This would bring accountability and oversight of management practices in the White House in line with Executive Branch agencies who are already under the CFO Act and the Inspector General Act.

The Inspector General Act of 1978 established Offices of Inspector General in certain Federal departments and agencies to protect the integrity of Federal programs and resources. IGs are appointed without regard to political affiliation and solely on the basis of a strong background in accounting, auditing, financial management, and investigations. They are provided the authority and independence to perform audits and investigations in order to combat waste, fraud, and abuse. They report to Congress on a semiannual basis.

Today, 61 entities have Inspectors General, including all 14 Cabinet level departments. In 1994, investigations and audits performed by Inspectors General led to more than 14,000 successful criminal and civil prosecutions, returned \$1.9 billion to the U.S. Treasury, and resulted in potential efficiency recommendations that would save \$24 billion.<sup>19</sup>

<sup>18</sup>The audit uncovered serious deficiencies at the White House Communications Agency. Accounting controls were poor. The agency had \$14.5 million in invalidated obligations. It paid for equipment and services that are no longer necessary. It paid for items that never arrived, and occasionally paid for the same item twice. Only 17 percent of its bills are paid on time, causing taxpayers to pay interest and penalties on the remaining 83 percent. This information is found in Report No. 96-033, November 29, 1995, "White House Communications Agency" and Report No. 96-100, April 29, 1996, "White House Communications Agency—Phase II," both issued by the Office of Inspector General, Department of Defense.

<sup>19</sup>"A Progress Report to the President Fiscal Year 1994," President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency.

The strength and effectiveness of the Inspector General Act lies in the significant authority and independence afforded IGs to conduct their audits and investigations. IGs have direct access to all records and information of the agency and possess the power to issue subpoenas and administer oaths for taking testimony. IGs have full control over hiring and managing their own staff and resources and can be removed only by the President or the agency head who appointed them.

The White House Inspector General would have all the basic powers that other IGs are granted under the Inspector General Act of 1978. However, H.R. 3452 has several special provisions to protect the constitutional prerogatives and operational effectiveness of the Presidency.

The first, § 8(h)(a), ensures that the White House IG will not intrude in any areas relating to policy, intelligence, national security interests, or other sensitive matters. He or she would be under the authority, control and direction of the President while conducting audits and investigations that require information concerning ongoing criminal investigations or proceedings; the identity of confidential sources or protected witnesses; deliberations and decisions on policy matters, intelligence matters, and counterintelligence; and matters of national security interest.

The second provision, § 8(h)(b), ensures that the IG does not hinder the President in carrying out his or her constitutional responsibilities. The President would have authority to prohibit the White House IG from conducting an audit if by doing so the IG would interfere with the core constitutional responsibilities of the President.

These provisions are intended to make sure that the establishment of an IG in the White House does not interfere with the constitutional responsibilities of the President, thereby violating the separation of powers doctrine. In an analysis provided for the record, the American Law Division of the Congressional Research Service concluded that the legislation “does not appear to create an improper balance between Congress and the Executive Branch \* \* \* (and) does not appear to aggrandize Congress’ power at the expense of the President’s power in an impermissible manner.”<sup>20</sup>

The committee’s intent is to set up in the Executive Office of the President a strong, effective, and independent Office of Inspector General that balances the interests of both the President and the Congress. The President must be able to carry out his or her constitutional responsibilities without undue interference. The Congress must be able to conduct effective oversight of the Executive Branch and ensure that the President is accountable to the American people.

In addition to the above provisions intended to enhance accountability and oversight, the bill also applies to the entire Executive Office of the President for the first time certain civil rights, labor and employment laws. Employees in four divisions of the Executive Office of the President are not widely covered by employment laws.

The divisions are:

<sup>20</sup>Memorandum on “Legal Analysis of Bill Which Establishes an Office of Inspector General in the Executive Office of the President,” October 22, 1993, Congressional Research Service American Law Division.

The White House Office,  
 The Office of Policy Development,  
 The Executive Residence at the White House, and  
 The Office of the Vice President.

It is the committee's opinion that all employees should have access to the same rights and remedies, whether they are employed in the private sector, in Congress, or the White House. H.R. 3452 would complete the process begun by the Congressional Accountability Act and make these laws apply to the White House as they apply in the private sector and to Congress.

H.R. 3452 is based on the same three principles which guided the drafters of the Congressional Accountability Act.

1. If a law is right for the private sector, it is right for Congress.
2. Congress will write better laws when it has to live by the same laws it imposes on the private sector.
3. The separation of powers embodied in the Constitution must be respected.

H.R. 3452 has been examined carefully and revised in some instances to ensure that it adheres to the third principle. Some provisions are different from those in the Congressional Accountability Act because of the intention of the committee to respect the separation of powers doctrine. The President would not be subject to injunctive relief. That is, the President could not be ordered to hire, promote, or reinstate an employee. The requirements of the Inspector General Act and the Chief Financial Officers Act have also been adapted so as not to impermissibly encroach on the President's core constitutional responsibilities or interfere with his carrying out those responsibilities. There is an exception to the definition of a covered employee to allow the continuation of the White House Volunteer Program.

H.R. 3452 addresses the serious lack of accountability of regular, unpaid, informal Presidential advisers. It does this by amending the definition of "special Government employee" in section 202 of title 18, United States Code. All informal advisers, paid or unpaid, of the President, the Vice President, or their respective spouses, should be accountable to the public if they function in such a manner that they are performing a Federal function. The definition of a "special Government employee" in H.R. 3452 would cover all such instances.

Public accountability is required for informal advisers. If an unpaid adviser participates in the Government's internal decision-making process, he or she should be held accountable to the American people, as are full-time or regular Federal employees. H.R. 3452 would bring under the definition of special Government employee (SGE) individuals who perform Federal functions in the White House or elsewhere in the Legislative or Executive Branches. They will therefore be required to adhere to conflict-of-interest and financial-disclosure rules.

The statutory definition of a special Government employee has not been materially revised since its enactment in 1962. Under it, a special Government employee is someone who is retained or appointed to perform duties on a full-time or part-time basis with or without compensation for no more than 130 days within 365 consecutive days. This definition does not give adequate notice of who

is covered by the definition and therefore covered by conflict-of-interest and financial-disclosure laws. Guidance issued by the Office of Government Ethics and the Department of Justice focuses on whether the advisor is in fact performing a Federal function, but there is no functional test in the statute. Neither the current law nor this Federal agency guidance adequately covers the various situations in which informal advisers in the White House have performed Federal functions and otherwise participated in the Government's decision- or policy-making process in recent years.

At the subcommittee hearing held on June 25, 1996, witnesses concurred that legislative revision of the definition of special Government employee was needed. Witnesses suggested that the definition be revised to adopt a functional test, one that concentrates on the nature of the Federal service the advisor is providing, rather than on the advisor's outside interests and affiliations.

The purpose for this legislative revision of the definition of a special Government employee is to accomplish three objectives. First, it attempts to capture informal or outside advisors who are not specifically appointed to advisory committees or part-time commissions as representatives of a non-Federal interest. Second, it uses a functional test consider the nature of the services the person is retained to provide. Third, it covers the entire Executive Branch. The revised definition of a special Government employee in H.R. 3452, in the committee's opinion, achieves these objectives.

## II. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

Representative Mica, Chairman of the House Subcommittee on Civil Service, Committee on Government Reform and Oversight, introduced H.R. 3452 on May 14, 1996. The Subcommittee on Government Management, Information and Technology, Committee on Government Reform and Oversight held a legislative hearing on H.R. 3452 on June 25, 1996.

The bill was marked up in the Subcommittee on Government Management, Information, and Technology on July 16, 1996. Five amendments were offered and accepted. Ranking Minority Member Maloney offered an amendment to the section on the definition of special Government employee that captures informal outside advisers, uses a functional test based on the nature of the services provided, and covers the entire Executive Branch. Another amendment, offered by Subcommittee Chairman Horn, made three technical corrections. Ranking Minority Member Maloney offered an "en bloc" amendment to allow: the White House Volunteer Program to continue; consideration of political affiliation and political compatibility in hiring; and the elimination of reinstatement as a remedy for employees. All three amendments were considered and adopted on a voice vote, without objection. Two other amendments were offered by Representative Maloney but were withdrawn. One was an amendment to the section on financial officers, the other proposed changing the civil rights, labor and employment laws applied by H.R. 3452 from the private sector laws to the laws already applicable to Executive Branch agencies. The legislation, as amended, passed unanimously by voice vote.

The House Committee on Government Reform and Oversight met on July 25, 1996 to consider H.R. 3452. Two amendments were of-

ferred. One, offered by Subcommittee Chairman Horn, deleted the provisions relating to the award of punitive damages. A second amendment, offered by Representative Charles F. Bass (R-NH), would establish an Inspector General (IG) in the White House. Both amendments were considered and adopted by voice vote without objection. Representative Maloney offered an amendment to the Bass amendment, to establish an IG in the White House based on the existing requirements for an IG in the House of Representatives. It was considered and rejected by voice vote. The legislation, as amended, was favorably reported to the House of Representatives unanimously by voice vote.

### III. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

On June 25, 1996, the Subcommittee on Government Management, Information, and Technology held a hearing to solicit comments from interested parties on H.R. 3452, the "Presidential and Executive Accountability Act." Witnesses testified concerning the intent of the bill; the bill's objectives; the reason for various provisions; and the need for certain changes.

The first panel consisted of Representatives Mica (R-FL) and Shays (R-CT). Mr. Mica drafted and introduced H.R. 3452. Mr. Shays drafted and introduced the Congressional Accountability Act (P.L. 104-1) and is a co-sponsor of H.R. 3452.

The second panel consisted of individuals familiar with the employment laws included in H.R. 3452 were: Gregory S. Walden, Counsel, Mayer Brown & Platt, and former Associate White House Counsel to President Bush; Sandra J. Boyd, Assistant General Counsel, Labor Policy Association; and Deanna R. Gelak, Director of Congressional Affairs, Society for Human Resource Management and Chair, Congressional Coverage Coalition. All confirmed the need for the provisions of H.R. 3452 to apply to the White House and those other divisions of the Executive Office of the President that are not widely covered by employment laws.

The last panel consisted of Franklin S. Reeder, Director, Office of Administration, Executive Office of the President, who testified for the administration on the impact H.R. 3452 would have on the Executive Office of the President.

Subcommittee Chairman Horn opened the hearing by referring to what James Madison had written in the Federalist Papers Number 57. "One of the strongest bonds by which human policy can connect the rulers and the people" and restrain the rulers from "oppressive measures" is that "they can make no law which will not have its full operation on themselves and their friends, as well as the in the great mass of society." He stated that H.R. 3452 would ensure that the White House has to live by the same laws imposed on the American people.

Mr. Mica noted that the intent of the bill was that the White House should not have any special privileges from which the private sector or Congress does not benefit. Ms. Gelak expressed surprise that the White House is exempt from the laws that apply to private companies and now to Congress, such as the minimum wage and overtime requirements of the Fair Labor Standards Act.

A discussion followed of whether current White House compliance with the Fair Labor Standards and the Family and Medical

Leave Act was satisfactory. It complies as a matter of policy with the latter but is not required to do so by law.

Mr. Reeder admitted that the four offices, the White House Office, the Office of the Vice President, the Office of Policy Development, and the Executive Residence of the White House, comprises approximately 550 employees, are not covered since they serve at the pleasure of the President. He stated that in these four offices, certain laws such as discrimination laws and the Occupational Safety and Health Act do apply as a matter of law. Others such as the Family and Medical Leave Act, apply as a matter of policy.

