

Whereas, on August 15, 1948, the Provisional Government of the Republic of Korea, established on April 11, 1919, was dissolved and transitioned to the First Republic of Korea, their first independent government;

Whereas United States military personnel have maintained a continuous presence on the Korean Peninsula since the Mutual Defense Treaty Between the United States and the Republic of Korea (5 UST 2368) was signed at Washington on October 1, 1953;

Whereas, on May 7, 2013, the United States and the Republic of Korea signed a Joint Declaration in Commemoration of the 60th Anniversary of the Alliance Between the Republic of Korea and the United States;

Whereas 63 years ago the Treaty of Friendship, Commerce, and Navigation between the United States and the Republic of Korea, with Protocol (8 UST 2217) was signed at Seoul on November 28 1956;

Whereas the economic relationship between the United States and the Republic of Korea is deep and mutually beneficial to both countries;

Whereas the Republic of Korea is the United States' seventh-largest trading partner;

Whereas the Republic of Korea is the 5th fastest growing source of foreign direct investment in the United States;

Whereas the United States is the largest source of foreign direct investment in the Republic of Korea;

Whereas, on January 13, 1903, 102 pioneer Korean immigrants arrived in the United States, initiating the first chapter of Korean immigration to America;

Whereas the over 2,000,000 Korean Americans living in the United States contribute to the diversity and prosperity of our nation, participate in all facets of American life, and have made significant contributions to the economic vitality of the United States;

Whereas members of the Korean American community serve with distinction in the United States Armed Forces;

Whereas Korean Americans continue to build and strengthen the alliance between the United States and the Republic of Korea; and

Whereas the Asia Reassurance Initiative Act (Public Law 115-409), signed into law on December 31, 2018, states that the United States Government—

(1) is committed to the Mutual Defense Treaty Between the United States and the Republic of Korea and all related and subsequent bilateral security agreements and arrangements concluded on or before the date of the enactment of that Act;

(2) recognizes the vital role of the alliance between the United States and South Korea in promoting peace and security in the Indo-Pacific region; and

(3) calls for the strengthening and broadening of diplomatic, economic, and security ties between the United States and the Republic of Korea: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the vital role the alliance of the United States and the Republic of Korea plays in promoting peace and security in the Indo-Pacific region;

(2) calls for the strengthening and broadening of diplomatic, economic, and security ties between the United States and the Republic of Korea; and

(3) reaffirms the United States' alliance with the Republic of Korea is central to advancing United States interests and engagement in the region, based on shared commitments democracy, free-market economics, human rights, and the rule of law.

AUTHORITY FOR COMMITTEES TO MEET

Mr. CORNYN. Mr. President, I have 12 requests for committees to meet during today's session of the Senate. They have the approval of the Majority and Minority leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today's session of the Senate:

COMMITTEE ON ARMED SERVICES

The Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 9:30 a.m., to conduct a hearing.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

The Committee on Energy and Natural Resources is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 10 a.m., to conduct a hearing.

COMMITTEE ON FINANCE

The Committee on Finance is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 10:15 a.m., to conduct a hearing on drug pricing and prescription cost.

COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 3 p.m., to conduct a hearing on the following nominations: Jeffrey L. Eberhardt, of Wisconsin, to be Special Representative of the President for Nuclear Nonproliferation, with the rank of Ambassador, and James S. Gilmore, of Virginia, to be U.S. Representative to the Organization for Security and Cooperation in Europe, with the rank of Ambassador, both of the Department of State; and Alan R. Swendiman, of North Carolina, to be Deputy Director of the Peace Corps.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

The Committee on Health, Education, Labor, and Pensions is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 2:30 p.m., to conduct a hearing on the pending nominations and Gordon Hartogensis, of Connecticut, to be Director of the Pension Benefit Guaranty Corporation.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

The Committee on Homeland Security and Governmental Affairs is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 10 a.m., to conduct a hearing on immigration.

COMMITTEE ON THE JUDICIARY

The Committee on the Judiciary is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 10 a.m., to conduct a hearing on abortion policy.

SELECT COMMITTEE ON INTELLIGENCE

The Select Committee on Intelligence is authorized to meet during the session of the Senate on Tuesday,

April 9, 2019, at 9:30 a.m., to conduct a closed hearing.

SELECT COMMITTEE ON INTELLIGENCE

The Select Committee on Intelligence is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 2:30 p.m., to conduct a closed hearing.

SUBCOMMITTEE ON AIRLAND

The Subcommittee on Airland of the Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 3 p.m., to conduct a hearing.

SUBCOMMITTEE ON EMERGING THREATS AND CAPABILITIES

The Subcommittee on Emerging Threats and Capabilities of the Committee on Armed Services is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON EAST ASIA, THE PACIFIC, AND INTERNATIONAL CYBERSECURITY POLICY

The Subcommittee on East Asia, The Pacific, and International Cybersecurity Policy of the Committee on Foreign Relations is authorized to meet during the session of the Senate on Tuesday, April 9, 2019, at 10 a.m., to conduct a hearing.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF CONGRESSIONAL
WORKPLACE RIGHTS,
April 9, 2019, Washington, DC.

Hon. CHARLES GRASSLEY,
President Pro Tempore, U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: Section 303(a) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1383(a), provides that the Executive Director of the Office of Congressional Workplace Rights "shall, subject to the approval of its Board of Directors, adopt rules governing the procedures of the Office, including the procedures of hearing officers, which shall be submitted for publication in the Congressional Record. The rules may be amended in the same manner." Section 303(b) of the Act, 2 U.S.C. 1383(b), further provides that the Executive Director "shall publish a general notice of proposed rulemaking" and "shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal."

Having obtained the approval of the Board as required by section 303(b) of the CAA, 2 U.S.C. 1383(b), I am transmitting the attached notice of proposed procedural rulemaking to the President Pro Tempore of the Senate. I request that this notice be published in the Senate section of the Congressional Record on the first day on which both Houses are in session following the receipt of this transmittal. In compliance with section 303(b) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Susan Tsui Grundmann, Executive Director of the Office of Congressional Workplace Rights, Room LA-200, 110

2nd Street SE, Washington, DC 20540; telephone: 202-724-9250.

Sincerely,

SUSAN TSUI GRUNDMANN,
Executive Director,

Office of Congressional Workplace Rights.

FROM THE EXECUTIVE DIRECTOR OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS: NOTICE OF PROPOSED RULEMAKING AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES

PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE, NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. §1383, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED

Introductory Statement

Shortly after the enactment of the Congressional Accountability Act (CAA or the Act) in 1995, Procedural Rules were adopted to govern the processing of cases and controversies under the administrative procedures established in subchapter IV of the CAA. 2 U.S.C. 1401-07. Those Rules of Procedure were amended in 1998, 2004, and again in 2016. The existing Rules of Procedure are available in their entirety on the public website of the Office of Congressional Workplace Rights (OCWR): www.ocwr.gov.

Pursuant to section 303(a) of the CAA (2 U.S.C. 1383(a)), the Executive Director of the OCWR has obtained approval of its Board of Directors regarding certain amendments to the Rules of Procedure.

After obtaining the Board's approval, the OCWR Executive Director must then "publish a general notice of proposed rulemaking . . . for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal." (Section 303(b) of the CAA, 2 U.S.C. 1383(b)).

Notice

Comments regarding the proposed amendments to the OCWR Procedural Rules set forth in this NOTICE are invited for a period of thirty (30) days following the date of the appearance of this NOTICE in the Congressional Record. In addition to being posted on the OCWR's website (www.ocwr.gov), this NOTICE is also available in alternative formats. Requests for this NOTICE in an alternative format should be made to the Office of Congressional Workplace Rights, at 202-724-9272 (voice). Submission of comments must be made in writing to the Executive Director, Office of Congressional Workplace Rights, 110 Second Street, S.E., Room LA-200, Washington, D.C. 20540-1999. It is requested, but not required, that an electronic version of any comments be provided via e-mail to: Alexander Ruvinsky, Alexander.Ruvinsky@ocwr.gov. Comments may also be submitted by facsimile to the Executive Director at 202-426-1913 (a non toll-free number). Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. Copies of submitted comments will be available for review on the OCWR's public website at www.ocwr.gov.

Supplementary Information

The Congressional Accountability Act of 1995, Pub. L. No. 104-1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 13 federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 301 of the CAA (2 U.S.C. 1381) establishes the OCWR as an independent office within that branch. Section 303 of the CAA (2 U.S.C. 1383) directs the Executive Director, as Chief Operating Officer, to adopt rules of procedure governing the OCWR, subject to approval by the Board of Directors of the Office. The

OCWR Rules of Procedure establish the process by which alleged violations of the 13 laws made applicable to the legislative branch under the CAA are considered and resolved.

On December 21, 2018, the Congressional Accountability Act of 1995 Reform Act was signed into law. (Pub. L. No. 115-397). The new law reflects the first set of comprehensive reforms to the CAA since 1995. Among other reforms, the Act substantially modifies the administrative dispute resolution (ADR) process under the CAA, including: providing for preliminary hearing officer review of claims; requiring current and former Members of Congress to reimburse awards or settlement payments resulting from harassment or retaliation claims; requiring certain employing offices to reimburse payments resulting from specified claims of discrimination; and appointing advisers to provide confidential information to legislative branch employees about their rights under the CAA. Most changes to the ADR process will be effective 180 days from the date of enactment of the Reform Act, i.e., on June 19, 2019.

These proposed amendments to the OCWR's Procedural Rules are the result of the OCWR's comprehensive review of the OCWR's procedures in light of the changes in the Reform Act to the ADR program, and they reflect the OCWR's experience processing disputes under the CAA since the original adoption of these Rules in 1995.

Scope of Comments Requested

The OCWR asks commenters to provide their views on the changes to the Procedural Rules proposed by the OCWR.

Summary of the Changes

Subpart A. Subpart A of the Procedural Rules covers general provisions pertaining to scope and policy, definitions, and information on various filings and computation of time. The OCWR's proposed amendments to subpart A provide additional definitions, and also clarify pleading requirements and procedures concerning confidentiality.

Subpart B. Currently, subpart B of the Procedural Rules sets forth the pre-complaint procedures applicable to consideration of alleged violations of sections 201 through 207 of the CAA, which concern employment discrimination, family and medical leave, fair labor standards, employee polygraph protection, worker adjustment and retraining, employment and reemployment of veterans, and reprisal. Specifically, subpart B sets forth procedures for mandatory pre-complaint counseling and mediation, as well as the statutory election to file either an administrative complaint with the OCWR or a civil action in a U.S. district court. Under the CAA Reform Act, however, counseling and mediation are no longer mandatory jurisdictional prerequisites to adjudication of an alleged violation of sections 201-07 of the CAA. Therefore, the OCWR proposes to remove the procedures for mandatory counseling and mandatory mediation from subpart B. Under the proposed rules, the remaining provisions of subpart B—which concern mediation and the statutory election—appear in subpart D.

The OCWR proposes to reserve a new subpart B for proposed rules and procedures for enforcement of the inspection, investigation and complaint sections 210(d) and (f) of the CAA, which relate to Public Services and Accommodations under titles II and III of the Americans with Disabilities Act. (Subpart C had been reserved for these rules since 1995.)

Subpart C. The OCWR proposes to redesignate the contents of current subpart D as subpart C. Therefore, sections 3.01 through 3.15 of this subpart prescribe rules and procedures for enforcement of the inspection and citation provisions of section 215(c)(1) through (3) of the CAA, which concern the protections set forth in the Occupational

Safety and Health Act of 1970 (OSHAct). Sections 3.20 through 3.31 contain rules of practice for administrative proceedings to grant variances and other relief under sections 6(b)(6)(A) and 6(d) of the OSHAct, as applied by section 215(c)(4) of the CAA. The proposed modifications to subpart C reflect nomenclature changes only. The modifications clarify that references to the "Hearing Officer" in this subpart are to the "Merits Hearing Officer" (defined in these proposed rules as the individual appointed by the Executive Director to preside over an administrative hearing conducted on matters within the Office's jurisdiction under section 405 of the Act), and not the "Preliminary Hearing Officer" (defined in these proposed rules as the individual appointed by the Executive Director to make a preliminary review of claims arising under sections 102(c) and 201 through 207 of the CAA).

Subparts D and E. The Procedural Rules currently set forth a single set of procedures for filing "complaints" under the CAA, whether the complaint is filed with the OCWR by an employee alleging violations of sections 201 through 207 of the Act, or by the OCWR General Counsel alleging violations of sections 210, 215 or 220 of the Act. The CAA Reform Act, however, uses the word "claim" to refer to an alleged violation of sections 201 through 207 of the Act (as well as an alleged violation of section 102(c) of the Act, which incorporates the protections of the Genetic Information Nondisclosure Act). As a result, the term "complaint" in the CAA refers only to violations alleged by the OCWR General Counsel.

Because the procedures in the Reform Act governing employee "claims" differ significantly from those governing General Counsel "complaints," these proposed rules set forth separate procedures for each. Therefore, subpart D, which concerns employee "claims," includes new procedures for informal employee requests for advice and information; confidential advising services; filing of claims; electing to file a civil action; initial processing and transmission of claims to parties; notification requirements; voluntary mediation; preliminary review of claims by a "Preliminary Hearing Officer;" requesting an administrative hearing before a "Merits Hearing Officer;" summary judgment and withdrawal of claims; confidentiality requirements; and automatic referral to congressional ethics committees.

Proposed subpart E, which concerns General Counsel complaints, sets forth procedures for filing complaints, appointment of the Merits Hearing Officer, dismissals, summary judgment, withdrawal of complaints, and confidentiality requirements. The new provisions in the Reform Act governing matters such as confidential advising services, preliminary review of claims, and automatic referral to congressional ethics committees, do not apply to OCWR General Counsel complaints alleging violations of sections 210, 215 or 220 of the Act. Therefore, they are not addressed in proposed subpart E.

