

(Pub. L. 88-352, title VII, § 703, July 2, 1964, 78 Stat. 255; Pub. L. 92-261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub. L. 102-166, title I, §§ 105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074-1076.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Subversive Activities Control Act of 1950, referred to in subsec. (f), is title I (§§ 1-32) of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, which is classified principally to subchapter I (§ 781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Controlled Substances Act, referred to in subsec. (k)(3), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (n)(2)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

##### AMENDMENTS

1991—Subsec. (k). Pub. L. 102-166, § 105(a), added subsec. (k).

Subsec. (l). Pub. L. 102-166, § 106, added subsec. (l).

Subsec. (m). Pub. L. 102-166, § 107(a), added subsec. (m).

Subsec. (n). Pub. L. 102-166, § 108, added subsec. (n).

1972—Subsec. (a)(2). Pub. L. 92-261, § 8(a), inserted “or applicants for employment” after “his employees”.

Subsec. (c)(2). Pub. L. 92-261, § 8(b), inserted “or applicants for membership” after “membership”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of this title.

##### SUBVERSIVE ACTIVITIES CONTROL BOARD

Subversive Activities Control Board established by act Sept. 23, 1950, ch. 1024, § 12, 64 Stat. 977, and ceased to operate on June 30, 1973.

#### § 2000e-3. Other unlawful employment practices

##### (a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

##### (b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employ-

ment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(Pub. L. 88-352, title VII, § 704, July 2, 1964, 78 Stat. 257; Pub. L. 92-261, § 8(c), Mar. 24, 1972, 86 Stat. 109.)

#### Editorial Notes

##### AMENDMENTS

1972—Subsec. (a). Pub. L. 92-261, § 8(c)(1), inserted provision making it an unlawful employment practice for a joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against the specified individuals.

Subsec. (b). Pub. L. 92-261, § 8(c)(2), inserted provisions making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, and notices or advertisements of such joint labor-management committees relating to admission to, or employment in, any program established to provide apprenticeship or other training.

#### § 2000e-4. Equal Employment Opportunity Commission

##### (a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The

President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

**(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General**

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

**(c) Exercise of powers during vacancy; quorum**

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

**(d) Seal; judicial notice**

The Commission shall have an official seal which shall be judicially noticed.

**(e) Reports to Congress and the President**

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

**(f) Principal and other offices**

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems nec-

essary to accomplish the purpose of this subchapter.

**(g) Powers of Commission**

The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

**(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities**

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination,

concerning rights and obligations under this subchapter or such law, as the case may be.

**(i) Personnel subject to political activity restrictions**

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324<sup>1</sup> of title 5, notwithstanding any exemption contained in such section.

**(j) Technical Assistance Training Institute**

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assist-

<sup>1</sup> See References in Text note below.

ance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

**(k) EEOC Education, Technical Assistance, and Training Revolving Fund**

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the ‘‘EEOC Education, Technical Assistance, and Training Revolving Fund’’ (hereinafter in this subsection referred to as the ‘‘Fund’’) and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training—

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) information with respect to the operation of the Fund, including information, presented in the aggregate, relating to—

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund \$1,000,000 from the Salaries and Expenses appropriation of the Commission.

(Pub. L. 88-352, title VII, § 705, July 2, 1964, 78 Stat. 258; Pub. L. 92-261, § 8(d)-(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub. L. 93-608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95-251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183; Pub. L. 102-166, title I, §§ 110(a), 111, Nov. 21, 1991, 105 Stat. 1078; Pub. L. 102-411, § 2, Oct. 14, 1992, 106 Stat. 2102; Pub. L. 104-66, title II, § 2031, Dec. 21, 1995, 109 Stat. 728.)

**Editorial Notes**

**REFERENCES IN TEXT**

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

The effective date of this Act, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 92-261, which was approved Mar. 24, 1972.

Section 7324 of title 5, referred to in subsec. (i), which related to Executive agency employees or District of Columbia government employees influencing elections or taking part in political campaigns, was omitted in the general revision of subchapter III of chapter 73 of Title 5 by Pub. L. 103-94, § 2(a), Oct. 6, 1993, 107 Stat. 1003, which enacted a new section 7324, relating to prohibition of political activities while on duty. See section 7323 of Title 5.

