

(c) Methodology**(1) In general**

The Office shall conduct each survey under this section in accordance with methodologies established by the Office.

(2) Confidentiality

Under the methodologies established under paragraph (1), all responses to all portions of the survey shall be anonymous and confidential, and each respondent shall be told throughout the survey that all responses shall be anonymous and confidential.

(3) Survey form

The Office shall limit the use of any information code or information on the survey form that makes a respondent to the survey, or the respondent's employing office, individually identifiable.

(d) Use of results of surveys

The Office shall furnish the information obtained from the surveys conducted under this section to the Committee on House Administration of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Rules and Administration of the Senate.

(e) Consultation with committees

The Office shall carry out this section, including establishment of methodologies and procedures under subsection (c), in consultation with the Committee on House Administration of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Rules and Administration of the Senate.

(Pub. L. 104-1, title III, § 307, as added Pub. L. 115-397, title II, § 202(a), Dec. 21, 2018, 132 Stat. 5317.)

Editorial Notes**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as an Effective Date of 2018 Amendment note under section 1301 of this title.

SUBCHAPTER IV—ADMINISTRATIVE AND JUDICIAL DISPUTE-RESOLUTION PROCEDURES**§ 1401. Procedure for consideration of alleged violations****(a) Filing and review of claims**

Except as otherwise provided, the procedure for consideration of an alleged violation of part A of subchapter II consists of—

(1) the filing of a claim by the covered employee alleging the violation, as provided in section 1402 of this title;

(2) the preliminary review of the claim, to be conducted by a hearing officer as provided in section 1402a of this title;

(3) mediation as provided in section 1403 of this title, if requested and agreed to by the parties under that section; and

(4) a formal hearing as provided in section 1405 of this title, subject to Board review as provided in section 1406 of this title and judicial review in the United States Court of Appeals for the Federal Circuit as provided in section 1407 of this title.

(b) Right of employee to file civil action**(1) Civil action**

Only a covered employee who has filed a claim timely as provided in section 1402 of this title and who has not submitted a request for a hearing on the claim pursuant to section 1405(a) of this title may, during the period described in paragraph (3), file a civil action in a District Court of the United States with respect to the violation alleged in the claim, as provided in section 1408 of this title.

(2) Effect of filing civil action

Notwithstanding paragraph (2), (3), or (4) of subsection (a), if the covered employee files such a civil action—

(A) the preliminary review of the claim by the hearing officer as provided in section 1402a of this title shall terminate upon the filing of the action by the covered employee; and

(B) the procedure for consideration of the alleged violation shall not include any further review of the claim by the hearing officer as provided in section 1402a of this title.

(3) Period for filing civil action

The period described in this paragraph with respect to a claim is the 70-day period which begins on the date the covered employee files the claim under section 1402 of this title.

(4) Special rule for employees who fail to state a claim for which relief may be granted

Notwithstanding paragraph (3), if a covered employee receives a written notice from the hearing officer under section 1402a(d)(2) of this title that the employee has the right to file a civil action with respect to the claim in accordance with section 1408 of this title, the covered employee may file the civil action not later than 90 days after receiving such written notice.

(c) Special rule for Architect of the Capitol and Capitol Police

In the case of an employee of the Office of the Architect of the Capitol or of the Capitol Police, the Office, after receiving a claim filed under section 1402 of this title, may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police for resolution of the employee's grievance for a specific period of time. Any deadline in this chapter relating to a claim for which the employee is using the grievance procedures, that

has not already passed by the first day of that specific period, shall be stayed during that specific period.

(d) Election of remedies for Library of Congress

(1) Definitions

In this subsection:

(A) Direct Act

The term “direct Act” means an Act (other than this Act), or provision of the Revised Statutes, that is specified in section 1311, 1312, or 1313 of this title.

(B) Direct provision

The term “direct provision” means a provision (including a definitional provision) of a direct Act that applies the rights or protections of a direct Act (including rights and protections relating to nonretaliation or noncoercion) to a Library claimant.

(C) Library claimant

The term “Library claimant” means, with respect to a direct provision, an employee of the Library of Congress who is covered by that direct provision.

(2) Election after proceedings initially brought under this chapter

A Library claimant who initially files a claim for an alleged violation as provided in section 1402 of this title may, at any time before the date that is 10 days after a hearing officer submits the report on the preliminary review of the claim under section 1402a(c) of this title, elect to bring the claim for a proceeding before the corresponding Federal agency under the corresponding direct provision, instead of continuing with the procedures applicable to the claim under this subchapter or filing a civil action in accordance with section 1408 of this title.

(3) Election after proceedings initially brought under other civil rights or labor law

A Library claimant who initially brings a claim, complaint, or charge under a direct provision for a proceeding before a Federal agency may, prior to requesting a hearing under the agency’s procedures, elect to—

(A) continue with the agency’s procedures and preserve the option (if any) to bring any civil action relating to the claim, complaint, or charge, that is available to the Library claimant; or

(B) file a claim with the Office under section 1402 of this title and continue with the corresponding procedures of this title available and applicable to a covered employee.

(4) Timing

A Library claimant who meets the initial deadline under section 1402(d) of this title for filing a claim under this subchapter, or any initial deadline for bringing a claim, complaint, or charge under the applicable direct provision, and then elects to change to alternative procedures as described in paragraph (2) or (3)(B), shall be considered to meet any initial deadline for the alternative procedures.

(5) Application

This subsection shall take effect and shall apply as described in section 153(c) of the Leg-

islative Branch Appropriations Act, 2018 (Public Law 115–141) (except to the extent such section applies to any violation of section 1331 of this title or a provision of an Act specified in section 1331 of this title).

(e) Rights of parties to retain private counsel

Nothing in this chapter may be construed to limit the authority of any individual (including a covered employee, the head of an employing office, or an individual who is alleged to have committed personally an act which consists of a violation of part A of subchapter II) to retain counsel to protect the interests of the individual at any point during any of the procedures provided under this title for the consideration of an alleged violation of part A of subchapter II, including as provided under section 1415(d)(8) of this title with respect to individuals subject to a reimbursement requirement of section 1415(d) of this title.

(f) Standards for assertions made by parties

Any party in any of the procedures provided under this subchapter, as well as any counsel or other person representing a party in any of such procedures, shall have an obligation to ensure that, to the best of the party’s knowledge, information, and belief, as formed after an inquiry which is reasonable under the circumstances, each of the following is correct:

(1) No pleading, written motion, or other paper is presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of resolution of the matter.

(2) The claims, defenses, and other legal contentions the party advocates are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further review or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(g) Procedure

Nothing in this chapter shall be construed to supersede or limit section 1361(d)(2) of this title.

(Pub. L. 104–1, title IV, § 401, Jan. 23, 1995, 109 Stat. 32; Pub. L. 115–141, div. I, title I, § 153(b)(1), Mar. 23, 2018, 132 Stat. 786; Pub. L. 115–397, title I, § 101(a), Dec. 21, 2018, 132 Stat. 5298.)

Editorial Notes

REFERENCES IN TEXT

Part A of subchapter II, referred to in subsecs. (a) and (e), was in the original “part A of title II”, meaning part A (§§ 201–207) of title II of Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 7, which is classified principally to part A of subchapter II of this chapter. For complete classification of part A to the Code, see Tables.