Subparts F-H. Subparts F and G include the process for the conduct of administrative hearings held as the result of the filing of an administrative claim or an administrative complaint. Subpart H sets forth the procedures for appeals of decisions by Hearing Officers to the OCWR Board of Directors and for appeals of decisions by the Board of Directors to the United States Court of Appeals for the Federal Circuit.

Proposed amendments to subpart F concern such matters as depositions requests in cases in which a Member of Congress is an intervenor, rulings on motions to quash and motions to limit, and formal requirements for sworn statements. Proposed amendments to subpart G clarify the Merits Hearing Officer's authority concerning frivolous claims,

defenses, and arguments. The proposed amendments also set forth the substantive requirements for the Merits Hearing Officer's written decision, including required findings when a final decision concerns a claim alleging a violation or violations described in section 415(d)(1)(C) of the Act, which requires Members of the House of Representatives and the Senate to reimburse the "compensatory damages" portion of a decision, award or settlement for a violation of section 201(a), 206(a), or 207 of the Act that the Member is found to have "committed personally." Proposed Amendments to subpart H concern appellate proceedings before the Board. They clarify that a report on preliminary review pursuant to section 402(c) of the CAA is not appealable to the Board.

Subpart I. Subpart I concerns other matters of general applicability to the dispute resolution process and to the OCWR's operations. Proposed amendments to subpart I concern requests for attorney fees in arbitration proceedings; informal resolution of disputes; general requirements for formal settlement agreements—including settlement of cases making allegations against a Member of Congress subject to the payment reimbursement provisions of section 415(d) of the Act.

The proposed amendments to subpart I also concern payments governed by section 415(a) of the CAA, which provides, in relevant part, that "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." Pursuant to section 415(a), the OCWR, through its Executive Director, prepares and processes requisitions for disbursements from the Treasury account established pursuant to section 415(a) when qualifying final decisions, awards, or approved settlements require the payment of funds. These proposed amendments provide further guidance for processing certifications of payments from the funds appropriated to the Section 415(a) Treasury Account. They are based on regulations issued by the Department of Treasury's Bureau of Fiscal Services at 31 C.F.R. part 256, which provide guidance to agencies in the executive branch for submitting requests for payments from the Judgment Fund, which is a permanent, indefinite appropriation that is available to pay many judicially and administratively ordered monetary awards against the United States. The proposed amendments also concern reimbursement to the Section 415(a) Treasury Account in cases when the Act requires: (1) Members of the House of Representatives and the Senate to reimburse the "compensatory damages" portion of a decision, award or settlement for a violation of section 201(a), 206(a), or 207 that the Member is found to have "committed personally;" and (2) employing offices (other than an employing office of the House or Senate) to reimburse awards and settlements paid from the Section 415(a) Treasury Account in connection with claims alleging violations of section 201(a) or 206(a) of the Act.

The proposed amendments to subpart I also add a new section governing the requirement in the Reform Act that employing offices must post and keep posted in conspicuous places on their premises the notices provided by the OCWR, which contain information about employees' rights and the OCWR's ADR process, along with OCWR contact information. Finally, the proposed amendments set forth rules concerning the new requirement in the Reform Act that each employing office (other than any employing office of the House of Representatives or any employing office of the Senate)

submit a report both to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the implementation of the training and education program required under section 438(a) of the Act.

Explanation Regarding the Text of the Proposed Amendments

Only subsections of the Procedural Rules that include proposed amendments are reproduced in this NOTICE. The insertion of a series of five asterisks (*****) indicates that a whole section or paragraph, including its subordinate sections paragraphs, is unchanged, and has not been reproduced in this document. The insertion of a series of three asterisks (***) indicates that the unamended text of higher level sections or paragraphs remain unchanged when text is changed at a subordinate level, or that preceding or remaining sentences in a paragraph are unchanged. For the text of other portions of the Procedural Rules which are not proposed to be amended, please access the Office of Congressional Workplace Rights public website at www.ocwr.gov.

Proposed Amendments

For the reasons set forth in the preamble, the OCWR proposes to amend subparts A through I of its Procedural Rules as follows:

SUBPART A—[AMENDED]

[Table of contents omitted]

1. *Revise section 1.01 to read as follows:*

§ 1.01 Scope and Policy

These Rules of the Office of Congressional Workplace Rights (OCWR) govern the procedures for considering and resolving alleged violations of the laws made applicable under parts A, B, C, and D of title II of the Congressional Accountability Act of 1995, as amended by the Congressional Accountability Act of 1995 Reform Act of 2018. The Rules include definitions and procedures for seeking confidential advice, preliminary review, mediation, filing a claim or complaint, and electing between filing a claim with the OCWR and filing a civil action in a United States district court under part A of title II of the CAA. The Rules also address the procedures for compliance, investigation, and enforcement under part B of title II, and for compliance, investigation, enforcement, and variance under part C of title II. The Rules include procedures for the conduct of hearings held as a result of the filing of a claim or complaint and for appeals to the OCWR Board of Directors from Merits Hearing Officers' decisions; as well as other matters of general applicability to the dispute resolution process and to the OCWR's operations. It is the OCWR's policy that these Rules shall be applied with due regard to the rights of all parties and in a manner that expedites the resolution of disputes.

2. *Revise section 1.02 to read as follows:*

§ 1.02 Definitions.

Except as otherwise specifically provided, the following are the definitions of terms used in these Rules:

(a) *Act.*—The term "Act" means the Congressional Accountability Act of 1995, as amended by the Congressional Accountability Act of 1995 Reform Act of 2018.

(b) *Board.*—The term "Board" means the Board of Directors of the Office of Congressional Workplace Rights.

(c) *Chair.*—The term "Chair" means the Chair of the Board of Directors of the Office of Congressional Workplace Rights.

(d) *Claim.*—The term "claim" means the allegations of fact that the claimant contends constitute a violation of part A of title II of the Act, which includes sections 102(c) and 201–207 of the Act.

(e) *Claim Form.*—The term "claim form" means the written pleading an individual files to initiate proceedings with the Office of Congressional Workplace Rights that describes the facts and law supporting the alleged violation of part A of title II of the Act, which includes sections 102(c) and 201–207 of the Act. The "claim form" also may be referred to as the "documented claim."

(f) *Claimant.*—The term "claimant" means the individual filing a claim form with the Office of Congressional Workplace Rights.

(g) *Complaint.*—The term "complaint" means the written pleading filed by the Office by the General Counsel with the Office of Congressional Workplace Rights that describes the facts and law supporting the alleged violation of sections 210(d)(3), 215(c)(3) or 220(c)(2) of the Act.

(h) *Confidential Advisor.*—A "Confidential Advisor" means, pursuant to section 382 of the Act, a lawyer appointed or designated by the Executive Director to offer to provide covered employees certain services, on a privileged and confidential basis, which a covered employee may accept or decline. A Confidential Advisor is not the covered employee's designated representative.

Covered Employee.—see "Employee, Covered," below.

(i) *Designated Representative.*—The term "designated representative" means an individual, firm, or other entity designated in writing by a party to represent the interests of that party in a matter filed with the Office.

(j) *Direct Act.*—The term "direct act," with regard to a Library claimant, means a statute (other than the Act) that is specified in sections 201, 202, or 203 of the CAA.

(k) *Direct Provision.*—The term "direct provision," with regard to a Library claimant, means a direct act provision (including a definitional provision) that applies the rights or protections of a direct act (including the rights and protections relating to nonretaliation or noncoercion).

(l) *Employee.*—The term "employee" includes an applicant for employment and a former employee.

(m) *Employee, Covered.*—The term "covered employee" means any employee of

- (1) the House of Representatives;
- (2) the Senate;
- (3) the Office of Congressional Accessibility Services;
- (4) the Capitol Police;
- (5) the Congressional Budget Office;
- (6) the Office of the Architect of the Capitol;
- (7) the Office of the Attending Physician;
- (8) the Library of Congress, except for section 220 of the Act;
- (9) the Office of Congressional Workplace Rights;
- (10) the Office of Technology Assessment;
- (11) the John C. Stennis Center for Public Service Training and Development;
- (12) the China Review Commission, the Congressional Executive China Commission, and the Helsinki Commission;
- (13) to the extent provided by sections 204–207 and 215 of the Act, the Government Accountability Office; or
- (14) unpaid staff, as defined below in subparagraph 1.02(r) of the Rules.

(n) *Employee of the Office of the Architect of the Capitol.*—The term "employee of the Office of the Architect of the Capitol" includes any employee of the Office of the Architect of the Capitol, or the Botanic Garden.

(o) *Employee of the Capitol Police.*—The term "employee of the Capitol Police" includes civilian employees and any member or officer of the Capitol Police.

(p) *Employee of the House of Representatives.*—The term "employee of the House of Representatives" includes an individual occupying a position the pay for which is disbursed by the Chief Administrative Officer of

the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives, but not any such individual employed by any entity listed in subparagraphs (3) through (13) of paragraph (m) above.

(q) *Employee of the Senate*.—The term “employee of the Senate” includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (13) of paragraph (m) above.

(r) *Employee, Unpaid Staff*.—The term “unpaid staff” means:

(1) any staff member of an employing office who carries out official duties of the employing office but who is not paid by the employing office for carrying out such duties (also referred to as an “unpaid staff member”), including an intern, an individual detailed to an employing office, and an individual participating in a fellowship program, in the same manner and to the same extent that section 201(a) and (b) of the Act applies to a covered employee; and

(2) a former unpaid staff member, if the act(s) that may be a violation of section 201(a) of the Act occurred during the service of the former unpaid staffer for the employing office.

(s) *Employing Office*.—The term “employing office” means:

(1) the personal office of a Member of the House of Representatives or a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate;

(4) the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Congressional Workplace Rights;

(5) the Library of Congress, except for section 220 of the Act;

(6) the John C. Stennis Center for Public Service Training and Development, the Office of Technology Assessment, the China Review Commission, the Congressional Executive China Commission, and the Helsinki Commission; or

(7) to the extent provided by sections 204–207 and 215 of the Act, the Government Accountability Office.

(t) *Executive Director*.—The term “Executive Director” means the Executive Director of the Office of Congressional Workplace Rights.

(u) *Final Disposition*.—The term “final disposition” of a claim under section 416(d) of the Act means any of the following:

(1) An order or agreement to pay an award or settlement, including an agreement reached pursuant to mediation under section 404 of the Act;

(2) A final decision of a hearing officer under section 405(g) of the Act that is no longer subject to review by the Board under section 406;

(3) A final decision of the Board under section 406(e) of the Act that is no longer subject to appeal to the United States Court of Appeals for the Federal Circuit under section 407;

(4) A final decision in a civil action under section 408 of the Act that is no longer subject to appeal; or

(5) A final decision of an appellate court, to include the United States Court of Appeals for the Federal Circuit, that is no longer subject to review.

(v) *General Counsel*.—The term “General Counsel” means the General Counsel of the Office of Congressional Workplace Rights.

(w) *Hearing*.—A “hearing” means an administrative hearing as provided in section 405 of the Act, subject to Board review as provided in section 406 of the Act and judicial review in the United States Court of Appeals for the Federal Circuit as provided in section 407 of the Act.

(x) *Hearing Officer*.—The term “Hearing Officer” means any individual appointed by the Executive Director to preside over administrative proceedings within the Office of Congressional Workplace Rights.

(y) *Hearing Officer, Merits*.—The term “Merits Hearing Officer” means any individual appointed by the Executive Director to preside over an administrative hearing conducted on matters within the Office’s jurisdiction under section 405 of the Act.

(z) *Hearing Officer, Preliminary*.—The term “Preliminary Hearing Officer” means an individual appointed by the Executive Director to make a preliminary review of the claim(s) and to issue a preliminary review report on such claim(s), as provided in section 403 of the Act.

(aa) *Intern*.—The term “intern,” for purposes of section 201(a) and (b) of the Act, means an individual who, for an employing office, performs service which is uncompensated by the United States to earn credit awarded by an educational institution or to learn a trade or occupation, and includes any individual participating in a page program operated by any House of Congress.

(bb) *Library Claimant*.—A “Library claimant” is a covered employee of the Library of Congress who initially brings a claim, complaint, or charge under a direct provision for a proceeding before the Library of Congress and who may, prior to requesting a hearing under the Library of Congress’ procedures, elect to—

(1) continue with the Library of Congress’ 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

(2) file a claim with the Office under section 402 of the Act and continue with the corresponding procedures of this Act available and applicable to a covered employee.

(cc) *Library Visitor*.—The term “Library visitor” means an individual who is eligible to allege a violation under title II or III of the Americans with Disabilities Act of 1990 (other than a violation for which the exclusive remedy is under section 201 of the Act) against the Library of Congress.

(dd) *Member or Member of Congress*.—The terms “Member” and “Member of Congress” mean a United States Senator, a Representative in the House of Representatives, a Delegate to Congress, or the Resident Commissioner from Puerto Rico.

(ee) *Member Hearing Officer*.—see “Hearing Officer, Merits,” above.

(ff) *Office*.—The term “Office” means the Office of Congressional Workplace Rights.

(gg) *Party*.—The term “party” means:

(1) an employee or employing office in a proceeding under part A of title II of the Act;

(2) a charging individual, an entity alleged to be responsible for correcting a violation, or the General Counsel in a proceeding under part B of title II of the Act;

(3) an employee, employing office, or as appropriate, the General Counsel in a proceeding under part C of title II of the Act;

(4) a labor organization, individual employing office or employing activity, or as appropriate, the General Counsel in a proceeding under part D of title II of the Act; or

(5) any individual, office, Member of Congress, or organization that has intervened in a proceeding.