Mr. Horn asked whether employees in the four offices not widely covered receive overtime. Mr. Reeder responded that probably about 80 of the 550 did and that the application of the Fair Labor Standards Act to all 550 would have a significant effect on operations, just as it has had in Congress.

Ranking Minority Member Maloney indicated that H.R. 3452 may have the unintended result of forbidding the President from using political affiliation as a criterion in hiring and may make it impossible for the President to ask advice from outside experts. She suggested adding a section based on Section 502 of the Congressional Accountability Act to consider party affiliation and political compatibility in hiring practices. Mr. Shays reiterated his support for hiring people based on party affiliation and said that should be included in the bill.

Representative Maloney also focused on the provision in section 411 of the bill which would give courts or administrative bodies the authority to order the President to hire, reinstate, or promote an individual. She asked whether this was unconstitutional under the Appointments Clause of Article 1 of the Constitution concerning Presidential appointments. Mr. Mica responded that it was not the intent to interfere with the President's authority and said he would be willing to work on the legislation to ensure that it did not dictate to the President regarding hiring or firing practices.

In his testimony, Mr. Walden suggested that the definition of special Government employee, in Section 4 of H.R. 3452 should be revised to include a functional test.

At the subcommittee hearing, Mr. Horn entered into the record additional written testimony that had been received by the subcommittee.<sup>21</sup> Subsequent to the hearing, additional information was received from Gregory Walden and from Stephen D. Potts, Director, Office of Government Ethics, concerning changes to the definition of a special Government employee.

On July 25, 1996 the Committee on Government Reform and Oversight marked up H.R. 3452. Subcommittee Chairman Horn offered an amendment which deleted the "punitive damages" provisions from the bill. Representative Bass offered an amendment to add an IG to the White House, based on H.R. 3872, the "White House Inspector General Act of 1996," which he had introduced on July 23, 1996. Both were adopted on a voice vote.

<sup>21</sup>This included a July 12, 1996 letter from the United States Office of Government Ethics on the definition of a "special Government employee," and two memoranda from the Congressional Research Service American Law Division, one dated June 24, 1996, on constitutional issues relating to establishing a Chief Financial Officer in the Executive Office of the President, the other dated June 21, 1996, on the proposed provisions of H.R. 3452, the "Presidential and Executive Office Accountability Act."

Ranking Minority Member Maloney offered an amendment to the IG amendment, applying the existing House rules on the IG to the Executive Office of the President. She stated that the intent of H.R. 3452 was to treat Congress and the White House similarly. She made the point that no parallel requirement for Congress exists. The Senate has no IG and that the IG in the House is limited to financial audits, a provision which is already in H.R. 3452. The amendment was rejected on a voice vote.

Representative Flanagan (R-IL) expressed his view that for Congress to set up an IG in the White House who would report directly to Congress was an usurpation of the power of the President and not within Congress's power to require. However, if such legislation is in fact required, he felt that the amendment offered by Representative Bass is the best available because it did have checks and limitations attached to it.

At the committee mark-up, written testimony on constitutional issues related to establishing an Inspector General in the Executive Office of the President from the American Law Division of the Congressional Research Service and from the Office of Legislative Affairs, United States Department of Justice, was put into the record.<sup>22</sup>

Written testimony was also received from the Office of Legislative Affairs, Department of Justice supporting the removal of the injunctive relief provisions from the bill.<sup>23</sup>

#### IV. EXPLANATION OF THE BILL

##### A. OVERVIEW

H.R. 3452 addresses three areas of concern:

The Executive Office of the President is not subject to the same employment laws that cover private businesses and the Congress;

Problematic management practices in the Executive Office of the President; and

Informal advisors in the White House who are not accountable to the American people.

H.R. 3452 strengthens accountability and oversight at the White House. It applies to the White House the same laws that Congress made applicable to itself in the Congressional Accountability Act. It requires the President to appoint a Chief Financial Officer and an Inspector General for the Executive Office of the President. This improves financial management and ensures that waste, fraud and abuse can be prevented or detected speedily. It amends the definition of special Government employee and makes future employment laws applicable.

<sup>22</sup>The memorandum, dated October 22, 1993, concluded that encroachment by the Legislative Branch on the President's authority must be balanced by the need of Congress to be able to conduct effective oversight over the Executive Branch, and, on balance, the bill did not impermissibly encroach on the President's constitutional authority. The letter from the United States Department of Justice Office of Legal Counsel, undated but received July 24, 1996, claimed that to establish an Inspector General in the Executive Office of the President violated the separation of powers between the Executive and Legislative Branches and was not balanced by the Congress' need for effective oversight.

<sup>23</sup>Letter undated but received July 24, 1996, United States Department of Justice Office of Legislative Affairs.

As a result of comments during the subcommittee hearing, certain amendments were made to the bill. These include:

The employment provisions do not encroach on the President's authority to hire or fire by allowing injunctive relief as a remedy. Criticism was received on the injunctive relief provisions, especially as they allow reinstatement as a remedy for an aggrieved employee.

The definition of "special Government employee" is clarified to cover Presidential advisors and their work with the President. The definition of "special Government employee" is tightened by including a functional test, thus ensuring that unpaid, informal advisers are accountable to the public. Such advisers would have to comply with the conflict-of-interest statutes.

Consideration of party affiliation and political compatibility in making hiring decisions is permissible.

The acceptance of volunteer services, or occasional advice from experts, is not prohibited. An amendment was made adding volunteers to the exclusion allowed for interns.

No punitive damages can be awarded, while allowing the full range of other remedies. An amendment was made eliminating the section which had added punitive damages to the Congressional Accountability Act and those sections in the bill that had allowed punitive damages.

An Office of Inspector General shall be set up in the White House. At the committee mark-up, Chairman Clinger remarked that he "was struck, during the course of the ongoing Travel Office investigation, by a remark from the Clinton White House. When they suspected \* \* \* that there was mismanagement in their travel office, they really had no one to call, no one to carry out or explore the allegations that were made. They eventually called in the FBI and, conceivably, the IRS. The President \* \* \* should have his own Inspector General, somebody that is selected by him and reportable to him to keep an eye on the management of the Executive Office \* \* \* [The IGs] have promoted efficiency and effectiveness in the Federal Government, and \* \* \* have literally saved the taxpayers billions of dollars."

At the subcommittee hearing Franklin Reeder claimed that the Executive Office of the President could not reorganize to have one Chief Financial Officer and produce one set of audited financial statements. At the subcommittee mark-up Ranking Minority Member Maloney offered and withdrew an amendment relating to the Chief Financial Officer Act which would have changed the requirement to allow decentralized financial management in each of the twelve divisions instead of centralized financial management under one CFO as the CFO Act envisaged. It is the committee's opinion that the Executive Office of the President can comply with the CFO requirements of H.R. 3452. When the Chief Financial Officers Act became law in 1990, the report of the House Committee on Government Operations stated that:

The Committee concluded that legislating a rigid organizational structure for financial management activities would probably deprive agency heads of the flexibility required to tailor an organizational structure that best supports their assigned missions and goals, thereby hindering

the overall objective of improving financial management operations.<sup>24</sup>

Several departments include several different agencies as component units. The Departments of Agriculture, the Interior, and the Treasury are all examples of this kind of organization structure. They have succeeded in establishing a CFO structure that meets the requirements of the CFO Act. The committee is confident that the Executive Office of the President can do likewise, and has not changed the provisions regarding the Chief Financial Officer.

#### B. SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; table of contents*

The short title of this Act is the “Presidential and Executive Office Accountability Act.” The table of contents lists the nine separate sections of the bill.

##### *Section 2. Extension of certain rights and protections to Presidential offices*

Subsection (a) amends title 3, United States Code, by adding at the end a new chapter 5, containing the following sections:

### **Subchapter I. General Provisions**

#### *Section 401. Definitions*

- (1) “Board” means the Merit Systems Protection Board.
- (2) “Covered employee” means an employee of an employing office.
- (3) “Employee” includes applicants for employment and former employees.
- (4) “Employing Office” means each agency office, or other component of the Executive Office of the President; the Executive Residence at the White House; and the official residence of the Vice President.

#### *Section 402. Application of laws*

The following laws are made applicable to the Executive Office of the President as prescribed in the Act:

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.

<sup>24</sup>Report No. 101–818, Part 1, on H.R. 5687, the “Chief Financial Officer Act of 1990,” p.19, Committee on Government Operations, House of Representatives.

## **Subchapter II. Extension of rights and protections**

### **Part A**

#### *Section 411. Equal employment*

This section applies 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 to covered employees. This covers White House employees and certain other Presidential appointees. It prohibits discrimination based upon race, color, religion, sex, national origin, age (within the meaning of the Age Discrimination in Employment Act), and disability (within the meaning of section 501 of the Rehabilitation Act and sections 102 through 104 of the Americans with Disabilities Act of 1990). Employees whose rights under these laws are violated are entitled to the same remedies as private sector employees, including, where applicable, liquidated damages, and compensatory damages, excluding as a remedy the right to be hired, reinstated, or promoted.

H.R. 3452 originally would have given courts and administrative bodies the power to invoke the full range of remedies on behalf of a White House employee who could show discrimination. This would have included injunctive relief, that is, requiring that the employee be hired, reinstated, or promoted, as applicable. At the hearing, witnesses testified that giving courts or administrative bodies the power to order the President to rehire or promote an employee presented a very serious constitutional problem. The Office of Legal Counsel at the Department of Justice concluded in a letter received on July 24, 1996 that the original wording of H.R. 3452 would violate the Constitution based on the powers given the President, the Appointments Clause of Article 2 of the Constitution, and on the separation of powers doctrine.

Accordingly, H.R. 3452 was amended to limit the ability of courts to order the President to hire, reinstate, or promote any individual, while leaving intact a full range of other remedies available to aggrieved employees, such as back pay or compensatory pay. It is very narrowly drawn so as not to touch the range of substantive worker protections and procedural safeguards, it merely removes the single remedy, injunctive relief, that could violate the Constitution.

This section also contains special definitions of “covered employee” and “employing office” to ensure coverage of all Presidential employees who were previously covered by section 320 of the Government Employee Rights Act of 1991, which is repealed.

Transition rules preserve the procedures and remedies of that Act for complaints filed under that Act before the effective date of this section.

Covered employees do not include individuals whose appointment is made by and with the advice and consent of the Senate, individuals appointed to advisory committees, or members of the uniformed forces.

*Section 412. Family and Medical Leave Act of 1993*

This section applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 to White House employees who have been employed by an “employing office” for 12 months and for at least 1,250 hours of employment during the previous 12 months. Employees whose rights are violated under this section are entitled to the same remedies, including liquidated damages, as private sector employee, excluding the right to be hired, reinstated, or promoted.

*Section 413. The Fair Labor Standards Act of 1938*

Under this section, White House employees would be protected by the Fair Labor Standards Act, which regulates minimum wages and overtime pay. H.R. 3452 provides an exception to the requirements of the Fair Labor Standards Act (which prohibits individuals from volunteering their services without receiving compensation) for interns and volunteers. The exception states that interns and volunteers are not covered employees under the Fair Labor Standards Act.