**CODIFICATION**

In subsec. (a), reference to section ‘‘5372’’ of title 5 substituted for reference to section ‘‘5362’’ on authority of Pub. L. 95-454, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

In subsec. (i), ‘‘section 7324 of title 5’’ substituted for ‘‘section 9 of the Act of August 2, 1939, as amended (the Hatch Act)’’ on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 9 of the Act of August 2, 1939, as amended, was classified to section 1181 of Title 5.

**AMENDMENTS**

1995—Subsec. (k)(2)(C). Pub. L. 104-66 substituted ‘‘including information, presented in the aggregate, relating to’’ for ‘‘including’’ in introductory provisions, ‘‘the number of persons and entities’’ for ‘‘the identity of each person or entity’’ in cl. (i), ‘‘such persons and entities’’ for ‘‘such person or entity’’ in cl. (ii), and ‘‘fees’’ for ‘‘fee’’ and ‘‘such persons and entities’’ for ‘‘such person or entity’’ in cl. (iii).

1992—Subsec. (k). Pub. L. 102-411 added subsec. (k).

1991—Subsec. (h). Pub. L. 102-166, § 111, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 102-166, § 110(a), added subsec. (j).

1978—Subsec. (a). Pub. L. 95-251 substituted ‘‘administrative law judges’’ for ‘‘hearing examiners’’ wherever appearing.

1975—Subsec. (e). Pub. L. 93-608 struck out reporting requirement of names, salaries, and duties of all individuals in employ of Commission.

1972—Subsec. (a). Pub. L. 92-261, § 8(d), struck out provisions setting forth length of terms of original members of Commission and provisions authorizing Vice Chairman to act as Chairman in certain circumstances, inserted provisions relating to continuation in office of all members of Commission, and substituted provisions requiring appointment of officers, etc., in accordance with provisions of title 5, fixing compensation of such officers, etc., in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, and requiring assignment, removal, and compensation of hearing examiners in accordance with specified sections, for provisions requiring appointment of officers, etc., in accordance with civil service laws, and fixing compensation of such officers, etc., in accordance with the Classification Act of 1949, as amended.

Subsecs. (b) to (e). Pub. L. 92-261, §8(e), added subsec. (b), struck out subsec. (e) which amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and redesignated existing subsecs. (b), (c), and (d) as (c), (d), and (e), respectively.

Subsec. (g)(6). Pub. L. 92-261, §8(f), substituted provisions which authorized Commission to intervene in a civil action brought under section 2000e-5 of this title where respondent is other than a government, governmental agency, or political subdivision for provisions which authorized Commission to refer matters to Attorney General with recommendations to intervene or institute civil actions.

Subsecs. (h) to (j). Pub. L. 92-261, §8(e)(2), (3), struck out subsec. (h) which provided for legal representation for Commission, and redesignated subsecs. (i) and (j) as (h) and (i), respectively.

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE OF 1991 AMENDMENT**

Pub. L. 102-166, title I, §110(b), Nov. 21, 1991, 105 Stat. 1078, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 1991]."

Amendment by section 111 of Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of this title.

##### **TERMINATION OF REPORTING REQUIREMENTS**

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (e) of this section is listed in item 20 on page 165), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

#### **Executive Documents**

##### **REORGANIZATION PLAN NO. 1 OF 1978 SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978**

Pub. L. 95-454, title IX, §905, Oct. 13, 1978, 92 Stat. 1224, provided in part that any provision in Reorganization Plan No. 1 of 1978 [set out below] inconsistent with any provision of that Act [see Tables for classification] was superseded thereby.