Preliminary Hearing Officer.—see “Hearing Officer, Preliminary,” above.

(gg) *Respondent*.—The term “respondent” means the party against which a claim, a complaint, or a petition is filed.

(hh) *Senior Staff*.—The term “senior staff,” for purposes of the reporting requirement of the House and Senate Ethics Committees under the Act, means any individual who is employed in the House of Representatives or the Senate 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.*).

Unpaid Staff.—see “Employee, Unpaid Staff,” above.

3. *Amend section 1.03 by:*

(a) *Revising paragraph (a)(1);*

(b) *Revising the first four sentences of paragraph (a)(3); and*

(c) *Revising the first five sentences of paragraph (a)(4).*

The revisions read as follows:

§ 1.03 Filing and Computation of Time.

(a) * * *

(1) *In Person*. A document shall be deemed timely filed if it is hand delivered to the Office at: Adams Building, Room LA–200, 110 Second Street, S.E., Washington, D.C. 20540–1999, before 5:00 p.m. Eastern Time on the last day of the applicable time period.

(2) * * *

(3) *By Fax*. Documents transmitted by fax machine will be deemed filed on the date received at the Office at 202–426–1913, or on the date received at the Office of the General Counsel at 202–426–1663 if received by 11:59 p.m. Eastern Time. Faxed documents received after 11:59 p.m. Eastern Time will be deemed filed the following business day. A fax filing will be timely only if the document is received no later than 11:59 p.m. * * *

(4) *By Electronic Mail*. Documents transmitted electronically will be deemed filed on the date received at the Office at ocwrefile@ocwr.gov, or on the date received at the Office of the General Counsel at OSH@ocwr.gov if received by 11:59 p.m. Eastern Time. Documents received electronically after 11:59 p.m. Eastern Time will be deemed filed the following business day. An electronic filing will be timely only if the document is received no later than 11:59 p.m. Eastern Time on the last day of the applicable filing period. Any party filing a document electronically is responsible for ensuring both that the document is timely and accurately transmitted and for confirming that the Office has received the document. * * *

* * * * *

4. *Amend section 1.04 by:*

(a) *Revising paragraph (a);*

(b) *Revising the first sentence of paragraph (b); and*

(c) *Revising paragraphs (c) through (d).*

The revisions read as follows:

§ 1.04 Filing, Service, and Size Limitations of Motions, Briefs, Responses, and Other Documents.

(a) *Filing with the Office; Number and Form*. One copy of claims, General Counsel complaints, requests for mediation, requests for inspection under OSH, unfair labor practice charges, charges under titles II and III of the Americans with Disabilities Act of 1990, all motions, briefs, responses, and other documents must be filed with the Office. A party may file an electronic version of any submission in a format designated by the Board, the Executive Director, the General Counsel, or the Merits Hearing Officer, with receipt confirmed by electronic transmittal in the same format.

(b) *Service*. The parties shall serve on each other one copy of all motions, briefs, responses and other documents filed with the

Office, other than the request for advising, the request for mediation, and the claim.
* * *

(c) *Time Limitations for Response to Motions or Briefs and Reply.* Unless otherwise specified by the Merits Hearing Officer or these Rules, a party shall file a response to a motion or brief within 15 days of the service of the motion or brief upon the party. Any reply to such response shall be filed and served within 5 days of the service of the response. Only with the Merits Hearing Officer's advance approval may either party file additional responses or replies.

(d) *Size Limitations.* Except as otherwise specified no brief, motion, response, or supporting memorandum filed with the Office shall exceed 35 double-spaced pages, exclusive of the table of contents, table of authorities and attachments. The Board, the Executive Director, or the Merits Hearing Officer may modify this limitation upon motion and for good cause shown, or on their own initiative. Briefs, motions, responses, and supporting memoranda shall be on standard letter-size paper (8-1/2" x 11"). If a filing exceeds 35 double-spaced pages, the Board, the Executive Director, or the Merits Hearing Officer may, in their discretion, reject the filing in whole or in part, and may provide the parties an opportunity to refile.

5. Amend section 1.05 by revising paragraph (a). The revisions read as follows:

§ 1.05 Signing of Pleadings, Motions, and Other Filings; Violation of Rules; Sanctions.

(a) *Signing.* Every pleading, motion, and other filing of a party represented by an attorney or other designated representative shall be signed by the attorney or representative. A party who is not represented shall sign the pleading, motion or other filing. In the case of an electronic filing, an electronic signature is acceptable. The signature of a representative or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other filing; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, each of the following is correct:

(1) It is not 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; and

(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.

* * * * *

6. Amend section 1.06 by:

(a) Revising paragraph (a);

(b) Revising the first sentence of paragraph (b);

(c) Revising paragraphs (c) through (d); and

(d) Removing paragraph (f).

The revisions read as follows:

§ 1.06 Availability of Official Information.

(a) *Policy.* It is the policy of the Board, the Executive Director, and the General Counsel, except as otherwise ordered by the Board, to make available for public inspection and copying final decisions and orders of the Board and the Office, as specified and described in subparagraph (d) below.

(b) *Availability.* Any person may examine and copy items described in paragraph (a)

above at the Office of Congressional Workplace Rights, Adams Building, Room LA-200, 110 Second Street SE, Washington, D.C. 20540-1999, under conditions prescribed by the Office, including requiring payment for copying costs, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Office. * * *

(c) *Copies of Forms.* Copies of blank forms prescribed by the Office for the filing of claims, complaints, and other actions or requests may be obtained from the Office or online at www.ocwr.gov.

* * * * *

(f) [Removed]

7. Amend section 1.07 by republishing the first two sentences of paragraph (c) and revising the third sentence of paragraph (c). The revisions read as follows:

§ 1.07 Designation of Representative.

* * * * *

(c) *Revocation of a Designation of Representative.* A revocation of a designation of representative, whether made by the party or by the representative with notice to the party, must be made in writing and filed with the Office. The revocation will be deemed effective the date of receipt by the Office. Consistent with any applicable statutory time limit, at the discretion of the Executive Director, General Counsel, mediator, hearing officer, or Board, additional time may be provided to allow the party to designate a new representative as consistent with the Act.

8. Amend section 1.08 by:

(a) Revising paragraphs (a) through (e); and

(b) Republishing paragraph (f).

The revisions read as follows:

§ 1.08 Confidentiality.

(a) *Policy.* Except as provided in sections 302(d) and 416(c), (d), and (e) of the Act, the Office shall maintain confidentiality in the confidential advising process, mediation, and the proceedings and deliberations of hearing officers and the Board in accordance with sections 302(d)(2)(B) and 416(a)-(b) of the Act.

(b) *Participant.* For the purposes of this rule, "participant" means an individual or entity who takes part as either a party, witness, or designated representative in confidential advising under section 302(d) of the Act, mediation under section 404, the claim and hearing process under section 405, or an appeal to the Board under section 406 of the Act, or any related proceeding which is expressly or by necessity deemed confidential under the Act or these rules.

(c) *Prohibition.* Unless specifically authorized by the provisions of the Act or by these rules, no participant in the confidential advising process, mediation, or other proceedings made confidential under section 416 of the Act may disclose a written or an oral communication that is prepared for the purpose of or that occurs during the confidential advising process, mediation, and the proceedings and deliberations of Hearing Officers and the Board.

(d) *Exceptions.* Nothing in these rules prohibits a party or its representative from disclosing information obtained in mediation or hearings when reasonably necessary to investigate claims, ensure compliance with the Act, or prepare its prosecution or defense. However, the party making the disclosure shall take all reasonably appropriate steps to ensure that persons to whom the information is disclosed maintain the confidentiality of such information. These rules do not preclude a mediator from consulting with the Office, except that when the covered employee is an employee of the Office, a mediator shall not consult with any individual within the Office who is or who might

be a party or witness. These rules do not preclude the Office from reporting information to the Senate and House of Representatives as required by the Act.

(e) *Contents or Records of Mediation or Hearings.* For the purpose of this rule, the contents or records of the confidential advising process, mediation or other proceeding includes the information disclosed by participants to the proceedings, and records disclosed by the opposing party, witnesses, or the Office. A participant is free to disclose facts and other information obtained from any source outside of the mediation or hearing. For example, an employing office or its representatives may disclose information about its employment practices and personnel actions, provided that the information was not obtained in a confidential proceeding. However, a claimant who obtains that information in mediation or other confidential proceeding may not disclose such information. Similarly, information forming the basis for the allegation of a claimant may be disclosed by that claimant, provided that the information contained in those allegations was not obtained in a confidential proceeding. However, the employing office or its representatives may not disclose that information if it was obtained in a confidential proceeding.

(f) *Sanctions.* The Executive Director will advise all participants in the mediation and hearing at the time they became participants of the confidentiality requirements of section 416 of the Act and that sanctions may be imposed by a Hearing Officer for a violation of those requirements. No sanctions may be imposed except for good cause and the particulars of which must be stated in the sanction order.

SUBPART B—[AMENDED]

[Table of contents omitted]

Amend subpart B by:

(1) Removing sections 2.01 through 2.07; and

(2) Reserving subpart B for rules concerning "Compliance, Investigation, and Enforcement under Section 210 of the Act (ADA Public Services)—Inspections and Complaints"

SUBPART C—[REDESIGNATED AND AMENDED]

[Table of contents omitted]

1. Amend subpart C by:

(a) Redesignating subpart D as subpart C, and amending the references as indicated in the table below:

Old Section	New Section
4.01	3.01
4.02	3.02
4.03	3.03
4.04	3.04
4.05	3.05
4.06	3.06
4.07	3.07
4.08	3.08
4.09	3.09
4.10	3.10
4.11	3.11
4.12	3.12
4.13	3.13
4.14	3.14
4.15	3.15
4.20	3.20
4.21	3.21
4.22	3.22
4.23	3.23
4.24	3.24
4.25	3.25
4.26	3.26
4.27	3.27
4.28	3.28
4.29	3.29
4.30	3.30
4.31	3.31

(b) In subpart C, when referencing sections 4.01 through 4.15 or 4.20 through 4.31, writing the corresponding new section number as indicated in the table above.

2. Amend redesignated section 3.07 by revising the last sentence of paragraph (g)(1) as follows:

* * * * *

§ 3.07 Conduct of Inspections.

* * * * *

(g) Trade Secrets.

(1) * * * In any such proceeding the Merits Hearing Officer or the Board shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

4. Amend redesignated section 3.14 by revising the second sentence of paragraph (b) as follows:

§ 3.14 Failure to Correct a Violation for Which a Citation Has Been Issued; Notice of Failure to Correct Violation; Complaint.

* * * * *

(b) * * * The complaint shall be submitted to a Merits Hearing Officer for decision pursuant to subsections (b) through (h) of section 405 of the Act, subject to review by the Board pursuant to section 406. * * *

3. Amend redesignated section 3.22 by revising the second sentence as follows:

§ 3.22 Effect of Variances.

* * * In its discretion, the Board may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employing office involved and a proceeding on the citation or a related issue concerning a proposed period of abatement is pending before the General Counsel, a Merits Hearing Officer, or the Board until the completion of such proceeding.

4. Amend redesignated section 3.25 by:

(a) Revising the second sentence of paragraph (a); and

(b) Revising the second sentence of paragraph (c)(1).

The revisions read as follows:

§ 3.25 Applications for Temporary Variances and Other Relief.

(a) *Application for Variance.* * * * Pursuant to section 215(c)(4) of the Act, the Board shall refer any matter appropriate for hearing to a Merits Hearing Officer under subsections (b) through (h) of section 405, subject to review by the Board pursuant to section 406. * * *

* * * * *

(c) Interim Order.

(1) *Application.* * * * The Merits Hearing Officer to whom the Board has referred the application may rule ex parte upon the application.

* * * * *

5. Amend redesignated section 3.26 by:

(a) Revising the second sentence of paragraph (a); and

(b) Revising the second sentence of paragraph (c)(1).

The revisions read as follows:

§ 3.26 Applications for Permanent Variances and Other Relief.

(a) *Application for Variance.* * * * Pursuant to section 215(c)(4) of the Act, the Board shall refer any matter appropriate for hearing to a Merits Hearing Officer under subsections (b) through (h) of section 405, subject to review by the Board pursuant to section 406.

* * * * *

(c) Interim Order.

(1) *Application.* * * * The Merits Hearing Officer to whom the Board has referred the application may rule ex parte upon the application.

* * * * *

6. Amend redesignated section 3.28 by revising paragraph (a)(1) as follows:

§ 3.28 Action on Applications.*(a) Defective Applications.*

(1) If an application filed pursuant to sections 3.25(a), 3.26(a), or 3.27 of these Rules

does not conform to the applicable section, the Merits Hearing Officer or the Board, as applicable, may deny the application.

* * * * *

7. Amend redesignated section 3.29 by revising it as follows:

§ 3.29 Consolidation of Proceedings.

On the motion of the Merits Hearing Officer or the Board or that of any party, the Merits Hearing Officer or the Board may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

8. Amend redesignated section 3.30 by

(1) Revising the second sentence of paragraph (a)(1);

(2) Revising paragraph (b)(3);

(3) Revising paragraph (c); and

(4) Revising paragraph (d).

The revisions read as follows:

§ 3.30 Consent Findings and Rules or Orders.

(a) *General.* * * * The allowance of such opportunity and the duration thereof shall be in the discretion of the Merits Hearing Officer, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

* * * * *

(3) a waiver of any further procedural steps before the Merits Hearing Officer and the Board; and

* * * * *

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) submit the proposed agreement to the Merits Hearing Officer for his or her consideration; or

(2) inform the Merits Hearing Officer that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the Merits Hearing Officer may accept such agreement by issuing his or her decision based upon the agreed findings.