The White House Volunteer Program has hundreds of participants. Tens of thousands of individuals over the decades have contributed their time and energy to the White House, in both Democratic and Republican Administrations. Most of these volunteers are senior citizens, school children, or Boy or Girl Scouts. State and local governments, as well as Federal institutions such as the National Park Service and the Smithsonian Institution, are already permitted to accept volunteer services. Allowing volunteers leaves the White House on the same footing as these other entities.

Except for employees whose schedules directly depend on the schedules of the President or Vice President, employees may not receive compensatory time in lieu of overtime. The remedy for a violation of the Fair Labor Standards Act is the same as that available to private sector employees, including liquidated damages; however, it excludes the right to be hired, reinstated, or promoted.

The President is required to issue regulations to implement this section that are the same as regulations issued by the Secretary of Labor, unless the President determines for good cause shown and stated, that modification of the Secretary’s regulations would be more effective for implementing the rights and protections under this section. The President’s regulations shall also include provisions for employees whose schedules depend directly on his or the Vice President’s schedule that are comparable to regulations issued by the Secretary covering employees who have irregular work schedules.

*Section 414. The Employee Polygraph Protection Act of 1988*

This section extends the protections of paragraphs (1), (2), and (3) of section 3 and the waiver provision of section 6(d) of the Employee Polygraph Protection Act of 1988 to White House employees. The White House would not be prohibited from requesting an employee to submit to a polygraph in connection with an ongoing investigation. The remedy for violations would be the same as provided for in the Employee Polygraph Protection Act for employees in the private sector, excluding the right to be hired, reinstated, or

promoted. The President is required to issue regulations to implement this section that are the same as regulations issued by the Secretary of Labor, unless the President determines for good cause shown and stated, that modification of the Secretary's regulations would be more effective for implementing the rights and protections under this section.

*Section 415. The Worker Adjustment and Retraining Notification Act*

This section provides that no employing office is allowed to close or order mass layoffs without giving 60 days notice to representatives of covered employees. However, there is an exception in the event that a President who does not succeed himself or herself fails to issue the required notices. In such an event no notice or waiting period is required with respect to the separation of an individual if such separation occurs pursuant to a closure or mass layoff ordered after the term of the new President commences. The individual is described as any covered employee serving pursuant to an appointment made during the term of office of the previous President, or any term, earlier than the term referred to above, during which such previous President served as President or Vice President. The remedy for a violation of this section is the same as would be provided under paragraphs (1), (2), and (4) of section 5(a) of the Worker Adjustment and Retraining Notification Act, but excluding the right to be hired, reinstated, or promoted.

The President is required to issue regulations to implement this section that are the same as regulations issued by the Secretary of Labor, unless the President determines for good cause shown and stated, that modification of the Secretary's regulations would be more effective for implementing the rights and protections under this section.

*Section 416. Veterans' Employment and Reemployment*

This section extends the protections of subsections (a) and (b) of section 4311, and sections 4312, 4313, 4316, 4317, and 4318, of title 38, United States Code to eligible employees. An eligible employee is a covered employee performing service in the uniformed services within the meaning of 38 U.S.C. § 4303(13) whose service has not been terminated under 38 U.S.C. § 4304. The remedy for a violation is the same as is provided under 38 U.S.C. § 4323(c)(1), (2)(A), and (3), but excluding the right to be hired, reinstated, or promoted.

The President is required to issue regulations to implement this section that are the same as regulations issued by the Secretary of Labor, unless the President determines for good cause shown and stated, that modification of the Secretary's regulations would be more effective for implementing the rights and protections under this section.

*Section 417. Intimidation or reprisal prohibited*

This section prohibits an employing office from intimidation or reprisal against any covered employee because the covered employee has opposed any practice made unlawful by the provisions of this chapter, or because the covered employee has initiated proceedings, made a charge, or in any way participated in a hearing

or other proceeding under this chapter. A violation can be remedied by any legal remedy available to redress the practice which the employee opposes or the violation of law which caused him or her to initiate proceedings. It excludes the right to be hired, reinstated, or promoted.

## **Part B**

### *Section 420. Public access provisions of the Americans with Disabilities Act of 1990*

This section applies the public access provisions of the Americans with Disabilities Act of 1990 to the White House and its grounds, the Old Executive Office Building, the New Executive Office Building, and any other facilities that house employees of the Executive Office of the President, to the extent that public services, programs, or activities are provided. The remedy and enforcement mechanisms for a violation are those available under sections 203 or 308 of the Americans with Disabilities Act of 1990. However, section 411 of this Act provides the exclusive remedy for employment discrimination.

## **Part C**

### *Section 425. Occupational Safety and Health Act of 1970*

This section requires employing offices and employees to comply with section 5 of the Occupational Safety and Health Act of 1970 (OSHA) and provides for remedies under section 13(a) of that Act. The Secretary of Labor has the same authority to conduct inspections and investigations as he has with respect to private employers under subsections (a), (d), (e), and (f) of section 8 of OSHA; to issue citations and notifications in accordance with sections 9 and 10 of OSHA; and to grant variances under sections 6(b)(6) and 6(d). Administrative adjudications of disputes under this section are available before the Occupational Safety and Health Review Commission, with judicial review by the United States Court of Appeals for the Federal Circuit.

The President is required to issue regulations to implement this section that are the same as regulations issued by the Secretary of Labor, unless the President determines for good cause shown and stated, that modification of the Secretary's regulations would be more effective for implementing the rights and protections under this section. This section takes effect one year after the enactment of this Act. Where new appropriations are necessary to correct a violation, the correction must be made as soon as possible but not later than the end of the fiscal year following the citation or final order.

## **Part D**

### *Section 430. The Federal Labor-Management Relations Act*

This section applies the Federal Labor Management Relations Act to the employing offices and covered employees, including ad-

ministrative proceedings before the Federal Labor Relations Authority. Judicial review shall be by the United States Court of Appeals for the Federal Circuit.

*Subsection (a). Labor-management rights*

This section makes it clear that covered employees shall not have the right to be reinstated. It takes effect one year after the date of enactment.

## **Part E**

*Section 435. Generally applicable remedies and limitations*

Covered employees who prevail in any action brought under this Act, or a qualified person with a disability who prevails with respect to a claim under section 420, may be entitled to attorney fees, expert fees, and costs in accordance with section 706(k) of the Civil Rights Act of 1964. Interest shall also be available under section 717(d). This Act does not allow any punitive damages to be awarded. The administrative and judicial procedures established by this Act are the exclusive procedures for remedying violations of the Act. However, covered employees who are veterans may also utilize the provisions of chapter 43 of title 38, United States Code, that are applicable to them. Covered employees may not receive a remedy under part A of title II unless they have exhausted the counseling and mediation procedures established pursuant to section 452 of this Act.

Except where inconsistent with definitions and exemptions provided in this Act, the definitions and exemptions in the laws made applicable by this Act shall apply. However, provisions in such laws that limit coverage based on size, number of employees, amount of business transacted, or other measures shall not apply, except for paragraphs (2) and (3) of section 2(a) of the Worker Adjustment and Retraining Notification Act.

For the purposes of this section, the definitions of “employing office” and “covered employee” in section 411 shall apply with respect to any matter to which section 411 relates.

### **Subchapter III. Administrative and judicial dispute-resolution procedures**

*Section 451. Procedures for consideration of alleged violations*

The procedures under this Act for remedying violations of part A of title II consist of counseling and mediation and the election of either an administrative remedy or a civil action remedy before a United States district court.

*Section 452. Counseling and mediation*

The President is required to establish by regulation procedures substantially similar to those under sections 402 and 403 of the Congressional Accountability Act of 1995 for counseling and mediation with respect to alleged violations of part A of title II. These procedures must be exhausted before the covered employee may pursue any further form of relief.

*Section 453. Election of proceeding*

After completing counseling and mediation, a covered employee must elect either an administrative remedy or a civil action before a United States district court. The election must be made no later than 90 days after the employee receives notice of the end of the period of mediation, but no sooner than 30 days after receiving such notice.

*Section 454. Appropriate agencies*

Complaints alleging violations of section 411 (or any related retaliation under section 417) shall be filed with the Equal Employment Opportunity Commission unless they involve a “mixed case,” and shall be processed under the same administrative procedures as complaints filed by any other Federal employee. Some cases are “mixed cases,” involving both an action that an employee of an executive agency could file with the Merit Systems Protection Board and an allegation of discrimination under section 411 (or any related retaliation under section 417). Such cases shall be filed with the Board and processed in accordance with the mixed case procedures in 5 U.S.C. §7702, except that judicial review shall lie with the United States Court of Appeals for the Federal Circuit rather than a Federal district court. Complaints alleging violations of any other section of part A of subchapter II shall be filed with the Merit Systems Protection Board.

*Section 455. Judicial review*

Judicial review of administrative decisions under this act shall lie with the United States Court of Appeals for the Federal Circuit.

*Section 456. Civil action*

The district courts of the United States shall have jurisdiction of any civil action brought under this Act. The defendant in such an action shall be the employing office alleged to have committed the violation or in which it is alleged to have occurred. Covered employees have the same right to a jury trial as a private sector employee. In any case under section 201, the court shall not inform the jury of the maximum amount of compensatory damages available under section 411(b)(1) or 411(b)(3).

*Section 457. Judicial review of regulations*

The court may review the validity of any regulation issued under this Act that is challenged in an action under section 455 or 456 in accordance with 5 U.S.C. § 706(2)(A)–(D). If the court determines that a regulation is invalid, it shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision with respect to which the challenged regulation was issued. Except as provided by this Act, the validity of regulations issued under this Act is not subject to judicial review.

*Section 458. Other judicial review prohibited*

The judicial review provided by this Act shall be the exclusive means of judicial review of matters arising under this Act.

*Section 459. Effect of failure to issue regulations*

If the President has failed to issue a regulation required by this Act, the administrative agency or court shall apply, to the extent necessary and appropriate, the most relevant substantive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

*Section 460. Expedited review of certain appeals.*

This section establishes expedited procedures for Supreme Court review of court rulings on the constitutionality of any provision of this Act. Such a ruling may be appealed directly to the Supreme Court, and the Supreme Court is required to accept jurisdiction unless it has previously ruled on the question, advance the appeal on its docket, and expedite the appeal to the greatest extent possible.

*Section 461. Payments*

Awards in and settlements of an action that commenced in a Federal district court shall be paid from the fund established by 31 U.S.C. § 1304. Awards in and settlements of an action that arise from an administrative proceeding under this Act shall be paid out of amounts otherwise appropriated or available to such office.

*Section 462. Confidentiality*

Counseling and mediation under this Act shall be strictly confidential.

*Section 463. Definitions*

In applying subchapter III, “employing office” and “covered employee” shall have the meaning given in section 411 when that section is involved.

## **Subchapter IV. Effective Date**

*Section 471. Effective Date*

Chapter 5 shall take effect one year after the date of the enactment of this Act. However, this section also requires that regulations needed to implement it shall be in effect on the effective date and makes a technical amendment to the table of chapters for title 3, United States Code.

*Section 3. Chief Financial Officer*

The President is required to appoint a Chief Financial Officer and a Deputy Chief Financial Officer for the Executive Office of the President. Both the Chief Financial Officer and the Deputy Chief Financial Officer shall meet the qualifications standards described in 31 U.S.C. § 901(a)(3). The Chief Financial Officer shall perform the same functions as a Chief Financial Officer under 31 U.S.C. § 902. The Director of the Office of Management and Budget shall prescribe regulations necessary to ensure that, to the extent practicable and appropriate, the Executive Office of the President shall be treated in the same way as an agency described in 31 U.S.C. § 901(b).