This chapter, referred to in subsecs. (c), (d)(1)(A), (2), (e), and (g), was in the original “this Act”, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Section 153(c) of the Legislative Branch Appropriations Act, 2018, referred to in subsec. (d)(5), is Pub. L. 115-141, div. I, title I, § 153(c), Mar. 23, 2018, 132 Stat. 787, set out as a note under section 1301 of this title.

AMENDMENTS

2018—Pub. L. 115-397 amended section generally. Prior to amendment, section related to procedure for consideration of alleged violations, consisting of three pars.

Par. (3). Pub. L. 115-141, § 153(b)(1)(A), struck out “either” after “section 1404 of this title, of” in introductory provisions.

Par. (3)(C). Pub. L. 115-141, § 153(b)(1)(B)–(D), added subpar. (C).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as a note under section 1301 of this title.

§ 1402. Initiation of procedures

(a) Claim

(1) Filing of claim

To commence a proceeding under this subchapter, a covered employee alleging a violation of law made applicable under part A of subchapter II shall file a claim with the Office. The Office shall not accept a claim which is filed after the deadline applicable under subsection (d).

(2) Contents of claim

The claim filed under this section shall be made in writing under oath or affirmation, shall describe the facts that form the basis of the claim and the violation that is being alleged, shall identify the employing office alleged to have committed the violation or in which the violation is alleged to have occurred, and shall be in such form as the Office requires.

(3) No effect on ability of covered employee to seek information from office or pursue relief

Nothing in paragraph (2), or subsection (b) or (c), may be construed to limit the ability of a covered employee—

(A) to contact the Office or any other appropriate office prior to filing a claim under this section to seek information regarding the employee's rights under this chapter and the procedures available under this chapter;

(B) in the case of a covered employee of an employing office of the House of Representatives or Senate, to refer information regarding an alleged violation of part A of subchapter II to the Committee on Ethics of the House of Representatives or the Select Committee on Ethics of the Senate (as the case may be); or

(C) to file a civil action in accordance with section 1401(b) of this title.

(b) Initial processing of claim

(1) Intake and recording; notification to employing office

Upon the filing of a claim by a covered employee under subsection (a), the Office shall

take such steps as may be necessary for the initial intake and recording of the claim, including providing each party with all relevant information with respect to the rights of the party under this chapter, and shall transmit immediately a copy of the claim to the head of the employing office and the designated representative of that office.

(2) Special notification requirements for claims based on acts by members of Congress

(A) In general

In the case of a claim alleging a violation described in subparagraph (B) which consists of a violation described in section 1415(d)(1)(A) of this title by an individual, upon the filing of the claim under subsection (a), the Office shall notify immediately such individual of the claim, the possibility that the individual may be required to reimburse the account described in section 1415(a) of this title for the reimbursable portion of any award or settlement in connection with the claim, and the right of the individual under section 1415(d)(8) of this title to intervene in any mediation, hearing, or civil action under this subchapter with respect to the claim.

(B) Violations described

A violation described in this subparagraph is—

- (i) harassment that is unlawful under section 1311(a) or 1316(a) of this title; or
- (ii) intimidation, reprisal, or discrimination that is unlawful under section 1317 of this title and is taken against a covered employee because of a claim alleging a violation described in clause (i).

(c) Use of secure electronic reporting and tracking system

(1) Establishment and operation of secure system

The Office shall establish and operate a secure electronic reporting system through which a covered employee may initiate a proceeding under this subchapter, and which will keep an electronic record of the date and time at which the proceeding is initiated and will track all subsequent actions or proceedings occurring with respect to the proceeding under this subchapter.

(2) Accessibility to all parties

The system shall be accessible to all parties to such actions or proceedings, but only until the completion of such actions or proceedings.

(3) Assessment of effectiveness of procedures

The Office shall use the information contained in the system to make regular assessments of the effectiveness of the procedures under this subchapter in providing for the timely resolution of claims, and shall submit semi-annual reports on such assessments each year to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.

(d) Deadline

A covered employee may not file a claim under this section with respect to an allegation

of a violation of law after the expiration of the 180-day period which begins on the date of the alleged violation.

(Pub. L. 104–1, title IV, §402, Jan. 23, 1995, 109 Stat. 32; Pub. L. 115–397, title I, §102(a), Dec. 21, 2018, 132 Stat. 5301.)

Editorial Notes

REFERENCES IN TEXT

Part A of subchapter II, referred to in subsec. (a)(1), (3)(B), was in the original “part A of title II”, meaning part A (§§201–207) of title II of Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 7, which is classified principally to part A of subchapter II of this chapter. For complete classification of part A to the Code, see Tables.

This chapter, referred to in subsecs. (a)(3)(A) and (b)(1), was in the original “this Act”, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

2018—Pub. L. 115–397 amended section generally. Prior to amendment, section related to counseling prior to commencing a proceeding.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115–397, set out as a note under section 1301 of this title.

§ 1402a. Preliminary review of claims

(a) Preliminary review by hearing officer

(1) Appointment

Not later than 7 days after transmission to the employing office of a claim pursuant to section 1402(b) of this title, the Executive Director shall appoint a hearing officer to conduct a preliminary review of the claim.

(2) Process for appointment

The Executive Director shall appoint a hearing officer under this subsection in the same manner and in accordance with the same requirements and procedures applicable to the appointment of a hearing officer under section 1405(c) of this title.

(b) Assessments required

In conducting a preliminary review of a claim under this section, the hearing officer shall assess each of the following:

(1) Whether the claimant is a covered employee authorized to obtain relief relating to the claim under this subchapter.

(2) Whether the office which is the subject of the claim is an employing office under this chapter.

(3) Whether the individual filing the claim has met the applicable deadlines for filing the claim under this subchapter.

(4) The identification of factual and legal issues involved with respect to the claim.

(5) The specific relief sought by the individual.

(6) Whether, on the basis of the assessments made under paragraphs (1) through (5), the in-

dividual filing the claim is a covered employee who has stated a claim for which, if the allegations contained in the claim are true, relief may be granted under this subchapter.

(7) The potential for the settlement of the claim without a formal hearing as provided under section 1405 of this title or a civil action as provided under section 1408 of this title.

(c) Report on review

(1) Report

Not later than 30 days after a claim is filed under section 1402 of this title, the hearing officer shall submit to the individual filing the claim and the office which is the subject of the claim a report on the preliminary review conducted under this section, and shall include in the report the hearing officer’s determination as to whether the individual is a covered employee who has stated a claim for which relief may be granted under this subchapter (as described in paragraph (6) of subsection (b)). The submission of the report shall conclude the preliminary review.

(2) Extension of deadline

The hearing officer may (upon notice to the individual filing the claim and the employing office which is the subject of the claim) use an additional period of not to exceed 30 days to conclude the preliminary review.

(d) Effect of determination of failure to state claim for which relief may be granted

If the hearing officer’s report on the preliminary review of a claim under subsection (c) includes the determination that the individual filing the claim is not a covered employee or has not stated a claim for which relief may be granted under this subchapter—

(1) the individual (including an individual who is a Library claimant, as defined in section 1401(d)(1) of this title) may not obtain a formal hearing with respect to the claim as provided under section 1405 of this title; and

(2) the hearing officer shall provide the individual and the Executive Director with a written notice that the individual may file a civil action with respect to the claim in accordance with section 1408 of this title.