9. Amend redesignated section 3.31 by revising paragraph (a) as follows:

§ 3.31 Order of Proceedings and Burden of Proof.

(a) *Order of Proceeding.* Except as may be ordered otherwise by the Merits Hearing Officer, the party applicant for relief shall proceed first at a hearing.

* * * * *

SUBPART D—[AMENDED]

Add a new subpart D as follows:

SUBPART D—CLAIMS PROCEDURES APPLICABLE TO CONSIDERATION OF ALLEGED VIOLATIONS OF SECTIONS 102(c) AND 201-07 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED BY THE CAA REFORM ACT OF 2018.

[Table of Contents omitted]

§ 4.01 Matters Covered by this Subpart.

(a) These rules govern the processing of any allegation that sections 102(c) or 201 through 206 of the Act have been violated and any allegation of intimidation or reprisal prohibited under section 207 of the Act. Sections 102(c) and 201-06 of the Act apply to covered employees and employing offices certain rights and protections of the following laws:

(1) the Fair Labor Standards Act of 1938

(2) title VII of the Civil Rights Act of 1964

(3) title I of the Americans with Disabilities Act of 1990

(4) the Age Discrimination in Employment Act of 1967

(5) the Family and Medical Leave Act of 1993

(6) the Employee Polygraph Protection Act of 1988

(7) the Worker Adjustment and Retraining Notification Act

(8) the Rehabilitation Act of 1973

(9) chapter 43 (relating to veterans' employment and re-employment) of title 38, United States Code

(10) chapter 35 (relating to veterans' preference) of title 5, United States Code

(11) the Genetic Information Non-discrimination Act of 2008

(b) This subpart applies to the covered employees and employing offices as defined in subparagraphs 1.02(m) and (s) of these Rules and any activities within the coverage of sections 102(c) and 201-07 of the Act and referenced above in subparagraph 4.01(a) of these Rules.

§ 4.02 Requests for Advice and Information.

At any time, an employee or an employing office may seek from the Office informal advice and information on the procedures of the Office and under the Act and information on the protections, rights and responsibilities under the Act and procedures available under the Act. The Office will maintain the confidentiality of requests for such advice or information.

§ 4.03 Confidential Advising Services.

(a) *Appointment or Designation of Confidential Advisors.* The Executive Director shall appoint or designate one or more Confidential Advisors to carry out the duties set forth in section 302(d)(2) of the Act.

(1) *Qualifications.* A Confidential Advisor appointed or designated by the Executive Director must be a lawyer who is admitted to practice before, and is in good standing with, the bar of a State or territory of the United States or the District of Columbia, and who has experience representing clients in cases involving the laws incorporated by section 102 of the Act. A Confidential Advisor may be an employee of the Office. A Confidential Advisor cannot serve as a mediator in any mediation conducted pursuant to section 404 of the Act.

(2) *Restrictions.* A Confidential Advisor may not act as the designated representative for any covered employee in connection with the covered employee's participation in any proceeding under the Act, any judicial proceeding, or any proceeding before any committee of Congress. A Confidential Advisor may not offer or provide any of the services in section 302(d)(2) of the Act if the covered employee has designated an attorney representative in connection with the employee's participation in any proceeding under the Act, except that the Confidential Advisor may provide general assistance and information to the attorney representative regarding the Act and the role of the Office, as the Confidential Advisor deems appropriate.

(3) *Continuity of Service.* Once a covered employee has accepted and received any services offered under section 302(d)(2) of the Act from a Confidential Advisor, any other services requested under section 302(d)(2) by the covered employee shall be provided, to the extent practicable, by the same Confidential Advisor.

(b) *Who May Obtain the Services of a Confidential Advisor.* The services provided by a Confidential Advisor are available to any covered employee, including any unpaid staff and any former covered employee, except that a former covered employee may only request such services if the alleged violation occurred during the employment or service of the employee; and a covered employee

may only request such services before the end of the 180-day period described in section 402(d) of the Act.

(c) *Services Provided by a Confidential Advisor.* A Confidential Advisor shall offer to provide the following services to covered employees, on a privileged and confidential basis, which may be accepted or declined:

(1) informing, on a privileged and confidential basis, a covered employee who has been subject to a practice that may be a violation of sections 102(c) or 201-07 of the Act about the employee's rights under the Act;

(2) consulting, on a privileged and confidential basis, with a covered employee who has been subject to a practice that may be a violation of sections 102(c) or 201-07 of the Act regarding—

(A) the roles, responsibilities, and authority of the Office; and

(B) the relative merits of securing private counsel, designating a nonattorney representative, or proceeding without representation for proceedings before the Office;

(3) advising and consulting, on a privileged and confidential basis, with a covered employee who has been subject to a practice that may be a violation of sections 102(c) or 201-07 of the Act regarding any claims the covered employee may have under title IV of the Act, the factual allegations that support each such claim, and the relative merits of the procedural options available to the employee for each such claim;

(4) assisting, on a privileged and confidential basis, a covered employee who seeks consideration under title IV of an allegation of a violation of sections 102(c) or 201-07 of the Act in understanding the procedures, and the significance of the procedures, described in title IV, including—

(A) assisting or consulting with the covered employee regarding the drafting of a claim form to be filed under section 402(a) of the Act; and

(B) consulting with the covered employee regarding the procedural options available to the covered employee after a claim form is filed, and the relative merits of each option; and

(5) informing, on a privileged and confidential basis, a covered employee who has been subject to a practice that may be a violation of sections 102(c) or 201-07 of the Act about the option of pursuing, in appropriate circumstances, a complaint with the Committee on Ethics of the House of Representatives or the Select Committee on Ethics of the Senate.

(d) *Privilege and Confidentiality.* Although the Confidential Advisor is not the employee's representative, the services provided under subparagraph (c) of this section, and any related communications between the Confidential Advisor and the employee before or after the filing of a claim, shall be strictly confidential and shall be privileged from discovery. All of the records maintained by a Confidential Advisor regarding communications between the employee and the Confidential Advisor are the property of the Confidential Advisor and not the Office, are not records of the Office within the meaning of section 301(m) of the Act, shall be maintained by the Confidential Advisor in a secure and confidential manner, and may be destroyed under appropriate circumstances. Upon request from the Office, the Confidential Advisor may provide the Office with statistical information about the number of contacts from covered employees and the general subject matter of the contacts from covered employees.

§ 4.04 Claims.

(a) *Who May File.* A covered employee alleging any violation of sections 102(c) or 201-07 of the Act may commence a proceeding by

filing a timely claim pursuant to section 402 of the Act.

(b) *When to File.*

(1) A covered employee may not file a claim under this section alleging a violation of law after the expiration of the 180-day period that begins on the date of the alleged violation.

(2) *Special Rule for Library of Congress Claimants.* A claim filed by a Library claimant shall be deemed timely filed under section 402 of the Act:

(A) if the Library claimant files the claim within the time period specified in subparagraph (1); or

(B) the Library claimant:

(i) initially filed a claim under the Library of Congress's procedures set forth in the applicable direct provision under section 401(d)(1)(B) of the Act;

(ii) met any initial deadline under the Library of Congress's procedures for filing the claim; and

(iii) subsequently elected to file a claim with the Office under section 402 of the Act prior to requesting a hearing under the Library of Congress's procedures.

(c) *Form and Contents.* All claims shall be on the form provided by the Office either on paper or electronically, signed manually or electronically under oath or affirmation by the claimant or the claimant's representative, and contain the following information, if known:

(1) the name, mailing and e-mail addresses, and telephone number(s) of the claimant;

(2) the name of the employing office against which the claim is brought;

(3) the name(s) and title(s) of the individual(s) involved in the conduct that the employee alleges is a violation of the Act;

(4) a description of the conduct being challenged, including the date(s) of the conduct;

(5) a description of why the claimant believes the challenged conduct is a violation of the Act;

(6) a statement of the specific relief or remedy sought; and

(7) the name, mailing and e-mail addresses, and telephone number of the representative, if any, who will act on behalf of the claimant.

(d) *Election of Remedies for Library of Congress Employees.* A Library claimant who initially files a claim for an alleged violation as provided in section 402 of the Act may, at any time within 10 days after a Preliminary Hearing Officer submits the report on the preliminary review of the claim pursuant to section 403, elect instead to bring the claim before the Library of Congress under the corresponding direct provision.

§ 4.05 Right to File a Civil Action.

(a) A covered employee may file a civil action in Federal district court pursuant to section 401(b) of the Act if the covered employee:

(1) has timely filed a claim as provided in section 402 of the Act; and

(2) has not submitted a request for an administrative hearing on the claim pursuant to section 405(a) of the Act.

(b) *Period for Filing a Civil Action.* A civil action pursuant to section 401(b) of the Act must be filed within a 70-day period beginning on the date the claim form was filed.

(c) *Effect of Filing a Civil Action.* If a claimant files a civil action concerning a claim during a preliminary review of that claim pursuant to section 403 of the Act, the review terminates immediately upon the filing of the civil action, and the Preliminary Hearing Officer has no further involvement.

(d) *Notification of Filing a Civil Action.* A claimant filing a civil action in Federal district court pursuant to section 401(b) of the Act shall notify the Office within 10 days of the filing.

§ 4.06 Initial Processing and Transmission of Claim; Notification Requirements.

(a) After receiving a claim form, the Office shall record the pleading, transmit immediately a copy of the claim form to the head of the employing office and the designated representative of that office, and provide the parties with all relevant information regarding their rights under the Act. An employee filing an amended claim form pursuant to § 4.04 of these Rules shall serve a copy of the amended claim form upon all other parties in the manner provided by § 1.04(b). A copy of these Rules also may be provided to the parties upon request. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(b) *Notification of Availability of Mediation.*

(1) Upon receipt of a claim form, the Office shall notify the covered employee who filed the claim form about the mediation process under section 4.07 of these Rules below and the deadlines applicable to mediation.

(2) Upon transmission to the employing office of the claim, the Office shall notify the employing office about the mediation process under the Act and the deadlines applicable to mediation.

(c) *Special Notification Requirements for Claims Based on Acts by Members of Congress.* When a claim alleges a violation described in subparagraphs (A) and (B) of section 402(b)(2) of the Act that consists of a violation described in section 415(d)(1)(A) by a Member of Congress, the Office shall notify immediately such Member of the claim, the possibility that the Member may be required to reimburse the account described in section 415(a) of the Act for the reimbursable portion of any award or settlement in connection with the claim, and the right of the Member under section 415(d)(8) to intervene in any mediation, hearing, or civil action under the Act as to the claim.

(d) *Special Rule for Architect of the Capitol, Capitol Police and Library of Congress Employees.* The Executive Director, after receiving a claim filed under section 402 of the Act, may recommend that a claimant use, for a specific period of time, the grievance procedures referenced in any Memorandum of Understanding between the Office and the Architect of the Capitol, the Capitol Police, or the Library of Congress. Any pending deadline in the Act relating to a claim for which the claimant uses such grievance procedures shall be stayed during that specific period of time.

§ 4.07 Mediation.

(a) *Overview.* Mediation is a process in which employees, including unpaid staff for purposes of section 201 of the Act, employing offices, and their representatives, if any, meet with a mediator trained to assist them in resolving disputes. As participants in the mediation, employees, employing offices, and their representatives discuss alternatives to continuing their dispute, including the possibility of reaching a voluntary, mutually satisfactory resolution. The mediator cannot impose a specific resolution, and all information discussed or disclosed in the course of any mediation shall be strictly confidential, pursuant to section 416 of the Act. Notwithstanding the foregoing, section 416 expressly provides that a covered employee may disclose the "factual allegations underlying the covered employee's claim" and an employing office may disclose "the factual allegations underlying the employing office's defense to the claim[.]"

(b) *Availability of Optional Mediation.* Upon receipt of a claim filed pursuant to section 402 of the Act, the Office shall notify the covered employee and the employing office about the process for mediation and applicable deadlines. If the claim alleges a Member

committed an act made unlawful under sections 201(a), 206(a) or 207 of the Act which consists of a violation of section 415(d)(1)(A), the Office shall permit the Member to intervene in the mediation. The request for mediation shall contain the claim number, the requesting party's name, office or personal address, e-mail address, telephone number, and the opposing party's name. Failure to request mediation does not adversely impact future proceedings.

(c) *Timing.* The covered employee or the employing office may file a written request for mediation beginning on the date that the covered employee or employing office, respectively, receives notice from the Office about the mediation process. The time to request mediation under these rules ends on the date on which a Merits Hearing Officer issues a written decision on the claim, or the covered employee files a civil action.

(d) *Notice of Commencement of the Mediation.* The Office shall promptly notify the opposing party or its designated representative of the request for mediation and the deadlines applicable to such mediation. When a claim alleges a violation described in subparagraphs (A) and (B) of section 402(b)(2) of the Act that consists of a violation described in section 415(d)(1)(A) by a Member of Congress, the Office shall notify immediately such Member of the right to intervene in any mediation concerning the claim.

(e) *Selection of Mediators; Disqualification.* Upon receipt of the second party's agreement to mediate, the Executive Director shall assign one or more mediators from a master list developed and maintained pursuant to section 404 of the Act, to commence the mediation process. Should the mediator consider himself or herself unable to perform in a neutral role in a given situation, he or she shall withdraw from the matter and immediately shall notify the Office of the withdrawal. Any party may ask the Office to disqualify a mediator by filing a written request, including the reasons for such request, with the Executive Director. This request shall be filed as soon as the party has reason to believe there is a basis for disqualification. The Executive Director's decision on this request shall be final and unreviewable.

(f) *Duration and Extension.*

(1) The mediation period shall be 30 days beginning on the first day after the second party agrees to mediate the matter.