This section also makes technical and conforming amendments to 31 U.S.C. § 503(a)(7) and (8). These exempt the Chief Financial Officer and Deputy Chief Financial Officer appointed under this Act from the requirements that the Director of the Office of Management and Budget establish qualification standards for agency Chief Financial Officers and Deputy Chief Financial Officers and advise the agency head on the selection of Deputy Chief Financial Officers. The President is also required to designate an employee of the Executive Office of the President as the “agency head” for the purposes of implementing 31 U.S.C. § 902.

*Section 4. Amendment to Definition of special Government employee*

This section amends the definition of special Government employee in subsection 202(a) of title 18, United States Code. This amendment is advisable, the committee believes, because hearings before the House Committee on Government Reform and Oversight on the “Travelgate” matter have uncovered allegations that certain advisers to the President may have used their position in the White House and the staff of the Executive Office of the President to promote their own business interests, by encouraging the firing of the White House Travel Office staff. The committee believes that such advisers should have been considered as special Government employees under the current tests used to interpret section 202. However, the committee deems it advisable to amend the statute to make it completely clear that, in the future, similarly situated informal advisers would be special Government employees and therefore subject to conflict-of-interest and financial-disclosure laws.

Under this amendment, an individual would meet the definition if two criteria are present. The first is that the individual was retained, designated, appointed, or employed in the Legislative or Executive Branch of the United States Government, or in any independent agency of the United States, to perform a Federal function, (or in the government of the District of Columbia to perform a District of Columbia function). The second is that the individual, at the time of retention, is expected to perform temporary duties on a full-time or intermittent basis for a period not to exceed 130 days during any period of 365 consecutive days.

Subsection 202 (c) is amended to define “officer” or “employee” and “Federal or District function.” Such a function is defined as including the following activities:

Supervising, managing, directing, or overseeing a Federal or District of Columbia officer or employee in the performance of such officer’s or employee’s official duties.

Providing regular advice, counsel, or recommendations to the President, the Vice President, a Member of Congress, or any other Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals, as part of the Federal or District of Columbia government’s internal deliberative process.

Obligating funds of the United States or the District of Columbia.

A person who is directing, supervising, or organizing Federal or District of Columbia employees or conducting meetings as de-

scribed above can clearly be seen as performing a Federal function. It is a more difficult matter to determine when a person giving advice is also performing a Federal function. The following reflects the intent of the committee in how the functional test should be applied.

The functional test would not cover the chairman of the Democratic National Committee or Republican National Committee, or other political adviser, including the President's pollster, so long as the political or polling advice is not regularly dispensed in the context of a meeting or discussion concerning official Government policy that is part of the Government's internal deliberative process.

By "internal," the committee's intent is to exclude advice given in a public forum.

By "deliberative process," the committee's intent is to exclude one-on-one discussions with the President, Vice President, or similar high-level official. One example would be a meeting with the head of the AFL-CIO or Chamber of Commerce, where no Government decision is being made or discussed among Government employees with decision-making authority or other responsibility concerning the matter. This would allow others to be present when the head of the AFL-CIO meets with the President.

By "regular," the committee's intent is to exclude any person from the coverage of the term who participates in only a single meeting, or only rarely meets, with the President or other Federal official.

The committee does not intend to make any change in the substance of the coverage of § 202(a) to military personnel.

A new subsection 202(f) is added. It serves two purposes. First, it continues the present exemption that states that enlisted members of the Armed Forces are not to be considered "officers or employees" or "special Government employees" for purposes of these conflicts of interest statutes. Second, it includes in the statute for the first time language reflecting longstanding interpretations that a special Government employee does not include an individual who is retained specifically to act as a representative of a non-Federal or non-District of Columbia interest on a Government advisory body. Such a body includes an advisory committee established pursuant to the Federal Advisory Committee Act,<sup>25</sup> or any similarly established committee whose meetings generally are open to the public.

#### *Section 5. Applicability of future employment laws*

Future Federal laws regulating private sector employment shall apply to "employing offices" and "covered employees" under section 401 unless such laws expressly exempt the White House and cite this section.

#### *Section 6. Repeal of Section 320 of the Government Employee Rights Act of 1991*

This section repeals section 320 of the Government Employee Rights Act of 1991, effective one year after the enactment of this Act. Complaints filed pursuant to the Government Employee

<sup>25</sup> 5 U.S.C. App. 1.

Rights Act of 1991 before the effective date of this Act shall be processed in accordance with that Act.

*Section 7. Political Affiliation*

This section allows for consideration of political affiliation in the hiring process. H.R. 3452 originally did not include language giving the President the right to hire and fire based on party affiliation and political compatibility. The Congressional Accountability Act, upon which H.R. 3452 is based, did include this specific provision. An amendment was added at the subcommittee hearing to add a new section to the bill, modeled on the Congressional Accountability Act, to clarify the intent of the bill by explicitly allowing consideration of political affiliation in hiring. This provision is intended to make it clear that considering political affiliation in hiring is not a violation of section 411 of this Act with respect to employment decisions.

*Section 8. Establish an Office of Inspector General in the Executive Office of the President*

*Subsection 8(a)*

This subsection amends Section 11 of the Inspector General Act of 1978 to establish an Office of Inspector General in the Executive Office of the President.

*Subsection 8(b)*

The President is required to appoint an Inspector General not later than 120 days after the effective date of subsection 8(d).

*Subsection 8(c)*

This adds a subsection to the applicable section of the U.S. Code, and renumbers the succeeding subsections. Subsection 8H includes special provisions concerning the Inspector General of the Executive Office of the President. It specifies that the IG will be under the direction and control of the President with respect to activities which could be construed as interfering with the President's constitutional authority or the national interest. The President can prohibit the IG from carrying out investigative activity with respect to such information. He can do this if the disclosure of the information would interfere with the core functions of the constitutional responsibilities of the President; and if such prohibition is necessary to prevent disclosure of that information.

The President must notify the IG of his or her decision within 30 days. In turn, within 30 days after receiving the notice, the IG must transmit a copy of the notice to each of the chairmen and ranking minority members of the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and other appropriate committees or subcommittees of Congress.

The IG must submit semiannual reports to the President as other IGs do to their department or agency heads. The report must then be transmitted to Congress within 30 days after receipt.

*Subsection 8(d). Effective date*

The provisions of this subsection shall take effect on January 21, 1997.

## V. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A), of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

## VI. BUDGET ANALYSIS AND PROJECTIONS

This act provides for new authorizations. Consequently the provisions of section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (pay-as-you-go-procedures) are applicable.

## VII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 5, 1996.*

Hon. WILLIAM F. CLINGER, Jr.,  
*Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3452, the Presidential and Executive Office Accountability Act.

Because enacting this legislation could affect direct spending, pay-as-you-go procedures would apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

Enclosure.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3452.
2. Bill title: Presidential and Executive Office Accountability Act.
3. Bill status: As ordered reported by the House Committee on Government Reform and Oversight on July 25, 1996.
4. Bill purpose: H.R. 3452 would apply 11 employee protection laws to the 12 agencies and offices that comprise the Executive Office of the President (EOP). The bill also would establish within the EOP both a chief financial officer (CFO) and an Office of the Inspector General (OIG), and would amend the definition of special government employee. The application of the employee protection laws is nearly identical to Public Law 104-1, which applied these same laws to the legislative branch.

The creation of the OIG would not take effect until January 21, 1997. The extension of the workplace protection laws to EOP employees and the repeal of section 320 of the Government Employee

Rights Act of 1991 would take effect one year after enactment. All other provisions would take effect upon enactment.

5. Estimated cost to the Federal Government: Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3452 would cost about \$2 million in fiscal year 1997, about \$3 million in fiscal year 1998, and about \$4 million in each of fiscal years 1999 through 2002. These costs would result primarily from applying the Inspector General (IG) Act to the EOP. They would also include costs for applying the CFO Act in the EOP, applying both the Fair Labor Standards Act of 1938 (FLSA) and labor-management relations provisions to Title 3 employees, developing regulations to implement the employee protection laws, establishing administrative and judicial dispute-resolution procedures, and surveying and modifying EOP facilities to conform with the Americans with Disabilities Act (ADA) requirements. The estimated budgetary effects of the bill are summarized in the following table.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated authorization level .....	2	3	4	4	4	4
Estimated outlays .....	2	3	4	4	4	4

#### 6. Basis of estimate:

**Office of the Inspector General.**—The primary budgetary impact of H.R. 3452 would stem from applying the Inspector General Act of 1978 to the EOP. Based on the costs of the existing OIGs, CBO estimates that the new OIG would cost less than \$0.5 million in fiscal year 1997, between \$1 million and \$1.5 million in fiscal year 1998, and between \$1.5 million and \$2 million each year thereafter. The estimate assumes that the inspector general would be appointed and approved by the Senate by the end of fiscal year 1997, and that to meet the act's responsibilities for conducting audits and investigations, the office would require about 12 employees, with additional costs to contract with a private accounting firm to audit the EOP's annual financial statements.

**Chief Financial Officer.**—The bill also would apply, to the extent practicable and appropriate, the provisions of the Chief Financial Officers Act to the EOP. The bill would require the Director of the Office of Management and Budget (OMB) to prescribe the necessary regulations to implement the CFO Act in the EOP. Based on the experience of existing agency CFOs and on information provided by the Office of administration, OMB, and the General Accounting Office, CBO estimates that the CFO provisions would increase costs by less than \$500,000 a year, beginning in fiscal year 1997. This estimate assumes that the President would appoint the CFO and deputy CFO by the middle of fiscal year 1997 and that either OMB or the Office of Administration would perform the main financial reporting responsibilities required under the CFO Act.

**Fair Labor Standards Act.**—For the most part, employees of the EOP, who are classified in one of two categories, are already covered by the employee protection laws. About 550 EOP employees—

including individuals that work in the Office of the White House, the Office of the Vice President, the Executive Residence, and the Office of Policy Development—are covered by Title 3 of the U.S. Code. Approximately 1,150 other EOP employees are covered by Title 5 of the U.S. Code. Of the 11 laws cited in H.R. 3452, Title 3 employees are already covered—either by law or as a matter of policy—by seven. The four exceptions are the Employee Polygraph Protection Act of 1988, the FLSA, the Worker Adjustment and Retraining Notification Act, and the labor-management provisions of Chapter 71 of Title 5. Title 5 employees are covered by 10 of the 11 laws, with the lone exception of the Employee Polygraph Protection Act of 1988.

The FLSA requires employers to pay at least the minimum wage specified in law and to compensate certain employees for overtime in excess of 40 hours in one week. H.R. 3452 would require EOP employers to pay affected Title 3 employees according to those standards. (The bill would exclude interns and volunteers from this coverage.) For employees whose work schedules directly depend upon the schedule of the President or Vice President, the bill would allow EOP employers to grant compensatory time off at a rate of one and a half hours per hour of overtime worked in lieu of overtime pay if the employee so chooses. Thus, this provision would result in some combination of increased spending by EOP employers because of overtime pay, and increased time off for certain employees who opt for compensatory time instead of overtime pay. The impact of FLSA ultimately would depend on how the President defines which employees are to be covered by FLSA and which covered employees qualify for compensatory time off, as well as whether employees would choose overtime pay or compensatory time off.