(e) Transmission of report on preliminary review of certain claims to congressional ethics committees

In the case of a hearing officer’s report under subsection (c) on the preliminary review of a claim alleging a violation described in section 1415(d)(1)(A) of this title, the hearing officer shall transmit the report to—

(1) the Committee on Ethics of the House of Representatives, in the case of such an act by a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress); or

(2) the Select Committee on Ethics of the Senate, in the case of such an act by a Senator.

(Pub. L. 104–1, title IV, §403, as added Pub. L. 115–397, title I, §103(a), Dec. 21, 2018, 132 Stat. 5303.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2), was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

PRIOR PROVISIONS

A prior section 403 of Pub. L. 104-1 was renumbered section 404 and is classified to section 1403 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as an Effective Date of 2018 Amendment note under section 1301 of this title.

§ 1403. Mediation**(a) Availability of mediation****(1) Notification regarding mediation****(A) Covered employee**

Upon receipt of a claim under section 1402 of this title, the Office shall notify the covered employee who filed the claim about the process for mediation under this section and the deadlines applicable to such mediation.

(B) Employing office

Upon transmission to the employing office of the claim pursuant to section 1402(b) of this title, the Office shall notify the employing office about the process for mediation under this section and the deadlines applicable to such mediation.

(2) Initiation**(A) In general**

During the period described in subparagraph (B), either the covered employee who filed a claim under section 1402 of this title or the employing office named in the claim may file a request for mediation with the Office, which shall promptly notify the other party. If the other party agrees to the request, the Office shall promptly assign a mediator to the claim, and conduct mediation under this section.

(B) Timing

A covered employee or an employing office may file a request for mediation under subparagraph (A) during the period beginning on the date that the covered employee or employing office, respectively, receives a notification under paragraph (1) regarding a claim under section 1402 of this title and ending on the date on which a hearing officer issues a written decision relating to the claim under section 1405(g) of this title or the covered employee files a civil action with respect to the claim in accordance with section 1408 of this title, as applicable.

(3) Failure to request or accept mediation to have no effect on treatment of claim

The failure of a party to request mediation under this section with respect to a claim, or

the failure of a party to agree to a request for mediation under this section, may not be taken into consideration under any procedure under this title with respect to the claim, including a preliminary review under section 1402a of this title, a formal hearing under section 1405 of this title, or a civil action under section 1408 of this title.

(b) Process

Mediation under this section—

(1) may include the Office, the covered employee, the employing office, and one or more individuals appointed by the Executive Director from the master list developed and maintained under subsection (e), and

(2) shall involve meetings with the parties during which, at the request of any of the parties, the parties shall be separated, for the purpose of resolving the dispute between the covered employee and the employing office.

(c) Mediation period

The mediation period shall be 30 days, beginning on the first day after the second party agrees to the request for the mediation. The mediation period may be extended for one additional period of 30 days at the joint request of the covered employee and employing office. Any deadline in this chapter relating to a claim for which mediation has been agreed to in this section, that has not already passed by the first day of the mediation period, shall be stayed during the mediation period. The Office shall notify in writing the covered employee and the employing office when the mediation period has ended.

(d) Independence of mediation process

No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under section 1405 of this title with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(e) Master list of mediators**(1) Development and maintenance of master list**

The Executive Director shall develop and maintain a master list of individuals who are experienced in adjudicating, arbitrating, or mediating the kinds of personnel and other matters for which mediation may be held under this section. Such list may include, but not be limited to, members of the bar of a State or the District of Columbia and retired judges of the United States courts.

(2) Consideration of candidates

In developing the master list under this subsection, the Executive Director shall consider candidates recommended by the Federal Mediation and Conciliation Service or the Administrative Conference of the United States.

(Pub. L. 104-1, title IV, § 404, formerly § 403, Jan. 23, 1995, 109 Stat. 32; Pub. L. 114-6, § 2(a), Mar. 20, 2015, 129 Stat. 81; renumbered § 404 and amended Pub. L. 115-397, title I, §§ 101(c)(2), 104, Dec. 21, 2018, 132 Stat. 5301, 5305.)

Editorial Notes**REFERENCES IN TEXT**

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

PRIOR PROVISIONS

A prior section 404 of Pub. L. 104-1 was classified to section 1404 of this title, prior to repeal by Pub. L. 115-397, title I, §101(c)(1), Dec. 21, 2018, 132 Stat. 5301.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-397, §104(a), amended subsec. (a) generally. Prior to amendment, text read as follows: “Not later than 15 days after receipt by the employee of notice of the end of the counseling period under section 1402 of this title, but prior to and as a condition of making an election under section 1404 of this title, the covered employee who alleged a violation of a law shall file a request for mediation with the Office.”

Subsec. (b)(2). Pub. L. 115-397, §104(b), substituted “meetings with the parties during which, at the request of any of the parties, the parties shall be separated,” for “meetings with the parties separately or jointly”.

Subsec. (c). Pub. L. 115-397, §104(c), substituted “The mediation period shall be 30 days, beginning on the first day after the second party agrees to the request for the mediation. The mediation period may be extended for one additional period of 30 days at the joint request of the covered employee and employing office. Any deadline in this chapter relating to a claim for which mediation has been agreed to in this section, that has not already passed by the first day of the mediation period, shall be stayed during the mediation period.” for “The mediation period shall be 30 days beginning on the date the request for mediation is received. The mediation period may be extended for additional periods at the joint request of the covered employee and the employing office.”

2015—Subsec. (b)(1). Pub. L. 114-6, §2(a)(1), substituted “from the master list developed and maintained under subsection (e)” for “after considering recommendations by organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters”.

Subsec. (e). Pub. L. 114-6, §2(a)(2), added subsec. (e).

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2018 AMENDMENT**

Amendment by Pub. L. 115-397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-6, §2(d), Mar. 20, 2015, 129 Stat. 82, provided that: “The amendments made by this section [amending this section and sections 1404 and 1416 of this title] shall apply with respect to mediations and other proceedings which are first initiated after the date of the enactment of this Act [Mar. 20, 2015].”

§ 1404. Repealed. Pub. L. 115-397, title I, § 101(c)(1), Dec. 21, 2018, 132 Stat. 5301

Section, Pub. L. 104-1, title IV, §404, Jan. 23, 1995, 109 Stat. 33; Pub. L. 114-6, §2(b), Mar. 20, 2015, 129 Stat. 81; Pub. L. 115-141, div. I, title I, §153(b)(2), Mar. 23, 2018, 132 Stat. 786, related to election of proceeding.

§ 1405. Hearing**(a) Requirement for hearings to commence in Office****(1) Hearing required upon request**

If, not later than 10 days after a hearing officer submits the report on the preliminary review of a claim under section 1402a(c) of this title, a covered employee submits a request to the Executive Director for a hearing under this section, the Executive Director shall appoint an independent hearing officer pursuant to subsection (c) to consider the claim and render a decision, and a hearing shall be commenced in the Office.

(2) Exceptions

Paragraph (1) does not apply with respect to the claim if—

(A) the hearing officer’s report on the preliminary review of the claim under section 1402a(c) of this title includes the determination that the individual filing the claim is not a covered employee who has stated a claim for which relief may be granted under this title (as described in section 1402a(d) of this title); or

(B) the covered employee files a civil action as provided in section 1408 of this title with respect to the claim.