(2) The Executive Director shall extend the mediation period an additional 30 days upon the joint written request of the parties, or of the appointed mediator on behalf of the parties. The request shall be written and filed with the Executive Director no later than the last day of the mediation period.

(g) *Effect of Mediation on Proceedings.*

Upon the parties' agreement to mediate a claim, any deadline relating to the processing of that claim that has not already passed by the first day of the mediation period, shall be stayed during the mediation period.

(h) *Procedures.*

(1) *The Mediator's Role.* After assignment of the case, the mediator will contact the parties. The mediator has the responsibility to conduct the mediation, including deciding how many meetings are necessary and who may participate in each meeting. The mediator may accept and may ask the parties to provide written submissions.

(2) *The Agreement to Mediate.* At the commencement of the mediation, the mediator will ask the participants and/or their representatives to sign an agreement prepared by the Office ("the Agreement to Mediate"). The Agreement to Mediate will define what is to be kept confidential during mediation and set out the conditions under which mediation will occur, including the requirement

that the participants adhere to the confidentiality of the process and a notice that a breach of the mediation agreement could result in sanctions later in the proceedings.

(i) The parties, including an intervenor Member, may elect to participate in mediation proceedings through a designated representative, provided that the representative has actual authority to agree to a settlement agreement, or has immediate access to someone with actual settlement authority, and provided further that, should the mediator deem it appropriate at any time, the physical presence in mediation of any party may be required. The Office may participate in the mediation process through a representative and/or observer. The mediator may determine, as best serves the interests of mediation, whether the participants may meet jointly or separately with the mediator. At the request of any of the parties, the parties shall be separated during mediation.

(j) *Informal Resolutions and Settlement Agreements.* At any time during mediation the parties may resolve or settle a dispute in accordance with subparagraph 9.03 of these Rules.

(k) *Conclusion of the Mediation Period and Notice.* If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, Member, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice will be e-filed, e-mailed, sent by first-class mail, faxed, or personally delivered.

(l) *Independence of the Mediation Process and the Mediator.* The Office will maintain the independence of the mediation process and the mediator. No individual appointed by the Executive Director to mediate may conduct or aid in a hearing conducted under section 405 of the Act with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(m) *Violation of Confidentiality in Mediation.* An alleged violation of the confidentiality provisions may be made by a party in mediation to the mediator during the mediation period and, if not resolved by agreement in mediation, to a Merits Hearing Officer during proceedings brought under section 405 of the Act.

(n) *Exceptions to Confidentiality in Mediation.* It shall not be a violation of confidentiality to provide the information required by sections 301(l) and 416(d) of the Act.

§ 4.08 Preliminary Review of Claims.

(a) *Appointment of Preliminary Hearing Officer.* Not later than 7 days after transmission to the employing office of a claim or claims, the Executive Director shall appoint a hearing officer to conduct a preliminary review of the claim or claims filed by the claimant. The appointment of the Preliminary Hearing Officer shall be in accordance with the requirements of section 405(c) of the Act.

(b) *Disqualifying a Preliminary Hearing Officer.*

(1) In the event that a Preliminary Hearing Officer considers himself or herself disqualified, either because of personal bias or of an interest in the case or for some other disqualifying reason, he or she shall withdraw from the case, stating in writing or on the record the reasons for his or her withdrawal, and shall immediately notify the Office of the withdrawal.

(2) Any party may file a motion requesting that a Preliminary Hearing Officer withdraw on the basis of personal bias or of an interest in the case or for some other disqualifying reason. This motion shall specifically set forth the reasons supporting the request and be filed as soon as the party has reason to be-

lieve that there is a basis for disqualification.

(3) The Preliminary Hearing Officer shall promptly rule on the withdrawal motion. If the motion is granted, the Executive Director will appoint another Preliminary Hearing Officer within 3 days. Any objection to the Preliminary Hearing Officer's ruling on the withdrawal motion shall not be deemed waived by a party's further participation in the preliminary review process. Such objection will not stay the conduct of the preliminary review process.

(c) *Assessments Required.* In conducting a preliminary review of a claim or claims under this section, the Preliminary Hearing Officer shall assess each of the following:

(1) whether the claimant is a covered employee authorized to obtain relief relating to the claim(s) under the Act;

(2) whether the office which is the subject of the claim(s) is an employing office under the Act;

(3) whether the individual filing the claim(s) has met the applicable deadlines for filing the claim(s) under the Act;

(4) the identification of factual and legal issues in the claim(s);

(5) the specific relief sought by the claimant;

(6) whether, on the basis of the assessments made under paragraphs (1) through (5), the claimant 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 the Act; and

(7) the potential for the settlement of the claim(s) without a formal hearing as provided under section 405 of the Act or a civil action as provided under section 408 of the Act.

(d) *Amendments to Claims.* Amendments to the claim(s) may be permitted in the Preliminary Hearing Officer's discretion, taking the following factors into consideration:

(1) whether the amendments relate to the cause of action set forth in the claim(s); and

(2) whether such amendments will unduly prejudice the rights of the employing office, or of other parties, unduly delay the preliminary review, or otherwise interfere with or impede the proceedings.

(e) *Report on Preliminary Review.*

(1) Except as provided in subparagraph (2), not later than 30 days after a claim form is filed, the Preliminary Hearing Officer shall submit to the claimant and the respondent(s) a report on the preliminary review. The report shall include a determination whether the claimant 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 the Act. Submitting the report concludes the preliminary review.

(2) In determining whether a claimant has stated a claim for which relief may be granted under the Act, the Preliminary Hearing Officer shall:

(A) be guided by judicial and Board decisions under the laws made applicable by section 102 of the Act; and

(B) consider whether the legal contentions the claimant advocates are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

(3) *Extension of Deadline.* The Preliminary Hearing Officer may, upon notice to the individual filing the claim(s) and the respondent(s), use an additional period of not to exceed 30 days to conclude the preliminary review.

(f) *Effect of Determination of Failure to State a Claim for which Relief may be Granted.*

(1) If the Preliminary Hearing Officer's report under subparagraph (e) includes the determination that the claimant is not a covered employee or has not stated a claim for which relief may be granted under the Act:

(A) the claimant (including a Library claimant) may not obtain an administrative hearing as provided under section 405 of the Act as to the claim; and

(B) the Preliminary Hearing Officer shall provide the claimant and the Executive Director with written notice that the claimant may file a civil action as to the claim in accordance with section 408 of the Act.

(2) The claimant must file the civil action not later than 90 days after receiving the written notice referred to in subparagraph (1)(B).

(g) *Transmission of Report on Preliminary Review of Certain Claims to Congressional Ethics Committees.* When a Preliminary Hearing Officer issues a report on the preliminary review of a claim alleging a violation described in section 415(d)(1)(A) of the Act, the Preliminary Hearing Officer shall transmit the report to—

(1) the Committee on Ethics of the House of Representatives, in the case of such an alleged 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 alleged act by a Senator.

§ 4.09 Request for Administrative Hearing.

(a) Except as provided in subparagraph (b), a claimant may submit to the Executive Director a written request for an administrative hearing under section 405 of the Act not later than 10 days after the Preliminary Hearing Officer submits the report on the preliminary review of a claim under section 403(c).

(b) Subparagraph (a) does not apply to the claim if—

(1) the preliminary review report of the claim under section 403(c) of the Act 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, as described in section 403(d) of the Act; or

(2) the covered employee files a civil action as to the claim as provided in section 408 of the Act.

(c) *Appointment of the Merits Hearing Officer.*

(1) Upon the filing of a request for an administrative hearing under subparagraph (a) of this section, the Executive Director shall appoint an independent Merits Hearing Officer to consider the claim(s) and render a decision, who shall have the authority specified in sections 4.10 and 7.01 of these Rules below.

(2) The Preliminary Hearing Officer shall not serve as the Merits Hearing Officer in the same case.

(d) *Answer.*

(1) Within 10 days after the filing of a request for an administrative hearing under subparagraph (a), the respondent(s) shall file an answer with the Office and serve one copy on the claimant. Filing a motion to dismiss a claim does not stay the time period for filing the answer.

(2) In answering a claim form, the respondent(s) must state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it.

(3) Failure to deny an allegation, other than one relating to the amount of damages, or to raise a defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the claim form shall be deemed waived.

(4) A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense will ordinarily be granted

unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

§ 4.10 Summary Judgment and Withdrawal of Claims.

(a) If a claimant fails to proceed with a claim, the Merits Hearing Officer may dismiss the claim with prejudice.

(b) *Summary Judgment.* A Merits Hearing Officer may, after notice and an opportunity for the parties to address the question of summary judgment, issue summary judgment on the claim. A motion before the Merits Hearing Officer asserting that the covered employee has failed to state a claim upon which relief can be granted shall be construed as a motion for summary judgment on the ground that the moving party is entitled to judgment as to that claim as a matter of law.

(c) *Appeal.* A final decision by the Merits Hearing Officer made under section 4.10 or 7.16 of these Rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01 of these Rules. A final decision under subparagraphs 4.10(a)–(d) of these Rules that does not resolve all of the issues in the case(s) before the Merits Hearing Officer may not be appealed to the Board in advance of a final decision entered under section 7.16 of these Rules, except as authorized pursuant to section 7.13.

(d) *Withdrawal of Claim.* At any time, a claimant may withdraw his or her own claim(s) by filing a notice with the Office for transmittal to the Preliminary or Merits Hearing Officer and by serving a copy on the respondent(s). Any such withdrawal must be approved by the relevant Hearing Officer and may be with or without prejudice to refile at that Hearing Officer's discretion.

(e) *Withdrawal from a Case by a Representative.* A representative must provide sufficient notice to the Hearing Officer and the parties of record of his or her withdrawal from a case. Until the party designates another representative in writing, the party will be regarded as appearing pro se.

§ 4.11 Confidentiality.

(a) Pursuant to section 416 of the Act, except as provided in subsections 416(c), (d) and (e), all proceedings and deliberations of Hearing Officers and the Board, including any related records, shall be confidential. A violation of the confidentiality requirements of the Act and these rules may result in the imposition of procedural or evidentiary sanctions. See also sections 1.08, 1.09 and 7.12 of these Rules.

(b) The fact that a request for an administrative hearing has been filed with the Office by a covered employee shall be kept confidential by the Office, except as allowed by these Rules.

§ 4.12 Automatic Referral to Congressional Ethics Committees.

Pursuant to section 416(d) of the Act, upon the final disposition of a claim alleging a violation described in section 415(d)(1)(C) 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.

SUBPART E—[AMENDED]

[Table of contents omitted]

Revise subpart E to read as follows:

Subpart E—General Counsel Complaints
[Table of contents omitted]

§ 5.01 Complaints.

(a) *Who May File.*

The General Counsel may timely file a complaint alleging a violation of sections 210, 215 or 220 of the Act.

(b) *When to File.*

A complaint may be filed by the General Counsel:

(1) after the investigation of a charge filed under section 210 or 220 of the Act, or

(2) after the issuance of a citation or notification under section 215 of the Act.

(c) *Form and Contents.*

A complaint filed by the General Counsel shall be in writing, signed by the General Counsel, or his designee, and shall contain the following information:

(1) the name, mail and e-mail addresses, if available, and telephone number of the employing office, as applicable;

(A) each entity responsible for correction of an alleged violation of section 210(b) of the Act;

(B) each employing office alleged to have violated section 215 of the Act; or

(C) each employing office and/or labor organization alleged to have violated section 220, against which the complaint is brought;

(2) notice of the charge filed alleging a violation of section 210 or 220 of the Act and/or issuance of a citation or notification under section 215;

(3) a description of the acts and conduct that are alleged to be violations of the Act, including all relevant dates and places, and the names and titles of the responsible individuals; and

(4) a statement of the relief or remedy sought.

(d) *Amendments.* Amendments to the complaint may be permitted by the Office or, after assignment, by a Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to meet the new allegations; that the amendments, as appropriate, relate to the charge(s) investigated and/or the citation or notification issued by the General Counsel; and that permitting such amendments will not unduly prejudice the rights of the employing office, the labor organization, or other parties, unduly delay the completion of the hearing, or otherwise interfere with or impede the proceedings.

(e) *Service of Complaint.* Upon receipt of a complaint or an amended complaint, the Office shall serve the respondent, or its designated representative, by hand delivery or first-class mail, e-mail, or facsimile with a copy of the complaint or amended complaint and written notice of the availability of these Rules at www.ocwr.gov. A copy of these Rules may also be provided if requested by either party. The Office shall include a service list containing the names and addresses of the parties and their designated representatives.

(f) *Answer.*

(1) Within 10 days after receipt of a copy of a complaint or an amended complaint, the respondent shall file an answer with the Office and serve one copy on the General Counsel. Filing a motion to dismiss a claim does not stay the time period for filing the answer.

(2) In answering a complaint, a respondent must state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it by an opposing party.

(3) Failure to deny an allegation, other than one relating to the amount of damages, or to raise a claim or defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defenses not

raised in an answer that could have reasonably been anticipated based on the facts alleged in the complaint shall be deemed waived.

(4) A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

(g) *Motion to Dismiss.* In addition to an answer, a respondent may file a motion to dismiss, or other responsive pleading with the Office and serve one copy on the complainant. Responses to any motions shall comply with subparagraph 1.04(c) of these Rules. A motion asserting that the General Counsel has failed to state a claim upon which relief can be granted may, in the Merits Hearing Officer's discretion, be construed as a motion for summary judgment pursuant to subparagraph 5.03(d) of these Rules on the ground that the moving party is entitled to judgment as a matter of law.

§ 5.02 Appointment of the Merits Hearing Officer.

Upon the filing of a complaint, the Executive Director will appoint an independent Merits Hearing Officer, who shall have the authority specified in subparagraphs 5.03 and 7.01(b) of the Rules below.