##### **REORGANIZATION PLAN NO. 1 OF 1978**

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

##### **EQUAL EMPLOYMENT OPPORTUNITY**

###### **SECTION 1. TRANSFER OF EQUAL PAY ENFORCEMENT FUNCTIONS**

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

#### **SEC. 2. TRANSFER OF AGE DISCRIMINATION ENFORCEMENT FUNCTIONS**

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

#### **SEC. 3. TRANSFER OF EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT ENFORCEMENT FUNCTIONS**

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

#### **SEC. 4. TRANSFER OF FEDERAL EMPLOYMENT OF HANDICAPPED INDIVIDUALS ENFORCEMENT FUNCTIONS**

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

#### **SEC. 5. TRANSFER OF PUBLIC SECTOR 707 FUNCTIONS**

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

#### **SEC. 6. TRANSFER OF FUNCTIONS AND ABOLITION OF THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL**

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

#### **SEC. 7. SAVINGS PROVISION**

Administrative proceedings including administrative appeals from the acts of an executive agency (as de-

fined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

#### SEC. 8. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

#### SEC. 9. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[Pursuant to Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, the transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission relating to enforcement of equal employment opportunity programs as provided by sections 1 to 4 of this Reorg. Plan is effective Jan. 1, 1979.]

[Pursuant to Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, sections 1 and 2 of this Reorg. Plan are effective July 1, 1979, except for transfer of functions already effective Jan. 1, 1979, under Ex. Ord. No. 12106 above.]

[Pursuant to Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, section 5 of this Reorg. Plan is effective July 1, 1978.]

[Pursuant to Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, section 6 of this Reorg. Plan is effective July 1, 1978.]

#### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority

among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

*The Equal Employment Opportunity Commission (EEOC)* enforces Title VII of the Civil Rights Act of 1964, [section 2000e et seq. of this title] which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

*The Department of Labor* and 11 other agencies enforce Executive Order 11246 [set out as a note under section 2000e of this title]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this "contract compliance" program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

*The Department of Justice* litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

*The Civil Service Commission (CSC)* enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

*The Equal Employment Opportunity Coordinating Council* includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of the Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

- inconsistent standards of compliance;
- duplicative, inconsistent paperwork requirements and investigative efforts;
- conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;
- confusion on the part of workers about how and where to seek redress;
- lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important

step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 2000e-4 of this title]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e-14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and \$6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and \$5.3 million shifted for Equal Pay; 119 positions and \$3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven "compliance agencies"—into the Labor Department (1,517 positions and \$33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies

meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect; I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a "pattern or practice" of discrimination. This in no way diminishes the EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own "pattern or practice" cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the

agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statutes should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilities, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

JIMMY CARTER.

THE WHITE HOUSE, February 23, 1978.

**EX. ORD. NO. 12106. TRANSFER OF CERTAIN EQUAL EMPLOYMENT ENFORCEMENT FUNCTIONS**

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided: By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1-101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall be effective on January 1, 1979.

1-102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further amended by deleting the preamble, by substituting "national origin, handicap, or age" for "or national origin" in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

"SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

"SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

"SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order."

1-103. Executive Order No. 11022, as amended [formerly set out as a note under section 3001 of this title], is further amended by revising Section 1(b) to read as follows:

"(b) The Council shall be composed of the Secretary of Health, Education, and Welfare [now Health and Human Services], who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Office of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission."

1-104. Executive Order No. 11480 of September 9, 1969 [formerly set out as a note under section 791 of Title 29, Labor], is amended by deleting "and the Chairman of the United States Civil Service Commission" in Section 4 and substituting therefor "Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission".

1-105. Executive Order No. 11830 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

"In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

- "(1) Secretary of Defense.
- "(2) Secretary of Labor.
- "(3) Secretary of Health, Education, and Welfare [now Health and Human Services], Co-Chairman.
- "(4) Director of the Office of Personnel Management.
- "(5) Administrator of Veterans Affairs.
- "(6) Administrator of General Services.
- "(7) Chairman of the Federal Communications Commission.
- "(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.
- "(9) Such other members as the President may designate."

1-106. This Order shall be effective on January 1, 1979.

JIMMY CARTER.

**EX. ORD. NO. 12144. TRANSFER OF CERTAIN EQUAL PAY AND AGE DISCRIMINATION IN EMPLOYMENT ENFORCEMENT FUNCTIONS**

Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, provided:

By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1-101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out above]).

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds,

available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1-104. This Order shall be effective July 1, 1979.

JIMMY CARTER.

#### § 2000e-5. Enforcement provisions

##### (a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

##### (b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and

as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

##### (c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)<sup>1</sup> by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

##### (d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

<sup>1</sup> So in original. Probably should be subsection "(b)".