(b) Dismissal

A hearing officer may dismiss any claim that the hearing officer finds to be frivolous or that fails to state a claim upon which relief may be granted.

(c) Hearing officer**(1) Appointment**

Upon the filing of a request for a hearing under subsection (a), the Executive Director shall appoint an independent hearing officer to consider the request for a hearing under subsection (a) and render a decision. No Member of the House of Representatives, Senator, officer of either the House of Representatives or the Senate, head of an employing office, member of the Board, or covered employee may be appointed to be a hearing officer. The Executive Director shall select hearing officers on a rotational or random basis from the lists developed under paragraph (2). Nothing in this section shall prevent the appointment of hearing officers as full-time employees of the Office or the selection of hearing officers on the basis of specialized expertise needed for particular matters.

(2) Lists

The Executive Director shall develop master lists, composed of—

(A) members of the bar of a State or the District of Columbia and retired judges of the United States courts who are experienced in adjudicating or arbitrating the kinds of personnel and other matters for which hearings may be held under this chapter, and

(B) individuals expert in technical matters relating to accessibility and usability by persons with disabilities or technical matters relating to occupational safety and health.

In developing lists, the Executive Director shall consider candidates recommended by the Federal Mediation and Conciliation Service or the Administrative Conference of the United States.

(3) Prohibiting hearing officer conducting preliminary review from conducting hearing

The Executive Director may not appoint a hearing officer to conduct a hearing under this section with respect to a claim if the hearing officer conducted the preliminary review with respect to the claim under section 1402a of this title.

(d) Hearing

Unless a claim is dismissed before a hearing, a hearing shall be—

(1) conducted in closed session on the record by the hearing officer;

(2) commenced no later than 90 days after the Executive Director receives the covered employee's request for the hearing under subsection (a), except that, upon mutual agreement of the parties or for good cause, the Office shall extend the time for commencing a hearing for not more than an additional 30 days; and

(3) conducted, except as specifically provided in this chapter and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5.

(e) Discovery

Reasonable prehearing discovery may be permitted at the discretion of the hearing officer.

(f) Subpoenas

(1) In general

At the request of a party, a hearing officer may issue subpoenas for the attendance of witnesses and for the production of correspondence, books, papers, documents, and other records. The attendance of witnesses and the production of records may be required from any place within the United States. Subpoenas shall be served in the manner provided under rule 45(b) of the Federal Rules of Civil Procedure.

(2) Objections

If a person refuses, on the basis of relevance, privilege, or other objection, to testify in response to a question or to produce records in connection with a proceeding before a hearing officer, the hearing officer shall rule on the objection. At the request of the witness or any party, the hearing officer shall (or on the hearing officer's own initiative, the hearing officer may) refer the ruling to the Board for review.

(3) Enforcement

(A) In general

If a person fails to comply with a subpoena, the Board may authorize the General Counsel to apply, in the name of the Office, to an appropriate United States district court for an order requiring that person to appear before the hearing officer to give testimony or produce records. The application

may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a civil contempt thereof.

(B) Service of process

Process in an action or contempt proceeding pursuant to subparagraph (A) may be served in any judicial district in which the person refusing or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpoenas for witnesses who are required to attend such proceedings may run into any other district.

(g) Decision

The hearing officer shall issue a written decision as expeditiously as possible, but in no case more than 90 days after the conclusion of the hearing. The written decision shall be transmitted by the Office to the parties. The decision shall state the issues raised in the claim, describe the evidence in the record, contain findings of fact and conclusions of law, contain a determination of whether a violation has occurred, and order such remedies as are appropriate pursuant to subchapter II. The decision shall be entered in the records of the Office. If a decision is not appealed under section 1406 of this title to the Board, the decision shall be considered the final decision of the Office.

(h) Precedents

A hearing officer who conducts a hearing under this section shall be guided by judicial decisions under the laws made applicable by section 1302 of this title and by Board decisions under this chapter.

(Pub. L. 104-1, title IV, § 405, Jan. 23, 1995, 109 Stat. 33; Pub. L. 115-397, title I, § 103(b)-(e), Dec. 21, 2018, 132 Stat. 5304, 5305.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(2)(A), (d)(3), and (h), was in the original "this Act", meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3 which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

Rule 45(b) of the Federal Rules of Civil Procedure, referred to in subsec. (f)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Subchapter II, referred to in subsec. (g), was in the original "title II", meaning title II of Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 7, which is classified principally to subchapter II of this chapter. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2018—Pub. L. 115-397, § 103(e)(1), struck out "Complaint and" before "Hearing" in section catchline.

Subsec. (a). Pub. L. 115-397, § 103(b), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to filing complaints by covered employees after completion of mediation under former section 1403 of this title.

Subsec. (c)(1). Pub. L. 115-397, § 103(e)(2), which directed substitution of "request for a hearing under sub-

section (a)” for “complaint”, was executed by making the substitution both places it appeared, to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 115–397, § 103(c), added par. (3).

Subsec. (d). Pub. L. 115–397, § 103(e)(3), substituted “claim” for “complaint” in introductory provisions.

Subsec. (d)(2). Pub. L. 115–397, § 103(d), added par. (2) and struck out former par. (2) which read as follows: “commenced no later than 60 days after filing of the complaint under subsection (a), except that the Office may, for good cause, extend up to an additional 30 days the time for commencing a hearing; and”.

Subsec. (g). Pub. L. 115–397, § 103(e)(4), substituted “claim” for “complaint”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115–397, set out as a note under section 1301 of this title.

§ 1406. Appeal to Board

(a) In general

Any party aggrieved by the decision of a hearing officer under section 1405(g) of this title may file a petition for review by the Board not later than 30 days after entry of the decision in the records of the Office.

(b) Parties' opportunity to submit argument

The parties to the hearing upon which the decision of the hearing officer was made shall have a reasonable opportunity to be heard, through written submission and, in the discretion of the Board, through oral argument.

(c) Standard of review

The Board shall set aside a decision of a hearing officer if the Board determines that the decision was—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (2) not made consistent with required procedures; or
- (3) unsupported by substantial evidence.

(d) Record

In making determinations under subsection (c), the Board 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.

(e) Decision

The Board shall issue a written decision setting forth the reasons for its decision. The decision may affirm, reverse, or remand to the hearing officer for further proceedings. A decision that does not require further proceedings before a hearing officer shall be entered in the records of the Office as a final decision.

(Pub. L. 104–1, title IV, § 406, Jan. 23, 1995, 109 Stat. 35.)

§ 1407. Judicial review of Board decisions and enforcement

(a) Jurisdiction

(1) Judicial review

The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any proceeding commenced by a petition of—

(A) a party aggrieved by a final decision of the Board under section 1406(e) of this title in cases arising under part A of subchapter II,

(B) a charging individual or a respondent before the Board who files a petition under section 1331(d)(4) of this title,

(C) the General Counsel or a respondent before the Board who files a petition under section 1341(c)(5) of this title, or

(D) the General Counsel or a respondent before the Board who files a petition under section 1351(c)(3) of this title.

The court of appeals shall have exclusive jurisdiction to set aside, suspend (in whole or in part), to determine the validity of, or otherwise review the decision of the Board.

(2) Enforcement

The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 1405(g) or 1406(e) of this title with respect to a violation of part A, B, C, or D of subchapter II.