Of the four Title 3 agencies, only the Executive Residence regularly pays overtime to its employees. Thus, any effect of this provision would be on the approximately 450 other employees covered by Title 3. Based on the Department of Labor classifications for exempt employees and on information provided by the Office of Administration, we expect that about 40 percent of the remaining title 3 employees—predominantly in the Office of the White House—would be eligible for overtime pay. The three offices do not know how much overtime these employees currently work. However, assuming that the individuals, on average, work no more than two to three hours of overtime a week, the total costs to the EOP to comply with the provision would still be less than \$500,000 a year through fiscal year 2002.

**Federal Labor-Management Relations.**—The bill would extend to Title 3 employees the same right that Title 5 employees currently have to organize, form bargaining units, select a union representative, negotiate with employers, and bring grievances to the Federal Labor Relations Authority (FLRA). If employees in the offices of the White House, vice President, Executive Residence, and Policy Development elected to organize and force their employers to negotiate with various bargaining units, the employers would incur additional staff costs in order to meet their responsibilities under the law. The employees within the Title 5 agencies of the EOP have so far elected not to form a union. Based on the experience of federal agencies whose employees have elected to unionize, it appears

that an agency with one hundred to several hundred employees could spend \$100,000 to \$200,000 per year for legal assistance and part of the time of personnel officers who must work with the bargaining units. CBO cannot predict to what extent Title 3 employees would decide to take advantage of their opportunity to organize; however, we do not expect that the costs would exceed \$500,000 in any one year.

**Administrative and Judicial Dispute-Resolution Procedures.**—H.R. 3452 would require the President to establish procedures substantially similar to those included in the Congressional Accountability Act for EOP employees to file complaints and answer questions and to receive counseling and mediation for alleged violations of the bill's employee protection laws. Depending on the outcome of the counseling and mediation steps, an employee may elect to further pursue the dispute in either an administrative hearing before the Merit Systems Protection Board (MSPB), or in the case of a violation of civil rights, the Equal Employment Opportunity Commission (EEOC), or by filing suit in a district court. Title 5 employees are already entitled to an administrative or judicial hearing, as well as to a judicial appeal. Also, the Office of Administration already provides some counseling and assistance to EOP employees. Thus, based on the Office of Compliance's brief experience with the legislative branch, CBO estimates that complying with the bill's dispute resolution procedures would cost the EOP between \$500,000 and \$1 million each year, beginning in fiscal year 1998. This estimate assumes six to eight additional full-time employees, which would include counselors, attorneys, and support staff, as well as additional costs for outside mediators.

**Other Costs.**—Most of the laws that would be applied by H.R. 3452 already govern employees of the EOP either through existing statute or as a matter of policy. In general, therefore, they are not likely to result in additional costs. However, requiring that EOP buildings conform with ADA standards would likely result in some minor modifications from the current Uniform Federal Accessibility Standards (UFAS), such as a greater use of signs with printing in Braille and the provision of text telephone and other devices to enhance communication access. To ensure compliance equivalent to existing private-sector requirements, either the General Services Administration (GSA), which controls the EOP properties, or an outside company would need to survey the properties and make any necessary modifications. Based on information provided by GSA, which has a revolving five-year plan to make necessary ADA modifications in GSA-controlled space, and based on the experience of the legislative branch, we do not expect such costs to be significant.

H.R. 3452 also would clarify the definition of special government employee (SGE) to both include certain advisors not covered under current law, as well as to exclude other advisors. SGEs are individuals who provide temporary services to the federal government, such as an independent counsel or a member of a member of a federal advisory council. These individuals are required to submit forms reporting on their finances and on potential conflicts of interest. On the one hand, the bill would clarify that individuals who provide regular advice or counsel to the President, Vice President,

a Member of Congress, or a federal judge are to be considered SGEs. On the other hand, the bill would clarify that an individual who serves on a federal committee with solely a nonfederal interest is not to be considered an SGE. Based on information provided by the Office of Government Ethics, we expect that the changes would have little impact on both the total number of individuals classified as SGEs and on the total costs to agencies and Congressional offices to review any additional disclosure forms that might arise from the bill's clarification.

Finally, the bill would require the President to develop regulations for implementing many of the bill's employee protection laws. Based on the experience of the Office of Compliance, which is still in the process of writing its regulations, CBO estimates that the largely one-time cost to the EOP would be between \$500,000 and \$1 million in fiscal year 1997. This estimate assumes that this task would require the equivalent of seven to 10 full-time employees for up to 12 months.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 3452 could affect direct spending. Thus, pay-as-you-go procedures would apply to the bill.

The bill would allow a district court to order a remedy that could include compensation. Under H.R. 3452, after an employee has exhausted the procedures for counseling and mediation, the individual may elect either an administrative or a judicial hearing. In the case of an administrative hearing before either the MSPB, or if the complaint alleges discriminatory practice, the EEOC, the employee could receive compensation if successful. However, the bill would require that any such payment be made out of an agency's appropriated funds. In the case of a judicial hearing, the payment would be made from the Claims, Judgments, and Relief Acts fund, a mandatory account. Title 5 employees are already covered by 10 of the bill's 11 workplace laws and can seek judicial relief under current law. Title 3 employees are covered by 7 of these laws, and only the application of FLSA is likely to affect awards of compensation to them. Therefore, we expect that H.R. 3452 would not result either in a significant increase in complaints or in direct spending. The estimated pay-as-you-go impact is summarized in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays .....	0	0	0
Change in receipts .....	0	NA	0

8. Estimated impact on State, local, and tribal governments: H.R. 3452 contains no intergovernmental mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), and would not affect the budgets of State, local, or tribal governments.

9. Estimated impact on the private sector: The bill contains no new private-sector mandates as defined by Public Law 104-4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate—John R. Righter; impact on State, local, and tribal governments—Theresa Gullo; impact on the private sector: Matthew Eyles.

12. Estimate approved by: Paul A Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

VIII. INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary impact on prices and costs in the operation of the national economy.

IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 3, UNITED STATES CODE**

Chap.	Sec.
<b>1. Presidential Elections and Vacancies .....</b>	<b>1</b>
* * * * *	
<b>5. <i>Extension of Certain Rights and Protections to Presidential Offices</i> .....</b>	<b>401</b>
* * * * *	

**CHAPTER 5—EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES**

*SUBCHAPTER I—GENERAL PROVISIONS*

- Sec.  
401. *Definitions.*  
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 RE-TRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION*

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.*  
412. *Rights and protections under the Family and Medical Leave Act of 1993.*  
413. *Rights and protections under the Fair Labor Standards Act of 1938.*  
414. *Rights and protections under the Employee Polygraph Protection Act of 1988.*  
415. *Rights and protections under the Worker Adjustment and Retraining Notification Act.*  
416. *Rights and protections relating to veterans' employment and reemployment.*  
417. *Prohibition of intimidation or reprisal.*

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

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

*PART C—OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970*

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

## PART D—LABOR-MANAGEMENT RELATIONS

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

## PART E—GENERAL

435. Generally applicable remedies and limitations.

## SUBCHAPTER III—ADMINISTRATIVE AND JUDICIAL DISPUTE-RESOLUTION PROCEDURES

- 451. Procedure for consideration of alleged violations.
- 452. Counseling and mediation.
- 453. Election of proceeding.
- 454. Appropriate agencies.
- 455. Judicial review.
- 456. Civil action.
- 457. Judicial review of regulations.
- 458. Other judicial review prohibited.
- 459. Effect of failure to issue regulations.
- 460. Expedited review of certain appeals.
- 461. Payments.
- 462. Confidentiality.
- 463. Definitions.

## SUBCHAPTER IV—EFFECTIVE DATE

471. Effective date.

**Subchapter I—General Provisions****SEC. 401. DEFINITIONS.**

Except as otherwise specifically provided in this chapter, as used in this chapter:

- (1) BOARD.—The term “Board” means the Merit Systems Protection Board under chapter 12 of title 5.
- (2) COVERED EMPLOYEE.—The term “covered employee” means any employee of an employing office.
- (3) EMPLOYEE.—The term “employee” includes an applicant for employment and a former employee.
- (4) EMPLOYING OFFICE.—The term “employing office” means—
  - (A) each office, agency, or other component of the Executive Office of the President;
  - (B) the Executive Residence at the White House; and
  - (C) the official residence (temporary or otherwise) of the Vice President.

**SEC. 402. APPLICATION OF LAWS.**

The following laws shall apply, as prescribed by this chapter, to all employing offices (including employing offices within the meaning of section 411, to the extent prescribed therein):

- (1) The Fair Labor Standards Act of 1938.
- (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 Family and Medical Leave Act of 1993.
- (6) The Occupational Safety and Health Act of 1970.
- (7) Chapter 71 (relating to Federal service labor-management relations) of title 5.
- (8) The Employee Polygraph Protection Act of 1988.
- (9) The Worker Adjustment and Retraining Notification Act.
- (10) The Rehabilitation Act of 1973.

(11) Chapter 43 (relating to veterans' employment and reemployment) of title 38.

**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.**

(a) *DISCRIMINATORY PRACTICES PROHIBITED.*—All personnel actions affecting covered employees shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 703 of the Civil Rights Act of 1964;

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967; or

(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 and sections 102 through 104 of the Americans with Disabilities Act of 1990.

(b) *REMEDY.*—

(1) *CIVIL RIGHTS.*—The remedy for a violation of subsection (a)(1) shall be—

(A) such damages as would be appropriate if awarded under section 706(g) of the Civil Rights Act of 1964; and

(B) such compensatory damages as would be appropriate if awarded under section 1977 of the Revised Statutes, or as would be appropriate if awarded under sections 1977A(a)(1), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes.

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

(A) such damages as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967; and

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

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

(3) *DISABILITIES DISCRIMINATION.*—The remedy for a violation of subsection (a)(3) shall be—

(A) such damages as would be appropriate if awarded under section 505(a)(1) of the Rehabilitation Act of 1973 or section 107(a) of the Americans with Disabilities Act of 1990; and

(B) such compensatory damages as would be appropriate if awarded under sections 1977A(a)(2), 1977A(a)(3),

1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes.

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

(1) *COVERED EMPLOYEE.*—The term “covered employee” means any employee of a unit of the executive branch, including the Executive Office of the President, whether appointed by the President or by any other appointing authority in the executive branch, who is not otherwise entitled to bring an action under any of the statutes referred to in subsection (a), but does not include any individual—

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

(B) who is appointed to an advisory committee, as defined in section 3(2) of the Federal Advisory Committee Act; or

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

(2) *EMPLOYING OFFICE.*—The term “employing office”, with respect to a covered employee, means the office, agency, or other entity in which the covered employee is employed (or sought employment or was employed in the case of an applicant or former employee, respectively).

(d) *APPLICABILITY.*—Subsections (a) through (c), and section 417 (to the extent that it relates to any matter under this section), shall apply with respect to violations occurring on or after the effective date of this chapter.

**SEC. 412. RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993.**

(a) *FAMILY AND MEDICAL LEAVE RIGHTS AND PROTECTIONS PROVIDED.*—

(1) *IN GENERAL.*—The rights and protections established by sections 101 through 105 of the Family and Medical Leave Act of 1993 shall apply to covered employees.