§ 5.03 Dismissal, Summary Judgment and Withdrawal of Complaints.

(a) A Merits Hearing Officer may, after notice and an opportunity to respond, dismiss any claim that the Merits Hearing Officer finds to be frivolous or that fails to state a claim upon which relief may be granted.

(b) A Merits Hearing Officer may, after notice and an opportunity to respond, dismiss a complaint because it fails to comply with the applicable time limits or other requirements under the Act or these Rules.

(c) If the General Counsel fails to proceed with an action, the Merits Hearing Officer may dismiss the complaint with prejudice.

(d) *Summary Judgment.* A Merits Hearing Officer may, after notice and an opportunity for the parties to address the question of summary judgment, issue summary judgment on some or all of the complaint.

(e) *Appeal.* A final decision by the Merits Hearing Officer made under sections 5.03(a)–(d) or 7.16 of these Rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01. A final decision under old subparagraph 5.03(a)–(d) that does not resolve all of the claims or issues in the case(s) before the Merits Hearing Officer may not be appealed to the Board in advance of a final decision entered under section 7.16 of these Rules, except as authorized pursuant to section 7.13.

(f) *Withdrawal of Complaint by the General Counsel.* At any time prior to the opening of the hearing, the General Counsel may withdraw his complaint by filing a notice with the Office for transmittal to the Merits Hearing Officer and by serving a copy on the respondent. After opening of the hearing, any such withdrawal must be approved by the Merits Hearing Officer and may be with or without prejudice to refile at the Merits Hearing Officer's discretion.

(g) *Withdrawal from a Case by a Representative.* A representative must provide sufficient notice to the Merits Hearing Officer and the parties of record of his or her withdrawal from a case. Until the party designates another representative in writing, the party will be regarded as appearing pro se.

§ 5.04 Confidentiality.

Pursuant to section 416(b) of the Act, except as provided in subsections 416(c) and (f),

all proceedings and deliberations of Merits Hearing Officers and the Board, including any related records, shall be confidential. Section 416(b) does not apply to proceedings under section 215 of the Act, but does apply to the deliberations of Merits Hearing Officers and the Board under section 215. A violation of the confidentiality requirements of the Act and these rules may result in the imposition of procedural or evidentiary sanctions. *See also* sections 1.08 and 7.12 of these Rules.

SUBPART F—[AMENDED]

[Table of Contents Omitted]

Revise subpart F to read as follows:

§ 6.01 Discovery.

(a) *Description.* Discovery is the process by which a party may obtain from another person, including a party, information that is not privileged and that is reasonably calculated to lead to the discovery of admissible evidence, to assist that party in developing, preparing and presenting its case at the hearing. No discovery, whether oral or written, by any party shall be taken of or from an employee of the Office of Congressional Workplace Rights (including but not limited to a Board member, the Executive Director, the General Counsel, a Confidential Advisor, a mediator, a hearing officer, or unpaid staff), including files, records, or notes produced during the confidential advising, mediation, and hearing phases of a case and maintained by the Office, the Confidential Advisor, the mediator, or the hearing officer.

(b) *Initial Disclosure.* Within 14 days after the prehearing conference in cases commenced by the filing of a claim pursuant to section 402(a) of the Act, and except as otherwise stipulated or ordered by the Merits Hearing Officer (the hearing officer appointed by the Executive Director to conduct the administrative hearing), a party must, without awaiting a discovery request, provide to the other parties: the name and, if known, mail and e-mail addresses, and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its causes of action or defenses; and a copy or a description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.

(c) *Discovery Availability.* Pursuant to section 405(e) of the Act, reasonable prehearing discovery may be permitted at the Merits Hearing Officer's discretion.

(1) The parties may take discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; physical and mental examinations; and requests for admissions. Nothing in section 415(d) of the Act—dealing with reimbursements by Members of Congress of amounts paid as settlements and awards—may be construed to require the claimant to be deposed by counsel for the intervening member in a deposition that is separate from any other deposition taken from the claimant in connection with the hearing or civil action.

(2) The Merits Hearing Officer may adopt standing orders or make any order setting forth the forms and extent of discovery, including orders limiting the number of depositions, interrogatories, and requests for production of documents, and also may limit the length of depositions.

(3) The Merits Hearing Officer may issue any other order to prevent discovery or disclosure of confidential or privileged materials or information, as well as hearing or

trial preparation materials and any other information deemed not discoverable, or to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) *Claims of Privilege.*

(1) *Information Withheld.* Whenever a party withholds information otherwise discoverable under these Rules by claiming that it is privileged or confidential or subject to protection as hearing or trial preparation materials, the party shall make the claim of privilege expressly in writing and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing whether the information itself is privileged or protected, will enable other parties to assess the applicability of the privilege or protection. A party must make a claim for privilege no later than the due date to produce the information.

(2) *Information Produced as Inadvertent Disclosure; Sealing All or Part of the Record.* If information produced in discovery is subject to a claim of privilege or of protection as hearing preparation material, the party making the claim of privilege may notify any party that received the information of the claim of privilege and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim of privilege is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Merits Hearing Officer or the Board under seal for a determination of the claim of privilege. The producing party must preserve the information until the claim of privilege is resolved.

§ 6.02 Request for Subpoena.

(a) *Authority to Issue Subpoenas.* At the request of a party, the Merits Hearing Officer may issue subpoenas for the attendance and testimony of witnesses and for the production of correspondence, books, papers, documents, or other records. The attendance of witnesses and the production of records may be required from any place within the United States. However, no subpoena shall be issued for the attendance or testimony of an employee or agent of the Office of Congressional Workplace Rights (including but not limited to a Board member, the Executive Director, the General Counsel, a Confidential Advisor, a mediator, a hearing officer, or unpaid staff), or for the production of files, records, or notes produced during the confidential advising process, in mediation, or at the hearing. Employing offices shall make their employees available for discovery and hearing without requiring a subpoena.

(b) *Request.* A request to issue a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under paragraph (a) above shall be submitted to the Merits Hearing Officer at least 15 days before the scheduled hearing date. If the subpoena is sought as part of the discovery process, the request shall be submitted to the Merits Hearing Officer at least 10 days before the date that a witness must attend a deposition or the date for the production of documents. The Merits Hearing Officer may waive the time limits stated above for good cause.

(c) *Forms and Showing.* Requests for subpoenas shall be submitted in writing to the Merits Hearing Officer and shall specify with particularity the witness, correspondence, books, papers, documents, or other records desired and shall be supported by a showing of general relevance and reasonable scope.

(d) *Rulings.* The Merits Hearing Officer shall promptly rule on subpoena requests.

§ 6.03 Service.

Subpoenas shall be served in the manner provided under Rule 45(b) of the Federal Rules of Civil Procedure. Service of a subpoena may be made by any person who is over 18 years of age and is not a party to the proceeding.

§ 6.04 Proof of Service.

When service of a subpoena is effected, the person serving the subpoena shall certify the date and the manner of service. The party on whose behalf the subpoena was issued shall file the server's certification with the Merits Hearing Officer.

§ 6.05 Motion to Quash or Limit.

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the Merits Hearing Officer before the time specified in the subpoena for compliance and not later than 10 days after service of the subpoena. The Merits Hearing Officer should promptly rule on a motion to quash or limit and ensure that the person receiving the subpoena is made aware of the ruling.

§ 6.06 Enforcement.

(a) *Objections and Requests for Enforcement.* If a person has been served with a subpoena pursuant to section 6.03 of the Rules, but fails or refuses to comply with its terms or otherwise objects to it, the party or person objecting or the party seeking compliance may seek a ruling from the Merits Hearing Officer. The request for a ruling shall be submitted in writing to the Merits Hearing Officer. However, it may be made orally on the record at the hearing at the discretion of the Merits Hearing Officer. The party seeking compliance shall present the proof of service and, except when the witness was required to appear before the Merits Hearing Officer, shall submit evidence, by affidavit or declaration, of the failure or refusal to obey the subpoena.

(b) *Ruling by the Merits Hearing Officer.*

(1) The Merits Hearing Officer shall promptly rule on the request for enforcement and/or the objection(s).

(2) On request of the objecting witness or any party, the Merits Hearing Officer shall—or on the Hearing Officer's own initiative, the Hearing Officer may—refer the ruling to the Board for review.

(c) *Review by the Board.* The Board may overrule, modify, remand, or affirm the Merits Hearing Officer's ruling and, in its discretion, may direct the General Counsel to apply in the name of the Office for an order from a United States district court to enforce the subpoena.

(d) *Application to an Appropriate Court; Civil Contempt.* If a person fails to comply with a subpoena, the Board may direct 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 Merits Hearing Officer to give testimony or produce records. Any failure to obey a lawful order of the district court may be held by such court to be a civil contempt thereof.

§ 6.07 Requirements for Sworn Statements.

Any time that the Office and/or a Hearing Officer requires an affidavit or sworn statement from a party or a witness, he or she should refer the party or witness to a sample declaration under 28 U.S.C. § 1746, which substantially requires:

(a) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the fore-

going is true and correct. Executed on (date). (Signature)."

(b) If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

SUBPART G—[AMENDED]

[Table of Contents Omitted]

Revise subpart G to read as follows:

§ 7.01 The Merits Hearing Officer.

This subpart concerns the duties and responsibilities of Merits Hearing Officers, who are appointed by the Executive Director to preside over the administrative hearings under the Act. The duties and responsibilities of Preliminary Hearing Officers are contained in section 5.08 of these Rules.

(a) *Exercise of Authority.* The Merits Hearing Officer may exercise authority as provided in subparagraph (b) of this section upon his or her own initiative or upon a party's motion, as appropriate.

(b) *Authority.* Merits Hearing Officers shall conduct fair and impartial hearings and take all necessary action to avoid undue delay in disposing of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

- (1) administer oaths and affirmations;
- (2) rule on motions to disqualify designated representatives;
- (3) issue subpoenas in accordance with section 6.02 of these Rules;
- (4) rule upon offers of proof and receive relevant evidence;
- (5) rule upon discovery issues as appropriate under sections 6.01 to 6.06 of these Rules;
- (6) hold prehearing conferences for simplifying issues and settlement;
- (7) convene a hearing, as appropriate, regulate the course of the hearing, and maintain decorum at and exclude from the hearing any person who disrupts, or threatens to disrupt, that decorum;
- (8) exclude from the hearing any person, except any claimant, any party, the attorney or representative of any claimant or party, or any witness while testifying;
- (9) rule on all motions, witness and exhibit lists, and proposed findings, including motions for summary judgment;
- (10) require the filing of briefs, memoranda of law, and the presentation of oral argument as to any question of fact or law;
- (11) order the production of evidence and the appearance of witnesses;
- (12) impose sanctions as provided under section 7.02 of these Rules;
- (13) file decisions on the issues presented at the hearing;
- (14) dismiss any claim that is found to be frivolous or that fails to state a claim upon which relief may be granted;
- (15) maintain and enforce the confidentiality of proceedings; and
- (16) waive or modify any procedural requirements of subparts F and G of these Rules so long as permitted by the Act.

§ 7.02 Sanctions.

(a) When necessary to regulate the course of the proceedings (including the hearing), the Merits Hearing Officer may impose an appropriate sanction, which may include, but is not limited to, the sanctions specified in this section, on the parties and/or their representatives.

(b) The Merits Hearing Officer may impose sanctions upon the parties and/or their representatives based on, but not limited to, the circumstances set forth in this section.

(1) *Failure to Comply with an Order.* When a party fails to comply with an order (includ-

ing an order to submit to a deposition, to produce evidence within the party's control, or to produce witnesses), the Merits Hearing Officer may:

(A) draw an inference in favor of the requesting party on the issue related to the information sought;

(B) stay further proceedings until the order is obeyed;

(C) prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(D) permit the requesting party to introduce secondary evidence concerning the information sought;

(E) strike, in whole or in part, the claim, briefs, answer, or other submissions of the party failing to comply with the order, as appropriate; or

(F) direct judgment against the non-complying party in whole or in part.

(2) *Failure to Prosecute or Defend.* If a party fails to prosecute or defend a position, the Merits Hearing Officer may dismiss the action with prejudice or decide the matter, when appropriate.

(3) *Failure to Make Timely Filing.* The Merits Hearing Officer may refuse to consider any request, motion or other action that is not filed in a timely fashion in compliance with this subpart.

(4) *Frivolous Claims, Defenses, and Arguments.* If a party or a representative files a claim that fails to meet the requirements of section 401(f) of the Act, the Merits Hearing Officer may dismiss the claim, in whole or in part, with prejudice or decide the matter for the opposing party. If a party or a representative presents a pleading, written motion, or other paper containing claims, defenses, and other legal contentions for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of resolution of the matter, the Merits Hearing Officer may reject the claims, defenses or legal contentions, in whole or in part. A claim, defense, or legal contention shall not be subject to sanctions if it constitutes a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

(5) *Failure to Maintain Confidentiality.* An allegation regarding a violation of the confidentiality provisions may be made to a Merits Hearing Officer in proceedings under section 405 of the Act. If, after notice and hearing, the Merits Hearing Officer determines that a party has violated the confidentiality provisions, the Merits Hearing Officer may:

(A) direct that the matters related to the breach of confidentiality or other designated facts be taken as established for purposes of the action, as the prevailing party contends;

(B) prohibit the party breaching confidentiality from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(C) strike the pleadings in whole or in part;

(D) stay further proceedings until the breach of confidentiality is resolved to the extent possible;

(E) dismiss the action or proceeding in whole or in part; or

(F) render a default judgment against the party breaching confidentiality.

(c) No sanctions may be imposed under this section except for good cause and the particulars of which must be stated in the sanction order.

§ 7.03 Disqualifying a Merits Hearing Officer.