(b) Procedures

(1) Respondents

(A) In any proceeding commenced by a petition filed under subsection (a)(1)(A) or (B), or filed by a party other than the General Counsel under subsection (a)(1)(C) or (D), the Office shall be named respondent and any party before the Board may be named respondent by filing a notice of election with the court within 30 days after service of the petition.

(B) In any proceeding commenced by a petition filed by the General Counsel under subsection (a)(1)(C) or (D), the prevailing party in the final decision entered under section 1406(e) of this title shall be named respondent, and any other party before the Board may be named respondent by filing a notice of election with the court within 30 days after service of the petition.

(C) In any proceeding commenced by a petition filed under subsection (a)(2), the party under section 1405 or 1406 of this title that the General Counsel determines has failed to comply with a final decision under section 1405(g) or 1406(e) of this title shall be named respondent.

(2) Intervention

Any party that participated in the proceedings before the Board under section 1406 of this title and that was not made respondent under paragraph (1) may intervene as of right.

(c) Law applicable

Chapter 158 of title 28 shall apply to judicial review under paragraph (1) of subsection (a), except that—

(1) with respect to section 2344 of title 28, service of a petition in any proceeding in which the Office is a respondent shall be on the General Counsel rather than on the Attorney General;

(2) the provisions of section 2348 of title 28, on the authority of the Attorney General, shall not apply;

(3) the petition for review shall be filed not later than 90 days after the entry in the Office of a final decision under section 1406(e) of this title; and

(4) the Office shall be an “agency” as that term is used in chapter 158 of title 28.

(d) Standard of review

To the extent necessary for decision in a proceeding commenced under subsection (a)(1) and when presented, the court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final decision of the Board if it is determined that the decision was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(e) Record

In making determinations under subsection (d), 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.

(Pub. L. 104–1, title IV, § 407, Jan. 23, 1995, 109 Stat. 35.)

Editorial Notes

REFERENCES IN TEXT

Parts A, B, C, and D of subchapter II, referred to in subsec. (a), were in the original references to parts A (§§ 201–207), B (§ 210), C (§ 215), and D (§ 220), respectively, of title II of Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 7, 13, 16, 19, which are classified principally to parts A, B, C, and D, respectively, of subchapter II of this chapter. For complete classification of parts A, B, C, and D to the Code, see Tables.

§ 1408. Civil action

(a) Jurisdiction

The district courts of the United States shall have jurisdiction over any civil action commenced under section 1401 of this title 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 1311 of this title is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 1311(b)(1) or 1311(b)(3) of this title.

(d) Appearances by House Employment Counsel

(1) In general

The House Employment Counsel of the House of Representatives and any other counsel in the Office of House Employment Counsel of the House of Representatives, including any counsel specially retained by the Office of

House Employment Counsel, shall be entitled, for the purpose of providing legal assistance and representation to employing offices of the House of Representatives under this chapter, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any such person to practice before the United States Supreme Court.

(2) House Employment Counsel defined

In this subsection, the term “Office of House Employment Counsel of the House of Representatives” means—

(A) the Office of House Employment Counsel established and operating under the authority of the Clerk of the House of Representatives as of November 12, 2001;

(B) any successor office to the Office of House Employment Counsel which is established after November 12, 2001; and

(C) any other person authorized and directed in accordance with the Rules of the House of Representatives to provide legal assistance and representation to employing offices of the House of Representatives in connection with actions brought under this subchapter.

(Pub. L. 104–1, title IV, § 408, Jan. 23, 1995, 109 Stat. 37; Pub. L. 107–68, title I, § 119(a), Nov. 12, 2001, 115 Stat. 573; Pub. L. 115–397, title I, § 101(b), Dec. 21, 2018, 132 Stat. 5300.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d)(1), was in the original “this Act”, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–397 substituted “section 1401 of this title” for “section 1404 of this title” and struck out “who has completed counseling under section 1402 of this title and mediation under section 1403 of this title. A civil action may be commenced by a covered employee only to seek redress for a violation for which the employee has completed counseling and mediation” after “covered employee”.

2001—Subsec. (d). Pub. L. 107–68 added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115–397, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–68, title I, § 119(b), Nov. 12, 2001, 115 Stat. 574, provided that: “The amendment made by this section [amending this section] shall apply with respect to proceedings occurring on or after the date of the enactment of this Act [Nov. 12, 2001].”

§ 1409. Judicial review of regulations

In any proceeding brought under section 1407 or 1408 of this title 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, except that with respect to regulations approved by a joint resolution under section 1384(c) of this title, only the provisions of section 706(2)(B) of title 5 shall apply. 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.

(Pub. L. 104-1, title IV, § 409, Jan. 23, 1995, 109 Stat. 37.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

§ 1410. Other judicial review prohibited

Except as expressly authorized by sections 1407, 1408, and 1409 of this title, 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.

(Pub. L. 104-1, title IV, § 410, Jan. 23, 1995, 109 Stat. 37.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

§ 1411. Effect of failure to issue regulations

In any proceeding under section 1405, 1406, 1407, or 1408 of this title, except a proceeding to enforce section 1351 of this title with respect to offices listed under section 1351(e)(2) of this title, if the Board has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the hearing officer, Board, 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.

(Pub. L. 104-1, title IV, § 411, Jan. 23, 1995, 109 Stat. 37.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

§ 1412. 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.

(Pub. L. 104-1, title IV, § 412, Jan. 23, 1995, 109 Stat. 38.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

§ 1413. Privileges and immunities

The authorization to bring judicial proceedings under sections 1405(f)(3), 1407, and 1408 of this title shall not constitute a waiver of sovereign immunity for any other purpose, or of the privileges of any Senator or Member of the House of Representatives under article I, section 6, clause 1, of the Constitution, or a waiver of any power of either the Senate or the House of Representatives under the Constitution, including under article I, section 5, clause 3, or under the rules of either House relating to records and information within its jurisdiction.

(Pub. L. 104-1, title IV, § 413, Jan. 23, 1995, 109 Stat. 38.)

§ 1414. Settlement

Any settlement entered into by the parties to a process described in section 1331, 1341, 1351, or 1401 of this title shall be in writing and not become effective unless it is approved by the Executive Director. Nothing in this chapter shall affect the power of the Senate and the House of Representatives, respectively, to establish rules governing the process by which a settlement may be entered into by such House or by any employing office of such House.

(Pub. L. 104-1, title IV, § 414, Jan. 23, 1995, 109 Stat. 38; Pub. L. 115-397, title I, § 103(f), Dec. 21, 2018, 132 Stat. 5305.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109

Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

2018—Pub. L. 115-397 struck out “of complaints” after “Settlement” in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as a note under section 1301 of this title.

§ 1415. Payments

(a) Awards and settlements

Except as provided in subsection (c), only funds which are appropriated to an account of the Office in the Treasury of the United States for the payment of awards and settlements may be used for the payment of awards and settlements under this chapter. There are appropriated for such account such sums as may be necessary to pay such awards and settlements. Funds in the account are not available for awards and settlements involving the Government Accountability Office or the Government Publishing Office.

(b) Compliance

Except as provided in subsection (c), there are authorized to be appropriated such sums as may be necessary for administrative, personnel, and similar expenses of employing offices which are needed to comply with this chapter.

(c) OSHA, accommodation, and access requirements

Funds to correct violations of section 1311(a)(3), 1331, or 1341 of this title may be paid only from funds appropriated to the employing office or entity responsible for correcting such violations. There are authorized to be appropriated such sums as may be necessary for such funds.