(2) *DEFINITIONS.*—For purposes of the application described in paragraph (1)—

(A) the term “employer” as used in the Family and Medical Leave Act of 1993 means any employing office; and

(B) the term “eligible employee” as used in the Family and Medical Leave Act of 1993 means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

(b) *REMEDY.*—The remedy for a violation of subsection (a) shall be such damages, including liquidated damages, as would be appropriate if awarded under paragraph (1) of section 107(a) of the Family and Medical Leave Act of 1993.

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

(a) *FAIR LABOR STANDARDS.*—

(1) *IN GENERAL.*—The rights and protections established by subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 shall apply to covered employees.

(2) *INTERNS AND VOLUNTEERS.*—For the purposes of this section, the term “covered employee” does not include an intern or a volunteer as defined in regulations under subsection (c).

(3) *COMPENSATORY TIME.*—Except as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation.

(b) *REMEDY.*—The remedy for a violation of subsection (a) shall be such damages, including liquidated damages, as would be appropriate if awarded under section 16(b) of the Fair Labor Standards Act of 1938.

(c) *REGULATIONS TO IMPLEMENT SECTION.*—

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

(2) *AGENCY REGULATIONS.*—Except as provided in paragraph (3), the regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

(3) *IRREGULAR WORK SCHEDULES.*—The President shall issue regulations for covered employees whose work schedules directly depend on the schedule of the President or the Vice President that shall be comparable to the provisions in the Fair Labor Standards Act of 1938 that apply to employees who have irregular work schedules.

**SEC. 414. RIGHTS AND PROTECTIONS UNDER THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988.**

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

(b) *REMEDY.*—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under section 6(c)(1) of the Employee Polygraph Protection Act of 1988.

(c) *REGULATIONS TO IMPLEMENT SECTION.*—

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

(2) *AGENCY REGULATIONS.*—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) except insofar as the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

**SEC. 415. RIGHTS AND PROTECTIONS UNDER THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.**

(a) *WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), no employing office shall be closed or mass layoff ordered within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to representatives of covered employees or, if there are no representatives, to covered employees.*

(2) *EXCEPTION.*—

(A) *IN GENERAL.*—*In the event that a President (hereinafter in this paragraph referred to as the “previous President”) does not succeed himself in office as a result of the election of a new President, no notice or waiting period shall be required under paragraph (1) with respect to the separation of any individual described in subparagraph (B), if such separation occurs pursuant to a closure or mass layoff ordered after the term of the new President commences.*

(B) *DESCRIPTION OF INDIVIDUALS.*—*An individual described in this subparagraph is any covered employee serving pursuant to an appointment made during—*

(i) *the term of office of the previous President; or*

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

(b) *REMEDY.*—*The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under paragraphs (1), (2), and (4) of section 5(a) of the Worker Adjustment and Retraining Notification Act.*

(c) *REGULATIONS TO IMPLEMENT SECTION.*—

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

(2) *AGENCY REGULATIONS.*—*The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except insofar as the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.*

**SEC. 416. RIGHTS AND PROTECTIONS RELATING TO VETERANS' EMPLOYMENT AND REEMPLOYMENT.**

(a) *EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES.*—

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

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

(B) *deny to an eligible employee reemployment rights within the meaning of sections 4312 and 4313 of title 38; or*

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

(2) *DEFINITION.*—For purposes of this section, the term “eligible employee” means a covered employee performing service in the uniformed services, within the meaning of section 4303(13) of title 38, whose service has not been terminated upon the occurrence of any of the events enumerated in section 4304 of such title.

(b) *REMEDY.*—The remedy for a violation of subsection (a) shall be such damages as would be appropriate if awarded under paragraphs (1) and (2)(A) of section 4323(c) of title 38.

(c) *REGULATIONS TO IMPLEMENT SECTION.*—

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

(2) *AGENCY REGULATIONS.*—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

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

(a) *IN GENERAL.*—It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this chapter.

(b) *REMEDY.*—A violation of subsection (a) may be remedied by any legal remedy available to redress the practice opposed by the covered employee or other violation of law as to which the covered employee initiated proceedings, made a charge, or engaged in other conduct protected under subsection (a).

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

**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.**

(a) *RIGHTS AND PROTECTIONS.*—The rights and protections against discrimination in the provision of public services and accommodations established by sections 201, 202, and 204, and sections 302, 303, and 309, of the Americans with Disabilities Act of 1990 shall apply, to the extent that public services, programs, or activities are provided, with respect to the White House and its appurtenant grounds and gardens, the Old Executive Office Building, the New Executive Office Buildings, and any other facility to the extent

that offices are provided for employees of the Executive Office of the President.

(b) *REMEDY.*—The remedy for a violation of subsection (a) shall be such remedy as would be appropriate if awarded under section 203 or 308 of the Americans with Disabilities Act of 1990, as the case may be, except that, with respect to any claim of employment discrimination, the exclusive remedy shall be under section 411 of this title. A remedy under the preceding sentence shall be enforced in accordance with applicable provisions of such section 203 or 308, as the case may be.

(c) *DEFINITION.*—For purposes of the application under this section of the Americans with Disabilities Act of 1990, the term “public entity” as used in such Act, means, to the extent that public services, programs, or activities are provided, the White House and its appurtenant grounds and gardens, the Old Executive Office Building, the New Executive Office Buildings, and any other facility to the extent that offices are provided for employees of the Executive Office of the President.

## **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.**

#### **(a) OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS.—**

(1) *IN GENERAL.*—Each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970.

(2) *DEFINITIONS.*—For purposes of the application under this section of the Occupational Safety and Health Act of 1970—

(A) the term “employer” as used in such Act means an employing office; and

(B) the term “employee” as used in such Act means a covered employee.

(b) *REMEDY.*—The remedy for a violation of subsection (a) shall be an order to correct the violation, including such order as would be appropriate if issued under section 13(a) of the Occupational Safety and Health Act of 1970.

#### **(c) PROCEDURES.—**

(1) *REQUESTS FOR INSPECTIONS.*—Upon written request of any employing office or covered employee, the Secretary of Labor shall have the authority to inspect and investigate places of employment under the jurisdiction of employing offices in accordance with subsections (a), (d), (e), and (f) of section 8 of the Occupational Safety and Health Act of 1970.

(2) *CITATIONS, NOTICES, AND NOTIFICATIONS.*—The Secretary of Labor shall have the authority, in accordance with sections 9 and 10 of the Occupational Safety and Health Act of 1970, to issue—

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

(B) a notification to any employing office that the Secretary of Labor believes has failed to correct a violation for

which a citation has been issued within the period permitted for its correction.

(3) *HEARINGS AND REVIEW.*—If after issuing a citation or notification, the Secretary of Labor determines that a violation has not been corrected—

(A) the citation and notification shall be deemed a final order (within the meaning of section 10(b) of the Occupational Safety and Health Act of 1970) if the employer fails to notify the Secretary of Labor within 15 days (excluding Saturdays, Sundays, and Federal holidays) after receipt of the notice that he intends to contest the citation or notification; or

(B) opportunity for a hearing before the Occupational Safety and Health Review Commission shall be afforded in accordance with section 10(c) of the Occupational Safety and Health Act of 1970, if the employer gives timely notice to the Secretary that he intends to contest the citation or notification.

(4) *VARIANCE PROCEDURES.*—An employing office may request from the Secretary of Labor an order granting a variance from a standard made applicable by this section, in accordance with sections 6(b)(6) and 6(d) of the Occupational Safety and Health Act of 1970.

(5) *JUDICIAL REVIEW.*—Any person or employing office aggrieved by a final decision of the Occupational Safety and Health Review Commission under paragraph (3) or the Secretary of Labor under paragraph (4) may file a petition for review with the United States Court of Appeals for the Federal Circuit pursuant to section 455.

(6) *COMPLIANCE DATE.*—If new appropriated funds are necessary to correct a violation of subsection (a) for which a citation is issued, or to comply with an order requiring correction of such a violation, correction or compliance shall take place as soon as possible, but not later than the end of the fiscal year following the fiscal year in which the citation is issued or the order requiring correction becomes final and not subject to further review.

(d) *REGULATIONS TO IMPLEMENT SECTION.*—

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

(2) *AGENCY REGULATIONS.*—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the President may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

(3) *EMPLOYING OFFICE RESPONSIBLE FOR CORRECTION.*—The regulations issued under paragraph (1) shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation.

## **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.**

(a) *LABOR-MANAGEMENT RIGHTS.*—Chapter 71 of title 5 shall apply to employing offices and to covered employees and representatives of those employees, except that covered employees shall not have a right to reinstatement pursuant to section 7118(a)(7)(C) or 7123 of title 5.

(b) *DEFINITION.*—For purposes of the application under this section of chapter 71 of title 5, the term “agency” as used in such chapter means an employing office.

## **PART E—GENERAL**

### **SEC. 435. GENERALLY APPLICABLE REMEDIES AND LIMITATIONS.**

(a) *ATTORNEY’S FEES.*—If a covered employee, with respect to any claim under this chapter, or a qualified person with a disability, with respect to any claim under section 420, is a prevailing party in any proceeding under section 453(1), 455, or 456, the administrative agency or court, as the case may be, may award attorney’s fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

(b) *INTEREST.*—In any proceeding under section 453(1), 455, or 456, the same interest to compensate for delay in payment shall be made available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

(c) *CIVIL PENALTIES AND PUNITIVE DAMAGES.*—Except as otherwise provided in this chapter, no civil penalty or punitive damages may be awarded with respect to any claim under this chapter.

(d) *EXCLUSIVE PROCEDURE.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), no person may commence an administrative or judicial proceeding to seek a remedy for the rights and protections afforded by this chapter except as provided in this chapter.

(2) *VETERANS.*—A covered employee under section 416 may also utilize any provisions of chapter 43 of title 38 that are applicable to that employee.

(e) *SCOPE OF REMEDY.*—Only a covered employee who has undertaken and completed the procedures described in section 452 may be granted a remedy under part A of this subchapter.

(f) *CONSTRUCTION.*—

(1) *DEFINITIONS AND EXEMPTIONS.*—Except where inconsistent with definitions and exemptions provided in this chapter, the definitions and exemptions in the laws made applicable by this chapter shall apply under this chapter.

(2) *SIZE LIMITATIONS.*—Notwithstanding paragraph (1), provisions in the laws made applicable under this chapter (other than paragraphs (2) and (3) of section 2(a) of the Worker Adjustment and Retraining Notification Act) determining coverage based on size, whether expressed in terms of numbers of employees, amount of business transacted, or other measure, shall not apply in determining coverage under this chapter.

(g) *DEFINITIONS RELATING TO SECTION 411.*—For purposes of applying this section with respect to any practice or other matter to which section 411 relates, the terms “employing office” and “covered employee” shall each be considered to have the meaning given to it by such section.

### **Subchapter III—Administrative and Judicial Dispute-Resolution Procedures**

#### **SEC. 451. PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.**

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

- (1) counseling and mediation as provided in section 452; and
- (2) election, as provided in section 453, of either—
  - (A) an administrative proceeding as provided in section 453(1) and judicial review as provided in section 455; or
  - (B) a civil action in a district court of the United States as provided in section 456.

#### **SEC. 452. COUNSELING AND MEDIATION.**

(a) *IN GENERAL.*—The President shall by regulation establish procedures substantially similar to those under sections 402 and 403 of the Congressional Accountability Act of 1995 for the counseling and mediation of alleged violations of a law made applicable under part A of subchapter II.

(b) *EXHAUSTION REQUIREMENT.*—A covered employee who has not exhausted counseling and mediation under subsection (a) shall be ineligible to make any election under section 453 or otherwise pursue any further form of relief under this subchapter.

#### **SEC. 453. ELECTION OF PROCEEDING.**

Not later than 90 days after a covered employee receives notice of the end of the period of mediation, but no sooner than 30 days after receipt of such notification, such covered employee may either—

- (1) file a complaint with the appropriate administrative agency, as determined under section 454; or
- (2) file a civil action in accordance with section 456 in the United States district court for the district in which the employee is employed or for the District of Columbia.

#### **SEC. 454. APPROPRIATE AGENCIES.**

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

(b) *EXCEPTIONS.*—

(1) *DISCRIMINATION.*—For purposes of any action arising under section 411 (or any action alleging intimidation, reprisal, or discrimination under section 417 relating to any practice made unlawful under section 411), the appropriate agency shall be the Equal Employment Opportunity Commission, and the complaint in any such action shall be processed under the same administrative procedures as any such complaint filed by any other Federal employee.

(2) *MIXED CASES.*—However, in the case of any covered employee (within the meaning of section 411(c)(1)) who has been affected by an action which an employee of an executive agency

may appeal to the Board and who alleges that a basis for the action was discrimination prohibited by section 411 (or any action alleging intimidation, reprisal, or discrimination under section 417 relating to any practice made unlawful under section 411), the initial appropriate agency shall be the Board, and such matter shall thereafter be processed in accordance with section 7702 (a)–(d) (disregarding paragraph (2) of such subsection (a)) and (f) of title 5.

(3) **JUDICIAL REVIEW.**—Notwithstanding any other provision of law (including any provision of law referenced in paragraph (1) or (2)), judicial review of any administrative decision under this subsection shall be by the court specified in section 455.

**SEC. 455. JUDICIAL REVIEW.**

(a) **IN GENERAL.**—The United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under this chapter of—

- (1) an appropriate agency (as determined under section 454);
- (2) the Federal Labor Relations Authority under chapter 71 of title 5, notwithstanding section 7123 of such title; or
- (3) the Secretary of Labor or the Occupational Safety and Health Review Commission, made under part C of subchapter II.

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

**SEC. 456. CIVIL ACTION.**

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

(b) **PARTIES.**—The defendant shall be the employing office alleged to have committed the violation, or in which the violation is alleged to have occurred.

(c) **JURY TRIAL.**—Any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made applicable by this chapter. In any case in which a violation of section 411 is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 411(b)(1) or 411(b)(3).

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

In any proceeding brought under section 455 or 456 in which the application of a regulation issued under this chapter is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued. Except as provided in this section, the validity of regulations issued under this chapter is not subject to judicial review.

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

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

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

*In any proceeding under section 453(1), 455, or 456, if the President has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the administrative agency or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.*

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

*(a) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order of a court upon the constitutionality of any provision of this chapter.*

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

**SEC. 461. PAYMENTS.**

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

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

*(2) out of amounts otherwise appropriated or available to such office, if it arises out of an administrative proceeding under this chapter (or any appeal therefrom).*

**SEC. 462. CONFIDENTIALITY.**

*(a) COUNSELING.—All counseling under section 452 shall be strictly confidential, except that, with the consent of the covered employee, the employing office may be notified.*

*(b) MEDIATION.—All mediation under section 452 shall be strictly confidential.*

**SEC. 463. DEFINITIONS.**

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

**Subchapter IV—Effective Date****SEC. 471. EFFECTIVE DATE.**

*This chapter shall take effect 1 year after the date of the enactment of the Presidential and Executive Office Accountability Act.*

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TITLE 31, UNITED STATES CODE

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CHAPTER 5—OFFICE OF MANAGEMENT AND BUDGET

\* \* \* \* \*

SUBCHAPTER I—ORGANIZATION

\* \* \* \* \*

§ 503. Functions of Deputy Director for Management

(a) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish governmentwide financial management policies for executive agencies and shall perform the following financial management functions:

(1) \* \* \*

\* \* \* \* \*

(7) Develop and maintain qualification standards for agency Chief Financial Officers and for agency Deputy Chief Financial Officers appointed under sections 901 and 903, [respectively.] respectively (excluding any officer appointed under section 901(c) or 903(c)).

(8) Provide advice to agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial [Officers.] Officers (excluding any officer appointed under section 901(c) or 903(c)).

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Subchapter VI—Property Management

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CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS

§ 901. Establishment of agency Chief Financial Officers

(a) \* \* \*

\* \* \* \* \*

(c)(1) There shall be within the Executive Office of the President a Chief Financial Officer, who shall be appointed by the President from among individuals meeting the standards described in subsection (a)(3).

(2) The Chief Financial Officer under this subsection shall have the same authority and shall perform the same functions as apply in the case of a Chief Financial Officer under section 902.

(3) The Director of the Office of Management and Budget shall prescribe any regulations which may be necessary to ensure that, for purposes of implementing paragraph (2), the Executive Office of the President shall, to the extent practicable and appropriate, be treated (including for purposes of financial statements under section 3515) in the same way as an agency described in subsection (b).

**§ 903. Establishment of agency Deputy Chief Financial Officers**

(a) \* \* \*

(c)(1) *There shall be within the Executive Office of the President a Deputy Chief Financial Officer, who, notwithstanding any provision of subsection (b), shall be appointed by the President from among individuals meeting the standards described in section 901(a)(3).*

(2) *The Deputy Chief Financial Officer under this subsection shall have the same authority and shall perform the same functions as apply in the case of the Deputy Chief Financial Officer of an agency described in subsection (b).*

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**SECTION 202 OF TITLE 18, UNITED STATES CODE**

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**§ 202. Definitions**

[(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term “special Government employee” shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member’s home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms “officer or employee” and “special Government employee” as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.]

(a) *For the purpose of sections 203, 205, 207, 208, and 209 of this title the term “special Government employee” shall mean—*

(1) an officer or employee as defined in subsection (c) who is retained, designated, appointed, or employed in the legislative or executive branch of the United States Government, in any independent agency of the United States, or in the government of the District of Columbia, and who, at the time of retention, designation, appointment or employment, is expected to perform temporary duties on a full-time or intermittent basis for not to exceed one hundred and thirty days during any period of three hundred and sixty five consecutive days;

(2) a part-time United States commissioner;

(3) a part-time United States magistrate;

(4) an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28;

(5) a person serving as a part-time local representative of a Member of Congress in the Member's home district or State; and

(6) a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, who is not otherwise an officer or employee as defined in subsection (c) who is—

(A) on active duty solely for training (notwithstanding section 2105(d) of title 5);

(B) serving voluntarily for not to exceed one hundred and thirty days during any period of three hundred and sixty five consecutive days; or

(C) serving involuntarily.

\* \* \* \* \*

[(c) Except as otherwise provided in such sections, the terms “officer” and “employee” in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.]

(c) The terms “officer” and “employee” in sections 203, 205, 207 through 209, and 218 of this title shall include—

(1) an individual who is retained, designated, appointed or employed in the United States Government or in the government of the District of Columbia, to perform, with or without compensation and subject to the supervision of the President, the Vice President, a Member of Congress, a Federal judge or an officer or employee of the United States or of the government of the District of Columbia, a Federal or District of Columbia function under authority of law or an Executive act. As used in this section, a Federal or District of Columbia function shall include, but not be limited to—

(A) supervising, managing, directing or overseeing a Federal or District of Columbia officer or employee in the performance of such officer's or employee's official duties;

(B) providing regular advice, counsel, or recommendations to the President, the Vice President, a Member of Congress, or any Federal or District of Columbia officer or employee, or conducting meetings involving any of those individuals, as part of the Federal or District of Columbia government's internal deliberative process; or

(C) obligating funds of the United States or the District of Columbia;

(2) a Reserve officer or officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of 130 days; and

(3) the President, the Vice President, a Member of Congress or a Federal judge only if specified in the section.

\* \* \* \* \*

(f) The terms “officer or employee” and “special Government employee” as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces, nor shall they include an individual who is retained, designated or appointed without compensation specifically to act as a representative of a non-Federal (or non-District of Columbia) interest on an advisory committee established pursuant to the Federal Advisory Committee Act or any similarly established committee whose meetings are generally open to the public. The non-Federal interest to be represented must be specifically set forth in the statute, charter, or Executive act establishing the committee.

## SECTION 320 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

### [(SEC. 320. COVERAGE OF PRESIDENTIAL APPOINTEES.

#### [(a) IN GENERAL.—

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

[(2) ENFORCEMENT BY ADMINISTRATIVE ACTION.—Any Presidential appointee may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, or such other entity as is designated by the President by Executive Order, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, United States Code, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission, or such other entity as is designated by the President pursuant to this section, determines that a violation has occurred, the final order shall also provide for appropriate relief.

#### [(3) JUDICIAL REVIEW.—

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

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

[(C) STANDARD OF REVIEW.—To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside

a final order under paragraph (2) if it is determined that the order was—

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

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

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

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

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

\* \* \* \* \*

**INSPECTOR GENERAL ACT OF 1978**

\* \* \* \* \*

**SEC. 8H. SPECIAL PROVISIONS CONCERNING INSPECTOR GENERAL OF THE EXECUTIVE OFFICE OF THE PRESIDENT.**

(a) *AUTHORITY, DIRECTION, AND CONTROL OF PRESIDENT.—Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Executive Office of the President shall be under the authority, direction, and control of the President with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—*

- (1) *ongoing criminal investigations or proceedings;*
- (2) *undercover operations;*
- (3) *the identity of confidential sources, including protected witnesses;*
- (4) *deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions;*
- (5) *intelligence or counterintelligence matters; or*
- (6) *other matters the disclosure of which would constitute a serious threat to the national security, or would cause signifi-*

*cant impairment to the national interests (including interests in foreign trade negotiations), of the United States.*

(b) **PROHIBITING ACTIVITIES OF INSPECTOR GENERAL.**—*With respect to information described in subsection (a), the President may prohibit the Inspector General of the Executive Office of the President from carrying out or completing any audit or investigation, or issuing any subpoena, after the Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the President determines that—*

(1) *the disclosure of that information would interfere with the core functions of the constitutional responsibilities of the President; and*

(2) *the prohibition is necessary to prevent the disclosure of that information.*

(c) **NOTICE.**—

(1) **NOTICE TO INSPECTOR GENERAL.**—*If the President makes a determination referred to in subsection (b)(1) or (2), the President shall within 30 days notify the Inspector General in writing stating the reasons for that determination.*

(2) **NOTICE TO CONGRESS.**—*Within 30 days after receiving a notice under paragraph (1), the Inspector General shall transmit a copy of the notice to each of the Chairman and the ranking minority party member of the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and other appropriate committees or subcommittees of the Congress.*

(d) **SEMIANNUAL REPORTS.**—

(1) **INFORMATION TO BE INCLUDED.**—*The Inspector General of the Executive Office of the President shall include in each semiannual report to the President under section 5, at a minimum—*

(A) *a list of the title or subject of each inspection, investigation, or audit conducted during the reporting period;*

(B) *a statement of whether corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action;*

(C) *a certification that the Inspector General has had full and direct access to all information relevant to the performance of functions of the Inspector General;*

(D) *a description of all cases occurring during the reporting period in which the Inspector General could not obtain documentary evidence relevant to any inspection, audit, or investigation due to a determination of the President under subsection (b); and*

(E) *such recommendations as the Inspector General considers appropriate concerning legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Executive Office of the President, and to detect and eliminate fraud, waste, and abuse in such programs and operations.*

(2) **TRANSMISSION TO CONGRESS.**—*Within 30 days after receiving a semiannual report under section 5 from the Inspector General of the Executive Office of the President, the President*

*shall transmit the report to each of the Chairman and the ranking minority party member of the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate with any comments the President considers appropriate.*

RULE OF CONSTRUCTION OF SPECIAL PROVISIONS

SEC. [8G.] 8I The special provisions under section 8, 8A, 8B, 8C, 8D, or 8E of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8F(a).

\* \* \* \* \*

SEC. 11. As used in this Act—

(1) the term “head of the establishment” means *the President (with respect only to the Executive Office of the President)*, the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans’ Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; and the chief executive officer of the Resolution Trust Corporation; and the Chairperson of the Federal Deposit Insurance Corporation; or the Commissioner of Social Security, Social Security Administration; as the case may be;

(2) the term “establishment” means *the Executive Office of the President*, the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the United States Information Agency, the Corporation for National and Community Service, or the Veterans’ Administration, or the Social Security Administration; as the case may be;

\* \* \* \* \*

## X. COMMITTEE RECOMMENDATION

On July 25, 1996, a quorum being present, the Committee ordered the bill, as amended, favorably reported to the House for consideration.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—104TH  
CONGRESS ROLLCALL

Date: July 25, 1996.

Amendment No. 1.

Description: Page 1, in the matter after line 5 and before line 6, strike the item relating to section 6 (and redesignate succeeding items accordingly). (Page and line nos. refer to Committee Print of July 17, 1996.)

Offered By: Mr. Horn.

Voice Vote: Ayes.

Amendment No. 2.

Description: Amendment to the Committee Print at the end of the bill add the following new section: Sec. . Establishment of Inspector General for Executive Office of the President.

Offered By: Mr. Bass.

Voice Votes: Ayes.

Final Passage of H.R. 3452.

Offered By: Mr. Horn.

Voice Vote: Ayes.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1;  
SECTION 102(b)(3)

This provision applies to the Executive Office of the President the eleven civil rights, labor and workplace laws that the CAA applied to Congress.

ADDITIONAL VIEW OF REPRESENTATIVE CAROLYN B.  
MALONEY

I strongly support the basic goal of H.R. 3452, the "Presidential and Executive Office Accountability Act," which is to apply the Congressional Accountability Act to the Executive Office of the President. The Federal government, including Congress and the entire Executive branch, should be required to abide by the same laws as the American people. I offered a number of amendments at the Subcommittee mark-up which were supported by the Majority. As a result, I was able to support the improved bill as it was reported by the Subcommittee.

Unfortunately, an amendment was adopted at the full Committee which may cause me to oppose this bill, should it come to the House floor. Rep. Bass offered an amendment to mandate creating an Inspector General for the White House, which I oppose for a number of reasons.

First, the Bass amendment is unconstitutional. The Office of Legal Counsel at the Justice Department has concluded that it violates the separation of powers doctrine. For the first time in American history, it would establish an office within the White House that is statutorily required to report to Congress on a regular basis. I have attached a copy of their letter on this issue.

Second, the guiding principle behind the Presidential and Executive Office Accountability Act is that the President should be subject to the same laws as the Congress. The Bass Amendment violates that principle: the Senate has no Inspector General at all; the House has one, but it is limited to financial audits of non-legislative offices and reports only to the leadership.

Third, the amendment is unnecessary. Congress, assisted by the GAO, exercises its oversight over the President through hearings and investigations. These safeguards have proven adequate throughout our history, and there is no need to rush to create an Inspector General at this time.

Fourth, putting an Inspector General in the White House would create a new and expensive level of bureaucracy in the Executive Office of the President, which has traditionally been a small and flexible organization with only 1700 employees.

Finally, there has not been one day of hearings on this issue during the 104th Congress. Putting an Inspector General in the White House would produce a fundamental shift in relations between two separate branches of government. The Bass Amendment was offered on the last day of the Government Reform and Oversight Committee's consideration of this bill, without any time for thoughtful consideration. Given the complexity of the matter, hearings are certainly required.

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, DC, July 24, 1996.*

Hon. WILLIAM F. CLINGER,  
*Chairman, Committee on Government Reform and Oversight, House  
of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to express further views on H.R. 3452, the "Presidential and Executive Office Accountability Act." Previously we expressed our support for the Subcommittee's changes in the bill, which would limit the remedies to damages only.

We understand that an amendment, embodying the White House Inspector General Act of 1996, may be offered as an amendment to H.R. 3452 during the Government Reform Committee's markup of this legislation tomorrow. This amendment would interfere significantly with the discharge of the President's constitutional authority. Accordingly, the Department of Justice believes that the amendment would raise serious constitutional concerns and we strongly oppose the amendment on separation of powers grounds.

The Executive Office of the President is the designation of the President's closest advisors and aides. The amendment would add the Executive Office of the President to the list of Executive establishments subject to the Inspector General Act. An Inspector General is appointed for each covered establishment. Inspectors General, along with their staffs, are to be "independent and objective units" within their respective establishments and are "to conduct and supervise audits and investigations relating to the programs and operations of the establishment;" "to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations;" and "to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action." 5 U.S.C. app. 3, section 2.

This general character is supplemented with a variety of specific duties. Inspectors General are to "provide policy direction for and . . . conduct, supervise, and coordinate audits and investigations," review legislative proposals and make recommendations for legislation relating to their respective establishments; recommend policies for and actually conduct and supervise activities to promote "economy and efficiency;" in the establishment's administration; detect and prevent "fraud and abuse;" supervise and coordinate relationships between the establishment and other Federal agencies, State and local governmental agencies and non-government entities to promote efficiency and prevent fraud and abuse; and keep the heads of their respective establishments and the Congress fully and currently informed about matters within their jurisdiction and recommend corrective action. *Id.* at section 4(a). In addition to these duties, each Inspector General is required to submit to Congress semiannual reports extensively detailing the Inspector General's activities and findings from the preceding period. *Id.* at section 5.

To carry out these duties, Inspectors General are vested with wide-ranging authority. Among other things, they are allowed access to all records, documents, and other materials relating to their respective establishments that pertain to their duties, and are authorized to make such investigations and reports as they deem “necessary or desirable.” *Id.* at section 6(a).

In discharging their authority, Inspectors General are to report to and be under the general supervision of the heads of the establishments to which they are assigned. However, the head of an establishment may not prohibit or prevent the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. *Id.* at section 3(a).

The amendment would depart somewhat from the existing framework under the Inspector General Act. The Inspector General in the Executive Office of the President would be subject to the authority, direction, and control of the President with respect to audits or investigations or the issuance of subpoenas that require access to information in any of six categories.<sup>1</sup> The President would be permitted to prohibit such an audit, investigation, or subpoena, but only after the Inspector General had decided to initiate such action and only if the President determined that “the disclosure of that information would interfere with the core functions of the constitutional responsibilities of the President” and that “the prohibition is necessary to prevent the disclosure of that information.” *Id.* at section 3. If the President exercised this preventive power, he would be required, within 30 days, to submit in writing the reasons for the determinations regarding interference with constitutional responsibilities and the possibility of disclosure to the Inspector General. The Inspector General, in turn, would be required to transmit a copy of the President’s submission to specified congressional committees. In addition, the Inspector General would be required to include a description of the episode in the public semi-annual report.

These provisions would raise serious concerns about intrusion on the President’s constitutional responsibilities. The Constitution assigns a variety of powers exclusively to the President. Examples include the powers to nominate Federal officers, grant reprieves and pardons, act as commander in chief, and receive ambassadors and other public ministers. See U.S. Const. art. II. Congress may not intrude upon the President’s exercise of these exclusive powers. See, e.g., *Public Citizen v. United States Department of Justice*, 491 U.S. 440 (1988) (Kennedy, J., concurring); *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam); *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872); *Ex Parte Garland*, 71 U.S. (4 Wall.) 333 (1866). Yet the amendment threatens just such an intrusion.

Even as to those exclusive powers encompassed within one of the six categories where the President may stop an audit, investigations, or subpoena, the bill would intrude upon the executive func-

<sup>1</sup>The categories are ongoing criminal investigations or proceedings, undercover operations, the identity of confidential sources, deliberations and decisions on policy matters, intelligence or counterintelligence matters, or other matters the disclosure of which constitute a serious threat to national security or cause significant impairment to the national interest. See section 3 (adding section 8F(a) to 5 U.S.C. app. 3).

tion. The Inspector General would have authority to investigate, audit, and issue subpoenas in these areas unless the President prevented the Inspector General from exercising the authority. The President could act only after the Inspector General decided to investigate, audit, or issue a subpoena, and, even then, the President would have to make written findings and submit those findings to the Inspector General who would transmit them to Congress. In these findings, the President would have to determine that “disclosure” of the information would “interfere with the core function of the constitutional responsibilities of the President.” But where the President is exercising, or has exercised, exclusive constitutional authority, Congress is wholly without authority to impose such requirements on the President or the President’s advisors.

Furthermore, it is far from clear that all investigations, audits, or subpoenas concerning the exercise of exclusive constitutional powers would even fall within any of the six categories as to which the President would have preventive authority. For example, unless the deliberations of the President and his advisors regarding whom to nominate for a Federal office are “policy matters,” the President would be without statutory authority to prohibit the Inspector General from performing investigations and audits of the exercise of that power or from reporting to Congress on these matters. Another example is the pardon power. Even if the grant of a reprieve or pardon is a “criminal \* \* \* proceeding[],” this category applies only to “ongoing” proceedings. Thus, the bill would subject the President’s deliberations on pardons that already have been granted to investigation and audit, and ultimately disclosure. The Constitution prohibits Congress from doing this.

With regard to those presidential powers that are not exclusive—powers in those spheres where Congress possesses authority to legislate—the doctrine of separation of powers still limits Congress’s ability to adopt legislation that infringes on the President’s constitutional role. In this area, a bill’s validity depends on “the extent to which the bill prevents the Executive Branch from performing its constitutionally assigned functions.” *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 443 (1977); see *Morrison v. Olson*, 487 U.S. 654 (1988), *CFTC v. Schor*, 478 U.S. 833 (1986). “Only where the potential for disruption is present must we then determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.” *Administrator of Gen. Servs.*, 425 U.S. at 443.

Here, where the bill would invade powers exclusively committed to the President, it is unnecessary also to identify all of the ways in which the bill could invalidly intrude on the President’s powers that are not exclusive. Rather, we note only that the amendment would create a strong potential for extensive interference with the ability of the President to perform all of his constitutional functions. At the least, the necessity for the President’s constant vigilance about possible intrusions on his exclusive powers would impede the President’s discharge of his non-exclusive constitutional powers. As we have recently observed, “the Constitution’s very structure suggests the importance of maintaining the ‘hallmarks of executive administration essential to effective act.’” The Constitutional Separation of Powers between the President and Congress at

12 (May 7, 1996) (quoting *Myers v. United States*, 272 U.S. 52, 134 (1926)). Application of the Inspector General Act to the Executive Office of the President would seriously undermine this constitutional structure and this should be strongly resisted.

Thank you for the opportunity to present our views on H.R. 3452. The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

ANN M. HARKINS  
(For Andrew Foiss, Assistant Attorney General).

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