(a) In the event that a Merits Hearing Officer considers himself or herself disqualified, either because of personal bias or of an interest in the case or for some other disqualifying reason, he or she shall withdraw from

the case, stating in writing or on the record the reasons for his or her withdrawal, and shall immediately notify the Office of the withdrawal.

(b) Any party may file a motion requesting that a Merits Hearing Officer withdraw on the basis of personal bias or of an interest in the case or for some other disqualifying reason. This motion shall specifically set forth the reasons supporting the request and be filed as soon as the party has reason to believe that there is a basis for disqualification.

(c) The Merits Hearing Officer shall promptly rule on the withdrawal motion. If the motion is granted, the Executive Director will appoint another Merits Hearing Officer within 5 days. Any objection to the Merits Hearing Officer's ruling on the withdrawal motion shall not be deemed waived by a party's further participation in the hearing and may be the basis for an appeal to the Board from the Merits Hearing Officer's decision under section 8.01 of these Rules. Such objection will not stay the conduct of the hearing.

§ 7.04 Motions and Prehearing Conference.

(a) *Motions.* Motions shall be filed with the Merits Hearing Officer and shall be in writing except for oral motions made on the record during the hearing. All written motions and any responses to them shall include a proposed order, when applicable. Only with the Merits Hearing Officer's advance approval may either party file additional responses to the motion or to the response to the motion. Motions for extension of time will be granted only for good cause shown.

(b) *Scheduling the Prehearing Conference.* Within 7 days after a Merits Hearing Officer is assigned to adjudicate the claim(s), the Merits Hearing Officer shall serve on the parties and their designated representatives written notice setting forth the time, date, and place of the prehearing conference, except that the Executive Director may, for good cause, extend up to an additional 7 days the time for serving notice of the prehearing conference.

(c) *Prehearing Conference Memoranda.* The Merits Hearing Officer may order each party to prepare a prehearing conference memorandum. The Merits Hearing Officer may direct that a memorandum be filed after discovery has concluded. The memorandum may include:

(1) the major factual contentions and legal issues that the party intends to raise at the hearing in short, successive, and numbered paragraphs, along with any proposed stipulations of fact or law;

(2) an estimate of the time necessary for presenting the party's case;

(3) the specific relief, including, when known, a calculation of any monetary relief or damages that is being or will be requested;

(4) the names of potential witnesses for the party's case, except for potential impeachment or rebuttal witnesses, and the purpose for which they will be called and a list of documents that the party is seeking from the opposing party, and, if discovery was permitted, the status of any pending request for discovery. (It is not necessary to list each document requested. Instead, the party may refer to the request for discovery.); and

(5) a brief description of any other unresolved issues.

(d) At the prehearing conference, the Merits Hearing Officer may discuss the subjects specified in paragraph (c) above and the manner in which the hearing will be conducted. In addition, the Merits Hearing Officer may explore settlement possibilities and consider how the factual and legal issues

might be simplified and any other issues that might expedite resolving the dispute. The Merits Hearing Officer shall issue an order, which recites the actions taken at the conference and the parties' agreements as to any matters considered, and which limits the issues to those not disposed of by the parties' admissions, stipulations, or agreements. Such order, when entered, shall control the course of the proceeding, subject to later modification by the Merits Hearing Officer by his or her own motion or upon proper request of a party for good cause shown.

§ 7.05 Scheduling the Hearing.

(a) *Date, Time, and Place of Hearing.* The Office shall issue the notice of hearing, which shall fix the date, time, and place of hearing. Absent a postponement granted by the Office, a hearing must commence no later than 60 days after the filing of the claim(s).

(b) *Motions for Postponement or a Continuance.* Motions for postponement or for a continuance by either party shall be made in writing to the Merits Hearing Officer, shall set forth the reasons for the request, and shall state whether or not the opposing party consents to such postponement. A Merits Hearing Officer may grant such a motion upon a showing of good cause. In no event will a hearing commence later than 90 days after the filing of the claim form.

§ 7.06 Consolidation and Joinder of Cases.

(a) *Explanation.*

(1) Consolidation is when two or more parties have cases that might be treated as one because they contain identical or similar issues or in such other appropriate circumstances.

(2) Joinder is when one party has two or more cases pending and they are united for consideration. For example, joinder might be warranted when a single party has one case pending challenging a 30-day suspension and another case pending challenging a subsequent dismissal.

(b) *Authority.* The Executive Director (before assigning a Merits Hearing Officer to adjudicate a claim); a Merits Hearing Officer (during the hearing); or the Board (during an appeal) may consolidate or join cases on their own initiative or on the motion of a party if to do so would expedite case processing and not adversely affect the parties' interests, taking into account the confidentiality requirements of section 416 of the Act.

§ 7.07 Conduct of Hearing; Disqualifying a Representative.

(a) Pursuant to section 405(d)(1) of the Act, the Merits Hearing Officer shall conduct the hearing in closed session on the record. Only the Merits Hearing Officer, the parties and their representatives, and witnesses during the time they are testifying, shall be permitted to attend the hearing, except that the Office may not be precluded from observing the hearing. The Merits Hearing Officer, or a person designated by the Merits Hearing Officer or the Executive Director, shall record the proceedings.

(b) The hearing shall be conducted as an administrative proceeding. Witnesses shall testify under oath or affirmation. Except as specified in the Act and in these Rules, the Merits Hearing Officer shall conduct the hearing, to the greatest extent practicable, consistent with the principles and procedures in sections 554 through 557 of title 5 of the United States Code (the Administrative Procedure Act).

(c) No later than the opening of the hearing, or as otherwise ordered by the Merits Hearing Officer, each party shall submit to the Merits Hearing Officer and to the opposing party typed lists of the hearing exhibits and the witnesses expected to be called to

testify, excluding impeachment or rebuttal witnesses.

(d) At the commencement of the hearing, or as otherwise ordered by the Merits Hearing Officer, the Merits Hearing Officer may consider any stipulations of facts and law pursuant to section 7.10 of the Rules, take official notice of certain facts pursuant to section 7.11 of the Rules, rule on the parties' objections and hear witness testimony. Each party must present his or her case in a concise manner, limiting the testimony of witnesses and submission of documents to relevant matters.

(e) Any evidentiary objection not timely made before a Merits Hearing Officer shall, absent clear error, be deemed waived on appeal to the Board.

(f) Failure of either party to appear at the hearing, to present witnesses, or to respond to an evidentiary order may result in an adverse finding or ruling by the Merits Hearing Officer. At the Merits Hearing Officer's discretion, the hearing also may be held without the claimant if the claimant's representative is present.

(g) If the Merits Hearing Officer concludes that an employee's representative, a witness, a charging party, a labor organization, an employing office, or an entity alleged to be responsible for correcting a violation has a conflict of interest, the Merits Hearing Officer may, after giving the representative an opportunity to respond, disqualify the representative. In that event, within the time limits for hearing and decision established by the Act, the affected party shall be afforded reasonable time to retain other representation.

§ 7.08 Transcript.

(a) *Preparation.* The Office shall keep an accurate electronic or stenographic hearing record, which shall be the sole official record of the proceeding. The Office shall be responsible for the cost of transcribing the hearing. Upon request, a copy of the hearing transcript shall be furnished to each party, provided, however, that such party has first agreed to maintain and respect the confidentiality of such transcript in accordance with the applicable rules prescribed by the Office or the Merits Hearing Officer to effectuate section 416(b) of the Act. Additional copies of transcripts shall be made available to a party at the party's expense. The Office may grant exceptions to the payment requirement for good cause shown. A motion for an exception shall be made in writing, accompanied by an affidavit or a declaration setting forth the reasons for the request, and submitted to the Office. Requests for copies of transcripts also shall be directed to the Office. The Office may, by agreement with the person making the request, arrange with the official hearing reporter for required services to be charged to the requester.

(b) *Corrections.* Corrections to the official transcript of the hearing will be permitted. Motions for correction must be submitted within 10 days of service of the transcript upon the parties. Corrections to the official transcript will be permitted only upon the approval of the Merits Hearing Officer. The Merits Hearing Officer may make corrections at any time with notice to the parties.

§ 7.09 Admissibility of Evidence.

The Merits Hearing Officer shall apply the Federal Rules of Evidence to the greatest extent practicable. These Rules provide, among other things, that the Merits Hearing Officer may exclude evidence if, among other things, it constitutes inadmissible hearsay or its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 7.10 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 7.11 Official Notice.

(a) The Merits Hearing Officer on his or her own motion or on motion of a party, may take official notice of a fact that is not subject to reasonable dispute because it is either:

- (1) a matter of common knowledge; or
- (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

(b) When a decision, or part thereof, rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§ 7.12 Confidentiality.

(a) Pursuant to section 416 of the Act and section 1.08 of these Rules, all proceedings and deliberations of Merits Hearing Officers and the Board, including the hearing transcripts and any related records, shall be confidential, except as specified in sections 416(c), (d), (e), and (f) of the Act and subparagraph 1.08(d) of these Rules. All parties to the proceeding and their representatives, and witnesses who appear at the hearing, will be advised of the importance of confidentiality in this process and of their obligations, subject to sanctions, to maintain it. This provision shall not apply to proceedings under section 215 of the Act, but shall apply to the Merits Hearing Officers' and the Board's deliberations under that section.

(b) *Violation of Confidentiality.* A Merits Hearing Officer, under section 405 of the Act, may resolve an alleged violation of confidentiality that occurred during a hearing. After providing notice and an opportunity to the parties to be heard, the Merits Hearing Officer, under subparagraph 1.08(f) of these Rules, may find a violation of confidentiality and impose appropriate procedural or evidentiary sanctions, to include the sanctions listed in section 7.02 of these Rules.

§ 7.13 Immediate Board Review of a Hearing Officer's Ruling.

(a) *Review Strongly Disfavored.* Board review of a Merits Hearing Officer's ruling is strongly disfavored while a proceeding is ongoing (an "interlocutory appeal"). In general, the Board may consider a request for interlocutory appeal only if the Merits Hearing Officer, on his or her own motion or by motion of the parties, determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention.

(b) *Time for Filing.* A party must file a motion for interlocutory appeal of a Merits Hearing Officer's ruling with the Merits Hearing Officer within 5 days after service of the ruling upon the parties. The motion shall include arguments in support of both interlocutory appeal and the requested determination to be made by the Board upon review. Responses, if any, shall be filed with the Hearing Officer within 3 days after service of the motion.

(c) *Standards for Review.* In determining whether to certify and forward a request for interlocutory appeal to the Board, the Merits Hearing Officer shall consider the following:

- (1) whether the ruling involves a significant question of law or policy about which there is substantial ground for difference of opinion;
- (2) whether an immediate Board review of the Merits Hearing Officer's ruling will ma-

terially advance completing the proceeding; and

(3) whether denial of immediate review will cause undue harm to a party or the public.

(d) *Merits Hearing Officer Action.* If all the conditions set forth in paragraph (c) above are met, the Merits Hearing Officer shall certify and forward a request for interlocutory appeal to the Board for its immediate consideration. Any such submission shall explain the basis on which the Merits Hearing Officer concluded that the standards in paragraph (c) have been met. The Merits Hearing Officer's decision to forward or decline to forward a request for review is not appealable.

(e) *Granting or Denying an Interlocutory Appeal is Within the Board's Sole Discretion.* The Board, in its sole discretion, may grant or deny an interlocutory appeal, upon the Merits Hearing Officer's certification and decision to forward a request for review. The Board's decision to grant or deny an interlocutory appeal is not appealable.

(f) *Stay Pending Interlocutory Appeal.* Unless otherwise directed by the Board, the stay of any proceedings during the pendency of either a request for interlocutory appeal or the appeal itself shall be within the Merits Hearing Officer's discretion, provided that no stay shall serve to toll the time limits set forth in section 405(d) of the Act. If the Merits Hearing Officer does not stay the proceedings, the Board may do so while an interlocutory appeal is pending with it.

(g) *Procedures before the Board.* Upon its decision to grant interlocutory appeal, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

(h) *Appeal of a Final Decision.* Denial of interlocutory appeal will not affect a party's right to challenge rulings, which are otherwise appealable, as part of an appeal to the Board under section 8.01 of the Rules from the Merits Hearing Officer's decision issued under section 7.16 of these Rules.

§ 7.14 Proposed Findings of Fact and Conclusions of Law; Posthearing Briefs.

May be Required. The Merits Hearing Officer may require the parties to file proposed findings of fact and conclusions of law and/or posthearing briefs on the factual and the legal issues presented in the case.

§ 7.15 Closing the Record.

(a) Except as provided in section 7.14 of the Rules, the record shall close when the hearing ends. However, the Hearing Officer may hold the record open as necessary to allow the parties to submit arguments, briefs, documents or additional evidence previously identified for introduction.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the hearing record except upon a showing that new and material evidence has become available that was not available despite due diligence before the record closed or that the additional evidence or argument is being provided in rebuttal to new evidence or argument that the other party submitted just before the record closed. The Merits Hearing Officer also shall make part of the record an approved correction to the transcript.

§ 7.16 Merits Hearing Officer Decisions; Entry in Office Records; Corrections to the Record; Motions to Alter, Amend, or Vacate the Decision.

(a) The Merits Hearing Officer shall issue a written decision no later than 90 days after the hearing ends, pursuant to section 405(g) of the Act.

(b) The Merits Hearing Officer's written decision shall:

- (1) state the issues raised in the claim(s), form, or complaint;

(2) describe the evidence in the record;

(3) contain findings of fact and conclusions of law, and the reasons or bases therefore, on all the material issues of fact, law, or discretion presented on the record;

(4) determine whether a violation has occurred; and

(5) order such remedies as are appropriate under the Act.