(d) Reimbursement by Members of Congress of amounts paid as settlements and awards

(1) Reimbursement required for certain violations

(A) In general

Subject to subparagraphs (B) and (D), if a payment is made from the account described in subsection (a) for an award or settlement in connection with a claim alleging a violation described in subparagraph (C) committed personally by an individual who, at the time of committing the violation, was a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or a Senator, the individual shall reimburse the account for the amount of the award or settlement for the claim involved.

(B) Conditions

In the case of an award made pursuant to a decision of a hearing officer under section

1405 of this title, or a court in a civil action, subparagraph (A) shall apply only if the hearing officer or court makes a separate finding that a violation described in subparagraph (C) occurred which was committed personally by an individual who, at the time of committing the violation, was a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or a Senator, and such individual shall reimburse the account for the amount of compensatory damages included in the award as would be available if awarded under section 1981a(b)(3) of title 42 irrespective of the size of the employing office. In the case of a settlement for a claim described in section 1416(d)(3) of this title, subparagraph (A) shall apply only if the conditions specified in section 1416(d)(3) of this title for requesting reimbursement are met.

(C) Violations described

A violation described in this subparagraph is—

- (i) harassment that is unlawful under section 1311(a) or 1316(a) of this title; or
- (ii) intimidation, reprisal, or discrimination that is unlawful under section 1317 of this title and is taken against a covered employee because of a claim alleging a violation described in clause (i).

(D) Multiple claims

If an award or settlement is made for multiple claims, some of which do not require reimbursement under this subsection, the individual described in subparagraph (A) shall only be required to reimburse for the amount (referred to in this chapter as the “reimbursable portion”) that is—

- (i) described in subparagraph (A), subject to subparagraph (B); and
- (ii) included in the portion of the award or settlement attributable to a claim requiring reimbursement.

(2) Withholding amounts from compensation

(A) Establishment of timetable and procedures by committees

For purposes of carrying out subparagraph (B), the applicable Committee shall establish a timetable and procedures for the withholding of amounts from the compensation of an individual who is a Member of the House of Representatives or a Senator.

(B) Deadline

The payroll administrator shall withhold from an individual's compensation and transfer to the account described in subsection (a) (after making any deposit required under section 8432(f) of title 5) such amounts as may be necessary to reimburse the account described in subsection (a) for the reimbursable portion of the award or settlement described in paragraph (1) if the individual has not reimbursed the account as required under paragraph (1) prior to the expiration of the 90-day period which begins on the date a payment is made from the account for such an award or settlement.

(C) Applicable Committee defined

In this paragraph, the term “applicable Committee” means—

- (i) the Committee on House Administration of the House of Representatives, in the case of an individual who, at the time of the withholding, is a Member of the House; or
- (ii) the Committee on Rules and Administration of the Senate, in the case of an individual who, at the time of the withholding, is a Senator.

(3) Use of amounts in Thrift Savings Fund as source of reimbursement**(A) In general**

If, by the expiration of the 180-day period that begins on the date a payment is made from the account described in subsection (a) for an award or settlement described in paragraph (1), an individual who is subject to a reimbursement requirement of this subsection has not reimbursed the account for the entire reimbursable portion as required under paragraph (1), withholding and transfers of amounts shall continue under paragraph (2) if the individual remains employed in the same position, and the Executive Director of the Federal Retirement Thrift Investment Board shall make a transfer described in subparagraph (B).

(B) Transfers

The transfer by such Executive Director is a transfer, from the account of the individual in the Thrift Savings Fund to the account described in subsection (a), of an amount equal to the amount of that reimbursable portion of the award or settlement, reduced by—

- (i) any amount the individual has reimbursed, taking into account any amounts withheld under paragraph (2); and
- (ii) if the individual remains employed in the same position, any amount that the individual is scheduled to reimburse, taking into account any amounts to be withheld under the individual's timetable under paragraph (2).

(C) Initiation of transfer

Notwithstanding section 8435 of title 5, the Executive Director described in subparagraph (A) shall make the transfer under subparagraph (A) upon receipt of a written request to the Executive Director from the Secretary of the Treasury, in the form and manner required by the Executive Director.

(D) Coordination between payroll administrator and the Executive Director

The payroll administrator and the Executive Director described in subparagraph (A) shall carry out this paragraph in a manner that ensures the coordination of the withholding and transferring of amounts under this paragraph, in accordance with regulations promulgated by the Board under section 1383 of this title and such Executive Director.

(4) Administrative wage garnishment or other collection of wages from a subsequent position**(A) Individual subject to garnishment or other collection**

Subparagraph (B) shall apply to an individual who is subject to a reimbursement requirement of this subsection if, at any time after the expiration of the 270-day period that begins on the date a payment is made from the account described in subsection (a) for an award or settlement described in paragraph (1), the individual—

- (i) has not reimbursed the account for the entire reimbursable portion as required under paragraph (1), through withholdings or transfers under paragraphs (2) and (3);
- (ii) is not serving in a position as a Member of the House of Representatives or a Senator; and
- (iii) is employed in a subsequent non-Federal position.

(B) Garnishment or other collection of wages

On the expiration of that 270-day period, the amount of the reimbursable portion of an award or settlement described in paragraph (1) (reduced by any amount the individual has reimbursed, taking into account any amounts withheld or transferred under paragraph (2) or (3)) shall be treated as a claim of the United States and transferred to the Secretary of the Treasury for collection. Upon that transfer, the Secretary of the Treasury shall collect the claim, in accordance with section 3711 of title 31, including by administrative wage garnishment of the wages of the individual described in subparagraph (A) from the position described in subparagraph (A)(iii). The Secretary of the Treasury shall transfer the collected amount to the account described in subsection (a).

(5) Notification to Office of Personnel Management and Secretary of the Treasury**(A) Individual subject to annuity or social security withholding**

Subparagraph (B) shall apply to an individual subject to a reimbursement requirement of this subsection if, at any time after the expiration of the 270-day period described in paragraph (4)(A), the individual—

- (i) has not served in a position as a Member of the House of Representatives or a Senator during the preceding 90 days; and
- (ii) is not employed in a subsequent non-Federal position.

(B) Annuity or social security withholding

If, at any time after the 270-day period described in paragraph (4)(A), the individual described in subparagraph (A) has not reimbursed the account described in subsection (a) for the entire reimbursable portion of the award or settlement described in paragraph (1) (as determined by the Secretary of the Treasury), through withholdings, transfers, or collections under paragraphs (2) through (4), the Secretary of the Treasury (after consultation with the payroll administrator)—

(i) shall notify the Director of the Office of Personnel Management, who shall take such actions as the Director considers appropriate to withhold from any annuity payable to the individual under chapter 83 or chapter 84 of title 5 and transfer to the account described in subsection (a), such amounts as may be necessary to reimburse the account for the remainder of the reimbursable portion of an award or settlement described in paragraph (1); and

(ii) shall (if necessary), notwithstanding section 207 of the Social Security Act (42 U.S.C. 407), take such actions as the Secretary of the Treasury considers appropriate to withhold from any payment to the individual under title II of the Social Security Act (42 U.S.C. 401 et seq.) and transfer to the account described in subsection (a), such amounts as may be necessary to reimburse the account for the remainder of the reimbursable portion of an award or settlement described in paragraph (1).

(6) Coordination between OPM and Treasury

The Director of the Office of Personnel Management and the Secretary of the Treasury shall carry out paragraph (5) in a manner that ensures the coordination of the withholding and transferring of amounts under such paragraph, in accordance with regulations promulgated by the Director and the Secretary.

(7) Certification

Once the Executive Director determines that an individual who is subject to a reimbursement requirement of this subsection has reimbursed the account described in subsection (a) for the entire reimbursable portion, the Executive Director shall prepare a certification that the individual has completed that reimbursement, and submit the certification to—

(A) the Committees on House Administration and Ethics of the House of Representatives, in the case of an individual who, at the time of committing the act involved, was a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress); and

(B) the Select Committee on Ethics of the Senate, in the case of an individual who, at the time of committing the act involved, was a Senator.

(8) Right to intervene

An individual who is subject to a reimbursement requirement of this subsection shall have the unconditional right to intervene in any mediation, hearing, or civil action under this subchapter to protect the interests of the individual in the determination of whether an award or settlement described in paragraph (1) should be made, and the amount of any such award or settlement, except that nothing in this paragraph may be construed to require the covered employee who filed the claim to be deposed by counsel for the individual in a deposition that is separate from any other deposition taken from the employee in connection with the hearing or civil action.

(9) Definitions

In this subsection:

(A) Non-Federal position

The term “non-Federal position” means a position other than the position of an employee, as defined in section 2105(a) of title 5.

(B) Payroll administrator

The term “payroll administrator” means—

(i) in the case of an individual who is a Member of the House of Representatives, the Chief Administrative Officer of the House of Representatives, or an employee of the Office of the Chief Administrative Officer who is designated by the Chief Administrative Officer to carry out this subsection; or

(ii) in the case of an individual who is a Senator, the Secretary of the Senate, or an employee of the Office of the Secretary of the Senate who is designated by the Secretary to carry out this subsection.

(e) Reimbursement by employing offices

(1) Notification of payments made from account

As soon as practicable after the Executive Director is made aware that a payment of an award or settlement under this chapter has been made from the account described in subsection (a) in connection with a claim alleging a violation of section 1311(a) or 1316(a) of this title by an employing office (other than an employing office of the House of Representatives or an employing office of the Senate), the Executive Director shall notify the head of the employing office that the payment has been made, and shall include in the notification a statement of the amount of the payment.

(2) Reimbursement by office

Not later than 180 days after receiving a notification from the Executive Director under paragraph (1), the head of the employing office involved shall transfer to the account described in subsection (a), out of any funds available for operating expenses of the office, a payment equal to the amount specified in the notification.

(3) Timetable and procedures for reimbursement

The head of an employing office shall transfer a payment under paragraph (2) in accordance with such timetable and procedures as may be established under regulations promulgated by the Office.

(Pub. L. 104–1, title IV, § 415, Jan. 23, 1995, 109 Stat. 38; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 113–76, div. I, title I, § 1101(a), Jan. 17, 2014, 128 Stat. 425; Pub. L. 113–235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 115–141, div. I, title I, § 153(a)(2)(E), Mar. 23, 2018, 132 Stat. 786; Pub. L. 115–397, title I, §§ 111(a), 115(a), Dec. 21, 2018, 132 Stat. 5306, 5314.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (d)(1)(D), and (e)(1), was in the original “this Act”, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification

of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

The Social Security Act, referred to in subsec. (d)(5)(B)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–141 substituted “or” for comma after “Government Accountability Office” and struck out “, or the Library of Congress” before period at end.

Subsec. (d). Pub. L. 115–397, §111(a), added subsec. (d).

Subsec. (e). Pub. L. 115–397, §115(a), added subsec. (e).

2014—Subsec. (a). Pub. L. 113–76 substituted “There are appropriated for such account such sums as may be necessary to pay such awards and settlements.” for “There are authorized to be appropriated for such account such sums as may be necessary to pay such awards and settlements.”

2004—Subsec. (a). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in subsec. (a) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–397, title I, §111(c), Dec. 21, 2018, 132 Stat. 5311, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8437 of Title 5, Government Organization and Employees] shall apply with respect to claims made on or after the date of the enactment of this Act [Dec. 21, 2018].”

Pub. L. 115–397, title I, §115(b), Dec. 21, 2018, 132 Stat. 5314, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to payments made under section 415 of the Congressional Accountability Act of 1995 (2 U.S.C. 1415) for claims filed on or after the date of the enactment of this Act [Dec. 21, 2018].”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–76, div. I, title I, §1101(b), Jan. 17, 2014, 128 Stat. 425, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal year 2014 and each succeeding fiscal year.”

§ 1416. Confidentiality

(a) Mediation

All information discussed or disclosed in the course of any mediation shall be strictly confidential, and the Executive Director shall notify each person participating in the mediation of the confidentiality requirement and of the sanctions applicable to any person who violates the confidentiality requirement.

(b) Hearings and deliberations

Except as provided in subsections (c), (d), and (e), all proceedings and deliberations of hearing officers and the Board, including any related records, shall be confidential. This subsection shall not apply to proceedings under section 1341 of this title, but shall apply to the deliberations of hearing officers and the Board under that section. The Executive Director shall notify each

person participating in a proceeding or deliberation to which this subsection applies of the requirements of this subsection and of the sanctions applicable to any person who violates the requirements of this subsection.

(c) Release of records for judicial action

The records of hearing officers and the Board may be made public if required for the purpose of judicial review under section 1407 of this title.

(d) Automatic referral to Congressional Ethics Committee of dispositions of claims involving Members of Congress and senior staff

(1) Referral

Upon the final disposition under this subchapter (as described in paragraph (6)) of a claim alleging a violation described in section 1415(d)(1)(C) of this title committed personally by a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or a Senator, or by a senior staff of the House of Representatives or Senate, the Executive Director shall refer the claim to—

(A) the Committee on Ethics of the House of Representatives, in the case of a Member or senior staff of the House; or

(B) the Select Committee on Ethics of the Senate, in the case of a Senator or senior staff of the Senate.

(2) Access to records and information

If the Executive Director refers a claim to a Committee under paragraph (1), the Executive Director shall provide the Committee with access to the records of any preliminary reviews, hearings, or decisions of the hearing officers and the Board under this chapter, and any information relating to an award or settlement paid, in response to such claim.

(3) Review by Senate ethics committee of settlements of certain claims

After the receipt of a settlement agreement for a claim that includes an allegation of a violation described in section 1415(d)(1)(C) of this title committed personally by a Senator, the Select Committee on Ethics of the Senate shall—

(A) not later than 90 days after that receipt, review the settlement agreement;

(B) determine whether an investigation of the claim is warranted; and

(C) if the Select Committee determines, after the investigation, that the claim that resulted in the settlement involved an actual violation described in section 1415(d)(1)(C) of this title committed personally by the Senator, then the Select Committee shall notify the Executive Director to request the reimbursement described in section 1415(d) of this title and include the settlement in the report required by section 1381(l) of this title.

(4) Protection of personally identifiable information

If a Committee to which a claim is referred under paragraph (1) issues a report with respect to the claim, the Committee shall ensure that the report does not directly disclose the

identity or position of the individual who filed the claim.

(5) Committee authority to protect identity of a claimant

(A) Authority

If a Committee to which a claim is referred under paragraph (1) issues a report as described in paragraph (4) concerning a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or a Senator, or a senior staff of the House of Representatives or Senate, the Committee may make an appropriate redaction to the information or data included in the report if the Chairman and Vice Chairman of the Committee reach agreement—

- (i) that including the information or data considered for redaction may lead to the unintentional disclosure of the identity or position of a claimant; and
- (ii) on the precise information or data to be redacted.

(B) Notation and statement

The report including any such redaction shall note each redaction and include a statement that the redaction was made solely for the purpose of avoiding such an unintentional disclosure of the identity or position of a claimant.

(C) Retention of reports

The Committee making a redaction in accordance with this paragraph shall retain a copy of the report, without a redaction.

(6) Final disposition described

In this subsection, the “final disposition” of a claim means any of the following:

- (A) An order or agreement to pay an award or settlement, including an agreement reached pursuant to mediation under section 1403 of this title.
- (B) A final decision of a hearing officer under section 1405(g) of this title that is no longer subject to review by the Board under section 1406 of this title.
- (C) A final decision of the Board under section 1406(e) of this title that is no longer subject to appeal to the United States Court of Appeals for the Federal Circuit under section 1407 of this title.
- (D) A final decision in a civil action under section 1408 of this title that is no longer subject to appeal.

(7) Senior staff defined

In this subsection, the term “senior staff” means any individual who, at the time a violation occurred, was required to file a report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 101 et seq.).¹

(e) Final decisions

A final decision entered under section 1405(g) or 1406(e) of this title shall be made public if it is in favor of the complaining covered employee, or in favor of the charging party under section 1331 of this title, or if the decision reverses a de-

cision of a hearing officer which had been in favor of the covered employee or charging party. The Board may make public any other decision at its discretion.

(f) Claims

Nothing in this section may be construed to prohibit a covered employee from disclosing the factual allegations underlying the covered employee’s claim, or to prohibit an employing office from disclosing the factual allegations underlying the employing office’s defense to the claim, in the course of any proceeding under this subchapter.

(Pub. L. 104–1, title IV, § 416, Jan. 23, 1995, 109 Stat. 38; Pub. L. 114–6, § 2(c), Mar. 20, 2015, 129 Stat. 81; Pub. L. 115–397, title I, §§ 112, 114, Dec. 21, 2018, 132 Stat. 5311, 5313.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original “this Act”, meaning Pub. L. 104–1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

The Ethics in Government Act of 1978, referred to in subsec. (d)(7), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. Title I of the Act was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in subchapter I (§ 13101 et seq.) of chapter 131 of Title 5 by Pub. L. 117–286, §§ 3(c), 7, Dec. 27, 2022, 136 Stat. 4266, 4361. For complete classification of this Act to the Code, see Tables. For disposition of sections of title I of the Act into subchapter I of chapter 131 of Title 5, see Disposition Table preceding section 101 of Title 5.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–397, § 114(b)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a). Prior to amendment, text of subsec. (a) read as follows: “All counseling shall be strictly confidential, except that the Office and a covered employee may agree to notify the employing office of the allegations.”

Subsec. (b). Pub. L. 115–397, § 114(b)(2), (3), redesignated subsec. (c) as (b) and substituted “subsections (c), (d), and (e)” for “subsections (d), (e), and (f)”. Former subsec. (b) redesignated (a).

Pub. L. 115–397, § 114(a), substituted “All information discussed or disclosed in the course of any mediation” for “All mediation”.

Subsecs. (c), (d). Pub. L. 115–397, § 114(b)(2), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 115–397, § 114(b)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Pub. L. 115–397, § 112, amended subsec. (e) generally, substituting provisions relating to automatic referral to congressional ethics committee of dispositions of claims involving Members of Congress and senior staff for provisions relating to access by committees of Congress.

Subsec. (f). Pub. L. 115–397, § 114(b)(4), added subsec. (f). Former subsec. (f) redesignated (e).

2015—Subsec. (b). Pub. L. 114–6, § 2(c)(1), inserted before period at end “, and the Executive Director shall notify each person participating in the mediation of the confidentiality requirement and of the sanctions applicable to any person who violates the confidentiality requirement”.

Subsec. (c). Pub. L. 114–6, § 2(c)(2), inserted at end “The Executive Director shall notify each person participating in a proceeding or deliberation to which this subsection applies of the requirements of this sub-

¹ See References in Text note below.

section and of the sanctions applicable to any person who violates the requirements of this subsection.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-6 applicable with respect to mediations and other proceedings first initiated after Mar. 20, 2015, see section 2(d) of Pub. L. 114-6, set out as a note under section 1403 of this title.

§ 1417. Option to request remote work assignment or paid leave of absence during pendency of procedures

(a) Options for employees

(1) Remote work assignment

At the request of a covered employee who files a claim alleging a violation of part A of subchapter II by the covered employee's employing office, during the pendency of any of the procedures available under this subchapter for consideration of the claim, the employing office may permit the covered employee to carry out the employee's responsibilities from a remote location (referred to in this section as “permitting a remote work assignment”) where such relocation would have the effect of materially reducing interactions between the covered employee and any person alleged to have committed the violation, instead of from a location of the employing office.

(2) Exception for work assignments required to be carried out onsite

If, in the determination of the covered employee's employing office, a covered employee who makes a request under this subsection cannot carry out the employee's responsibilities from a remote location or such relocation would not have the effect described in paragraph (1), the employing office may during the pendency of the procedures described in paragraph (1)—

(A) grant a paid leave of absence to the covered employee;

(B) permit a remote work assignment and grant a paid leave of absence to the covered employee; or

(C) make another workplace adjustment, or permit a remote work assignment, that would have the effect of reducing interactions between the covered employee and any person alleged to have committed the violation described in paragraph (1).

(3) Ensuring no retaliation

An employing office may not grant a covered employee's request under this subsection in a manner which would constitute a violation of section 1317 of this title.

(4) No impact on vacation or personal leave

In granting leave for a paid leave of absence under this section, an employing office shall not require the covered employee to sub-

stitute, for that leave, any of the accrued paid vacation or personal leave of the covered employee.

(b) Exception for arrangements subject to collective bargaining agreements

Subsection (a) does not apply to the extent that it is inconsistent with the terms and conditions of any collective bargaining agreement which is in effect with respect to an employing office.

(Pub. L. 104-1, title IV, § 417, as added Pub. L. 115-397, title I, § 113(a), Dec. 21, 2018, 132 Stat. 5313.)

Editorial Notes

REFERENCES IN TEXT

Part A of subchapter II, referred to in subsec. (a)(1), was in the original “part A of title II”, meaning part A (§§ 201-207) of title II of Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 7, which is classified principally to part A of subchapter II of this chapter. For complete classification of part A to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as an Effective Date of 2018 Amendment note under section 1301 of this title.

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

§ 1431. Exercise of rulemaking powers

The provisions of sections 1302(b)(3), section 1381(l), and 1384(c) of this title are enacted—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

(Pub. L. 104-1, title V, § 501, Jan. 23, 1995, 109 Stat. 39; Pub. L. 115-397, title II, § 201(c), Dec. 21, 2018, 132 Stat. 5317.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-397 inserted “, section 1381(l),” before “and 1384(c) of this title” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018,

¹ So in original. The word “section” probably should not appear.