(c) If a final decision concerns a claim alleging a violation or violations described in section 415(d)(1)(C) of the Act, the written decision shall include the following findings:

(1) whether the alleged violation or violations occurred;

(2) whether any violation or violations found to have occurred were 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;

(3) the amount of compensatory damages, if any, awarded pursuant to section 415(d)(1)(B) of the Act; and

(4) the amount, if any, of compensatory damages that is the "reimbursable portion" as defined by section 415(d) of the Act.

(d) Upon issuance, the Merits Hearing Officer's decision and order shall be entered into the Office's records.

(e) The Office shall promptly provide a copy of the Merits Hearing Officer's decision and order to the parties.

(f) If there is no appeal of a Merits Hearing Officer's decision and order, that decision becomes a final decision of the Office, which is subject to enforcement under section 8.03 of these Rules.

(g) *Corrections to the Record.* After a Merits Hearing Officer's decision has been issued, but before an appeal is made to the Board, or absent an appeal, before the decision becomes final, the Merits Hearing Officer may issue an erratum notice to correct simple errors or easily correctable mistakes. The Merits Hearing Officer may do so on the parties' motion or on his or her own motion with or without advance notice.

(h) After a Merits Hearing Officer's decision has been issued, but before an appeal is made to the Board, or absent an appeal, before the decision becomes final, a party to the proceeding before the Merits Hearing Officer may move to alter, amend, or vacate the decision. The moving party must establish that relief from the decision is warranted because: (1) of mistake, inadvertence, surprise, or excusable neglect; (2) there is newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new hearing; (3) there has been fraud (misrepresentation, or misconduct by an opposing party); (4) the decision is void; or (5) the decision has been satisfied, released, or discharged; it is based on an earlier decision that has been reversed or vacated; or applying it prospectively is no longer equitable. The motion shall be filed within 15 days after service of the Merits Hearing Officer's decision. No response shall be filed unless the Merits Hearing Officer so orders. The filing and pendency of a motion under this provision shall not relieve a party of the obligation to file a timely appeal or operate to stay the Merits Hearing Officer's action unless the Merits Hearing Officer so orders.

Subpart H—[AMENDED]

[Table of Contents Omitted]

Amend section 8.01 by:

(a) *Revising the second sentence of paragraph (a);*

(b) *Adding a new paragraph (b) and redesignating paragraphs (b) through (j) as paragraphs (c) through (k), respectively;*

(c) *Revising redesignated paragraph (c)(2); and*

(d) *Revising redesignated paragraphs (i) through (k).*

The revisions read as follows:

§ 8.01 Appeal to the Board.

(a) * * * The appeal must be served on all opposing parties or their representatives.

(b) A Report on Preliminary Review pursuant to section 402(c) of the Act is not appealable to the Board.

(c)

* * * * *

(2) Unless otherwise ordered by the Board, within 21 days following the service of the appellant's brief, any opposing party may file and serve a responsive brief. Unless otherwise ordered by the Board, within 10 days following the service of the responsive brief(s), the appellant may file and serve a reply brief.

* * * * *

(i) *Record.* The docket sheet, claim form or complaint and any amendments, preliminary review report, request for hearing, notice of hearing, answer and any amendments, motions, rulings, orders, stipulations, exhibits, documentary evidence, any portions of depositions admitted into evidence, docketed Memoranda for the Record, or correspondence between the Office and the parties, and the transcript of the hearing (together with any electronic recording of the hearing if the original reporting was performed electronically) together with the Merits Hearing Officer's decision and the petition for review, any response thereto, any reply to the response and any other pleadings shall constitute the record in the case.

(j) The Board may invite amicus participation, in appropriate circumstances, in a manner consistent with the requirements of section 416 of the Act.

(k) An appellant may move to withdraw a petition for review at any time before the Board renders a decision. The motion must be in writing and submitted to the Board. The Board, at its discretion, may grant or deny such a motion and take whatever action is required.

* * * * *

SUBPART I—[AMENDED]

[Table of Contents Omitted]

1. *Amend section 9.01 by:*

(a) *Revising paragraph (a); and*

(b) *Adding a new paragraph (c).*

The revisions read as follows:

§ 9.01 Attorney's Fees and Costs.

(a) *Request.* No later than 30 days after the entry of a final decision of the Office, the prevailing party may submit to the Merits Hearing Officer who decided the case a motion for the award of reasonable attorney's fees and costs, following the form specified in paragraph (b) below. The Merits Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion. Decisions regarding attorney's fees and costs are collateral and do not affect the finality or appealability of a final decision issued by the Office.

* * * * *

(c) *Arbitration Awards.* In arbitration proceedings, the prevailing party must submit any request for attorney's fees and costs to the arbitrator in accordance with the established arbitration procedures.

2. *Amend section 9.02 by revising paragraph (b) as follows:*

§ 9.02 Ex Parte Communications.

* * * * *

(b) *Exception to Coverage.* The Rules set forth in this section do not apply during periods that the Board designates as periods of negotiated rulemaking in accordance with

the procedures set forth in the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.*

* * * * *

3. *Revise section 9.03 as follows:*

§ 9.03 Informal Resolutions and Settlement Agreements.

(a) *Informal Resolution.* At any time before a covered employee files a claim form under section 402 of the Act, a covered employee and the employing office, on their own, may agree voluntarily and informally to resolve a dispute. Any informal resolution shall be ineffective to the extent that it purports to:

(1) constitute a waiver of a covered employee's rights under the Act; or

(2) create an obligation that is payable from the account established by section 415(a) of the Act ("Section 415(a) Treasury Account") or enforceable by the Office.

(b) * * * * *

(c) *General Requirements for Formal Settlement Agreements.* A formal settlement agreement must contain the signatures of all parties or their designated representatives on the agreement document. A formal settlement agreement cannot be approved by the Executive Director until the appropriate revocation periods have expired and the employing office has fully completed and submitted the Office's Section 415(a) Account Requisition Form. A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise permitted by law. All formal settlement agreements must also:

(1) specify the amount of each payment to be made from the Section 415(a) Treasury Account;

(2) identify the portion of any payment that is subject to the reimbursement provisions of section 415(e) of the Act because it is being used to settle an alleged violation of section 201(a) or 206(a) of the Act;

(3) identify each payment that is back pay and indicate the net amount that will be paid to the employee after tax withholding and authorized deductions; and

(4) certify that, except for funds to correct alleged violations of sections 201(a)(3), 210, or 215 of the Act, only funds from the Section 415(a) Treasury Account will be used for the payment of any amount specified in the settlement agreement.

(d) *Requirements for Formal Settlement Agreements Involving Claims against Members of Congress.* If a formal settlement agreement concerns allegations against a Member of Congress subject to the payment reimbursement provisions of section 415(d) of the Act, the settlement agreement must comply with subparagraphs 9.03(c)(1), (3) and (4) of these Rules, and:

(1) specify the amount, if any, that is the "reimbursable portion" as defined by section 415(d) of the Act; and

(2) contain the signature of any individual (or the representative of any individual) who has exercised his or her right to intervene pursuant to section 414(d)(8) of the Act.

(e) * * * * *

3. *Revise section 9.04 as follows:*

§ 9.04 Payments Required Pursuant to Decisions, Awards, or Settlements under Section 415(a) of the Act.

(a) *In General.* Whenever an award or settlement requires the payment of funds pursuant to section 415(a) of the Act, the award or settlement must be submitted to the Executive Director together with a fully completed Section 415(a) Account Requisition Form for processing by the Office.

(b) *Requesting Payments.*

(1) Only an employing office under section 101 of the Act may submit a payment request from the Section 415(a) Treasury Account.

(2) Employing offices must submit requests for payments from the Section 415(a) Treasury Account on the Office's Section 415(a) Account Requisition Forms.

(c) *Duty to Cooperate.* Each employment office has a duty to cooperate with the Executive Director or his or her designee by promptly responding to any requests for information and to otherwise assist the Executive Director in providing prompt payments from the Section 415(a) Treasury Account. Failure to cooperate may be grounds for disapproval of the settlement agreement.

(d) *Back Pay.* When the award or settlement specifies a payment as back pay, the gross amount of the back pay will be paid to the employing office and the employing office will then promptly issue amounts representing back pay (and interest if authorized) to the employee and retain amounts representing withholding and deductions.

(e) *Attorney's fees.* When the award or settlement specifies a payment as attorney's fees, the attorney's fees are paid directly to the attorney from the Section 415(a) Treasury Account.

(f) *Tax Reporting and Withholding Obligations.* The Office does not report Section 415(a) Treasury Account payments as potential taxable income to the Internal Revenue Service (IRS) and is not responsible for tax withholding or reporting. To the extent that W-2 or 1099 forms need to be issued, it is the responsibility of the employing office submitting the payment request to do so. The employing office should also consult IRS regulations for guidance in reporting the amount of any back pay award as wages on a W-2 Form.

(g) *Method of Payment.* Section 415(a) Treasury Account payments are made by electronic funds transfer. The Office will issue an electronic payment to the payee's account as specified on the appropriate Section 415(a) Treasury Account form.

(h) *Reimbursement of the Section 415(a) Treasury Account.*

(1) *Members of Congress.* Section 415(d) of the Act requires Members of the House of Representatives and the Senate to reimburse the "compensatory damages" portion of a decision, award or settlement for a violation of section 201(a), 206(a), or 207 that the Member is found to have "committed personally." Reimbursement shall be in accordance with the timetable and procedures established by the applicable congressional committee for the withholding of amounts from the compensation of an individual who is a Member of the House of Representatives or a Senator.

(2) *Other Employing Offices.* Section 415(e) of the Act requires employing offices (other than an employing office of the House or Senate) to reimburse awards and settlements paid from the Section 415(a) Treasury Account in connection with claims alleging violations of section 201(a) or 206(a) of the Act.

(A) As soon as practicable after the Executive Director is made aware that a payment of an award or settlement under this Act has been made from the Section 415(a) Treasury Account in connection with a claim alleging a violation of section 201(a) or 206(a) of the Act by an employing office (other than an employing office of the House of Representatives or an employing office of the Senate), the Executive Director will notify the head of the employing office that the payment has been made. The notice will include a statement of the payment amount.

(B) Reimbursement must be made within 180 days after receipt of notice from the Executive Director, and is to be transferred to the Section 415(a) Treasury Account out of funds available for the employing office's operating expenses.

(C) The Office will notify employing offices of any outstanding receivables on a quarterly basis. Employing offices have 30 days from the date of the notification of an outstanding receivable to respond to the Office regarding the accuracy of the amounts in the notice.

(D) Receivables outstanding for more than 30 days from the date of the notification will be noted as such on the Office's public website and in the Office's annual report to Congress on awards and settlements requiring payments from the Section 415(a) Treasury Account.

(3) [reserved]

4. Amend section 9.05 by revising paragraph (b) as follows:

§9.05 Revocation, Amendment or Waiver of Rules.

* * * * *

(b) The Board or a Hearing Officer may waive a procedural rule in an individual case for good cause shown if application of the rule is not required by law.

5. Add a new section 9.06 as follows:

§9.06 Notices.

(a) All employing offices are required to post and keep posted the notice provided by the Office that:

(1) describes the rights, protections, and procedures applicable to covered employees of the employing office under this Act, concerning violations described in 2 U.S.C. § 1362(b); and

(2) includes contact information for the Office.

(b) The notice must be displayed in all premises of the covered employer in conspicuous places where notices to applicants and employees are customarily posted.

6. Add a new section 9.07 as follows:

§9.07 Training and Education Programs.

(a) Not later than 180 days after the date of the enactment of the Reform Act, June 19, 2019, and not later than 45 days after the beginning of each Congress (beginning with the 117th Congress), each employing office shall submit a report both to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the implementation of the training and education program required under section 438(a) of the Act.

(b) *Exception for Offices of Congress.*—This section does not apply to any employing office of the House of Representatives or any employing office of the Senate.

APPOINTMENT

THE PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 93-642, appoints

the following Senator to be a member of the Board of Trustees of the Harry S Truman Scholarship Foundation: The Honorable BRIAN SCHATZ of Hawaii.

AUTHORIZING TESTIMONY, DOCUMENTS, AND REPRESENTATION IN UNITED STATES V. PRATERSCH

Mr. PORTMAN. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 151, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant bill clerk read as follows:

A resolution (S. Res. 151) to authorize testimony, documents, and representation in United States v. Pratersch.

There being no objection, the Senate proceeded to consider the resolution.

Mr. PORTMAN. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 151) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under "Submitted Resolutions.")

DISCHARGE AND REFERRAL—S. 846

Mr. PORTMAN. Madam President, I ask unanimous consent that S. 846, the Transit Infrastructure Vehicle Security Act, be discharged from the Committee on Commerce, Science, and Transportation and the bill be referred to the Committee on Banking, Housing, and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE READ THE FIRST TIME—H.R. 1585

Mr. PORTMAN. Madam President, I understand that there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The assistant bill clerk read as follows:

A bill (H.R. 1585) to reauthorize the Violence Against Women Act of 1994, and for other purposes.

Mr. PORTMAN. Madam President, I now ask for a second reading, and in order to place the bill on the Calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will receive its second reading on the next legislative day.

ORDERS FOR WEDNESDAY, APRIL 10, 2019

Mr. PORTMAN. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Wednesday, April 10; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, morning business be closed, and the Senate proceed to executive session and resume consideration of the Stanton nomination.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. PORTMAN. Madam President, if there is no further business to come before the Senate, I ask that it stand adjourned under the previous order.

There being no objection, the Senate, at 6:58 p.m., adjourned until Wednesday, April 10, 2019, at 9:45 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 9, 2019:

THE JUDICIARY

DANIEL DESMOND DOMENICO, OF COLORADO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF COLORADO.

PATRICK R. WYRICK, OF OKLAHOMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA.