be Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Representative of the United States of America to the United Nations.

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 Wednesday, June 19, 2019, at 9:30 a.m., to conduct a hearing on pending legislation and the following nominations: Chad F. Wolf, of Virginia, to be Under Secretary for Strategy, Policy, and Plans, Jeffrey Byard, of Alabama, to be Administrator of the Federal Emergency Management Agency, and Troy D. Edgar, of California, to be Chief Financial Officer, all of the Department of Homeland Security, John McLeod Barger, of California, to be a Governor of the United States Postal Service, and B. Chad Bungard, of Maryland, to be a Member of the Merit Systems Protection Board.

COMMITTEE ON INDIAN AFFAIRS

The Committee on Indian Affairs is authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 2:30 p.m., to conduct a hearing.

COMMITTEE ON INDIAN AFFAIRS

The Committee on Indian Affairs is authorizd to meet during the session of the Senate on Wednesday, June 19, 2019, at 2:30 p.m., to conduct a hearing on pending legislation.

COMMITTEE ON THE JUDICIARY

The Committee on the Judiciary is authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 10 a.m., to conduct a hearing.

COMMITTEE ON VETERANS' AFFAIRS

The Committee on Veterans' Affairs 1s authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 2:30 p.m., to conduct a hearing.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

The Committee on Small Business and Entrepreneurship is authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 2:30 p.m., to conduct a hearing.

SPECIAL COMMITTEE ON AGING

The Special Committee on Aging is authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 9 a.m., to conduct a hearing.

SUBCOMMITTEE ON MANUFACTURING, TRADE, AND CONSUMER PROTECTION

The Subcommittee on Manufacturing, Trade, and Consumer Protection of the Committee on Commerce is authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 10 a.m., to conduct a hearing.

SUBCOMMITTEE ON NATIONAL PARKS

The Subcommittee on National Parks of the Committee on the Energy and Natural Resources is authorized to meet during the session of the Senate on Wednesday, June 19, 2019, at 10 a.m., to conduct a hearing.

PRIVILEGES OF THE FLOOR

Mrs. SHAHEEN. Mr. President, I ask unanimous consent that my defense fellow, Jenny Tsao, and Pearson fellow, Anthony Pirnot, be given floor privileges for the remainder of the first session of the 116th Congress.

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

Mr. REED. I ask unanimous consent that Jeremy Maginot, a Coast Guard fellow in my office, be granted privileges of the floor for the remainder of this Congress.

I also ask unanimous consent that another fellow in my office, Aminata Sy, be granted privileges of the floor until August 2, 2019.

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

Mr. INHOFE. Mr. President, I request unanimous consent to grant floor privileges for the duration of this consideration of the NDAA to Kyle Stewart, my defense fellow, and Jennifer Dougherty, the GAO detailee.

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

NOTICE OF ADOPTED RULEMAKING

U.S. CONGRESS, OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
June 19, 2019, Washington, DC.

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

DEAR MR. PRESIDENT: Section 303 of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1383, requires that, with regard to the amendment of the rules governing the procedures of the Office, the Executive Director ''shall, subject to the approval of the Board [of Directors], adopt rules governing the procedures of the Office'' and ''[u]pon adopting rules . . . shall transmit notice of such action together with a copy of such rules 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 published a general notice of proposed rulemaking in the Congressional Record on April 9, 2019, provided a comment period of at least 30 days after publication of such notice, and obtained the approval of the Board of Directors for the adoption of these rules as required by sections 303(a) and (b) of the CAA, 2 U.S.C. 1383(a) and (b), I am transmitting the attached amendments to the Procedural Rules of the Office of Congressional Workplace Rights to the President Pro Tempore of the United States Senate for publication 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 accordance with section 303(b) of the CAA, these amendments to the Procedural Rules shall be considered issued by the Executive Director and in effect as of the date on which they are published in the Congressional Record. 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.

Sincerely,

SUSAN TSUI GRUNDMANN,
Executive Director, Office of Congressional Workplace Rights.

FROM THE EXECUTIVE DIRECTOR OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS: NOTICE OF ADOPTED RULEMAKING, AS REQUIRED BY 2 U.S.C. 1383, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED

Introductory Statement

On April 9, 2019, a Notice of Proposed Rulemaking concerning the Procedural Rules of the Office of Congressional Workplace Rights (OCWR) was published in the Congressional Record at S2334 and H3200. As required under the Congressional Accountability Act of 1995 at section 303(b) (2 U.S.C. 1383(b)), a 30-day period for comments from interested parties followed. In response to the Notice of Proposed Rulemaking, the OCWR received a number of comments regarding the proposed amendments. Specifically, the Office received comments from the House Committee on Ethics, the House Office of Employee Advocacy, the Office of House Employment Counsel, the Architect of the Capitol, the Library of Congress, the U.S. Capitol Police, the Fraternal Order of Police/U.S. Capitol Police Labor Committee, District Council 20 of the American Federation of State, County, and Municipal Employees, AFL-CIO, the U.S. Senate Disbursing Office, and the U.S. Senate Chief Counsel for Employment.

The Executive Director and the Board of Directors of the OCWR, having reviewed all comments received regarding the Notice, and having made certain additional changes to the proposed amendments in response thereto, now issue the final Procedural Rules as authorized by section 303(b) of the Act, which states in part: ''Rules shall be considered issued by the Executive Director as of the date on which they are published in the Congressional Record.'' 2 U.S.C. 1383(b). These Procedural Rules of the Office of Congressional Workplace Rights may be found on the Office's web site: www.ocwr.gov.

Supplementary Information

The Congressional Accountability Act of 1995 (CAA or the Act), 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 (CAARA or 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 Reform 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 on June 19, 2019—i.e., upon the expiration of the 180-day period which begins on the date of enactment of the Reform Act.

The OCWR's responses to and discussion of the comments are presented below:

General Comments

Several commenters highlighted typographical errors in the proposed Procedural Rules, and we corrected those along with any typographical errors we identified ourselves. We appreciate the close and thorough review conducted by these commenters.

Many of the comments suggested modifications to the language of the proposed Procedural Rules that would clarify the Rules rather than make substantive changes. To the extent we agreed that those clarifications were warranted, they appear in the final Procedural Rules.

We received some suggestions regarding the existing Procedural Rules that the Board has not proposed to amend, or that were subject to nomenclature changes only without any substantive revisions. Although the Board always appreciates feedback regarding ways to improve OCWR procedures, those Procedural Rules have already been subject to the notice and comment procedures set forth at section 303 of the Act. To the extent that comments received in May 2019 pertain to provisions in the Rules that have not changed in response to the Reform Act, those comments are untimely. However, some of these comments noted typographical errors or suggested alterations for the purpose of clarity, and to the extent that we agreed that those edits were warranted, they appear in the final Procedural Rules.

We received a suggestion that the references to the sections of the CAA be changed to refer to the corresponding sections of the U.S. Code instead. The Board declines to alter its longstanding practice of referencing the section numbers of the Act rather than the provisions of the U.S. Code, but for easier reference we will include a table of the Act sections and corresponding U.S. Code provisions at the beginning of the printed version of the Procedural Rules and the version that appears on the Office's web site.

One commenter expressed a general concern that some of the proposed Rules could prevent or inhibit the Congressional ethics committees from obtaining information they need to investigate alleged violations of workplace rights and other misconduct by Members of Congress and staff. The Procedural Rules related to confidentiality, disclosures, and referral reflect the requirements of the Act, and the Board declines to expand upon those statutory requirements. However, the Office will work with the ethics committees to establish procedures for providing information necessary for those committees to fulfill their obligations, consistent with the requirements of the Act and in a manner that will ensure secure transmittal. We also note that certain internal processes of the Office are outside the scope of the Procedural Rules, but that the Office will comply with the reporting requirements of the Act whether or not they are specifically addressed in the Rules.

Several commenters offered suggestions about the content of the claim form as defined in section 1.02(e) of the Rules. We have taken these comments into consideration in preparing the claim form to be used for claims filed on or after June 19, 2019, which is available at www.ocwr.gov.

One commenter asked the Board to explicitly affirm that it will continue to follow its own existing precedent except to the extent that the Reform Act may require deviation from that existing precedent. The Board does not intend to change its approach to considering and applying legal precedent, but it is the Board's view that the Procedural Rules are not the appropriate forum in which to address this subject, and the Board therefore declines to adopt the commenter's suggestion.

One commenter pointed out that the reimbursement requirements of the Act at section 415 may be expanded by rules of the Senate or the House of Representatives. We have added language where appropriate to account for those potentially broader requirements, including with respect to notification of Members who may have the right to intervene. The Board declines, however, to adopt the commenter's suggestion to require Merits Hearing Officers to make specific findings regarding violations and reimbursement pursuant to the additional requirements imposed by such expanded rules. The Board views such decisions as beyond the jurisdiction conferred by the Act upon the OCWR and its appointed Hearing Officers.

Multiple commenters suggested imposing specific time frames for various actions by the OCWR, by Mediators, or by Hearing Officers. Where such deadlines are feasible and would further the purposes of the Act, we have modified the proposed Rules to include them. However, with respect to mediation and administrative hearings, in the Board's experience such deadlines are best established by Mediators and Hearing Officers in consultation with the parties on a case-by-case basis.

One commenter suggested adding details to the Procedural Rules regarding the process Members must follow in order to intervene. We have added language to the Rules specifying that Members will be notified of their right to intervene, as well as the method for doing so, at three points in the process: when a claim form is filed that contains allegations of violations described in section 415(d)(1)(C) of the Act committed personally by a Member; when mediation has been requested with respect to a claim containing such allegations; and when an administrative hearing has been requested with respect to a claim containing such allegations. However, the Board has determined that the specific procedures for intervening will be set forth in the notification itself rather than in these Rules.

One commenter also requested that the rights and duties of intervenor Members in OCWR proceedings be more clearly delineated. We agree, and various provisions throughout the Rules have been modified where appropriate to make clear whether they apply to intervenor Members.

Subpart A—General Provisions

Several commenters requested that we change or clarify the use of the terms ''claim'' and ''claim form.'' The CAARA uses the term ''claim'' when referring to the filing a covered employee must make to initiate dispute resolution proceedings—indeed, Congress deliberately replaced the term ''complaint'' with the term ''claim'' in passing the CAARA—and the Board has decided to follow the statutory language. The Board therefore declines to revert to the term ''complaint'' or to replace the statutory term ''claim'' with another term not used in the statute, such as the suggested alternative ''alleged violation.'' However, we have made modifications to the Rules where appropriate to make clear that a ''claim'' is an allegation of a violation of sections 102(c) or 201–207 of the Act, and a ''claim form'' is the document filed to initiate proceedings with the Office in cases that allege violations of sections 102(c) or 201–207 of the Act. A claim form may contain one or more claims—in other words, it may contain allegations of more than one violation of the Act.

One commenter correctly pointed out that the definition of ''covered employee'' omitted employees of the Office of Technology Assessment. That error has been corrected, and the numbering of subparagraphs in section 1.02(m) has been adjusted accordingly.

A few commenters suggested adding to the definition of ''party'' a list of the specific statutory provisions that allow intervention. Because there are different types of proceedings under the Act that allow intervention for various reasons, and because the Rules allow intervention in circumstances beyond those explicitly listed in the Act (i.e., when a House or Senate rule requires reimbursement by a Member for conduct beyond that described in section 415(d)(1)(C) of the Act), the Board has declined to modify the definition of ''party'' in the manner suggested, as such a definition would be overly restrictive.

For clarification purposes, a definition of the term ''Mediator'' has been added at section 1.02(gg) of the Rules. The numbering of the definitions that follow in section 1.02 has been revised accordingly.

Upon further consideration of the filing requirements, a minimum font size of 12-point has been added to section 1.04(d) to clarify the size limitations for briefs, motions, responses, and supporting memoranda filed with the Office.

One commenter pointed out that covered employees who participate in confidential advising before becoming ''parties'' to a proceeding should be explicitly covered by the confidentiality provisions of the Rules. We agree, and have added covered employees to the definition of ''participant'' in section 1.08(b).

One commenter suggested adding an exception to the confidentiality provisions of the Rules for disclosures made between a party and that party's representative. We agree, and language has been added to section 1.08(d) to make clear that parties are not prohibited from disclosing confidential information to their designated representatives, or vice versa.

One commenter suggested adding exceptions to section 1.08(d) that would allow for the disclosure of confidential information in certain circumstances, including when required by law, compelled by legal process, or requested in conjunction with a criminal or security clearance investigation. The Board declines to add these exceptions; should such circumstances arise, Merits Hearing Officers or the Board will address them on a case-by-case basis.

Subpart D—Claims Procedures Applicable to Consideration of Alleged Violations of Sections 102(c) and 201–207 of the Congressional Accountability Act of 1995, as Amended by the CAA Reform Act of 2018

Several commenters suggested adding details regarding the scope of the Confidential Advisor's role in section 4.03 of the Proposed Rules. Because the Act specifically sets forth the parameters of the Confidential Advisor's role, the Board declines to depart from the language of the statute.

One commenter suggested requiring the Confidential Advisor to offer services regarding one of the employing offices' employee assistance programs. The Board declines to expand the scope of the Confidential Advisor's services set forth in the Procedural Rules to include providing this type of information. Different employing offices may have their own employee assistance or counseling programs, and those programs may change over time; moreover, as already noted, the Act specifically sets forth the parameters of the Confidential Advisor's role. We note, however, that the OCWR's longstanding practice has been to provide employees with information concerning such programs, and it will continue to do so as appropriate.

Two commenters included suggestions regarding the oversight of the Confidential Advisor. The Board declines to revise the Procedural Rules in this regard, and notes that the Confidential Advisor is appointed by the Executive Director of the OCWR and will be subject to the Executive Director's oversight.

One commenter noted that the language in section 4.03(c)(5) of the Proposed Rules referenced a ''complaint'' with the Congressional ethics committees, whereas the term ''complaint'' in the context of those committees' investigations may have a narrower meaning than intended by the proposed Procedural Rule. We agree, and have changed the language of this provision accordingly.

Several commenters raised questions or concerns about section 4.03(d), regarding privilege and confidentiality. This provision follows from the directive in the Act that the Confidential Advisor's services are to be provided ''on a privileged and confidential basis.'' In response to the comments, we have modified the language in the proposed Rule to remove language that would have defined the contours of this statutorily-created privilege in a way that, in the Board's view, would be more appropriately developed in the context of specific proceedings before Hearing Officers and the Board.

One commenter suggested removal of the words ''or the claimant's representative'' in section 4.04(c), with respect to who may sign a claim form under oath or affirmation. We agree that the claim form should be signed by the claimant, and have modified the language accordingly. The same commenter suggested that claimants who have designated representatives should not be required to provide their own contact information, but the Board chooses to maintain its longstanding practice of requiring contact information for all claimants regardless of representation.

One commenter suggested adding a subparagraph to section 4.04(c) of the proposed Rules that would require the claim form to specify whether the challenged conduct meets the criteria set forth in section 415(d) of the Act. The Board has elected to leave this determination to the OCWR as part of its internal process for claim intake, rather than assign it to the claimant.

One commenter suggested adding information to section 4.05(b) regarding the exceptions to the 70-day deadline for filing a civil action after a claim form is filed. These exceptions were described in other sections of the proposed Procedural Rules concerning preliminary review and mediation, but we agree that they should be included here as well, and we have added clarifying language to this subsection accordingly.

We received a comment that the OCWR should notify employing offices immediately upon receipt of notification that a claimant has filed a civil action in federal district court. The Board declines to include such a requirement in the Procedural Rules, although as a practical matter the OCWR will endeavor to notify employing offices, as well as any intervening Members or Members who have not exercised their right to intervene, without undue delay. In order to make this practice more feasible and effective, the Board has modified section 4.05(d) of the Procedural Rules to change the time frame for claimants to notify the OCWR from 10 days to 3 days after filing a civil action.

Some commenters offered suggestions for how individual Members should receive notifications required by the Act. The Board prefers to work with the Senate and the House of Representatives to devise a method of identifying points of contact and providing notifications, rather than providing for this in the Procedural Rules. One commenter also suggested that the notification should inform the Member of not only the right to intervene, but also the procedures for doing so; we agree, and sections dealing with Member notification now include language to that effect.

One commenter correctly pointed out that the special rule referenced in section 4.06(d) applies only to employees of the Architect of the Capitol and the U.S. Capitol Police, not the Library of Congress. We have removed the references to the Library of Congress from this subsection.

The proposed section 4.07(d) required immediate notification of a Member with a right to intervene whenever mediation is requested. Upon further review of the requirements of the Act, the Board has changed the word ''immediately'' to ''promptly.''

One commenter noted that only claimants and respondents, not intervening Members, have the statutory right to request an extension of the mediation period. We agree, and have modified the language of section 4.07(f)(2) accordingly.

Several commenters pointed out that because mediation is voluntary, the mediator lacks the authority to require the physical presence of any party. We agree, and have changed the language of section 4.07(i) from ''required'' to ''requested.''

One commenter noted an inconsistency between section 4.07(j) of the proposed Rules, which referenced both informal resolutions and formal settlements during the meditation period, and section 9.03(a) of the proposed Rules, which concerned informal resolution before a covered employee files a claim form. Because references to informal resolution have been removed from section 9.03 for the reasons discussed below, the inconsistency noted by the commenter no longer exists. The Rules no longer address resolutions achieved prior to the filing of a claim form; all settlements reached between the parties after a claim form is filed, including during mediation, must satisfy the requirements of section 414 of the Act and section 9.03 of these Rules.

One commenter suggested adding a requirement that any alleged confidentiality violation must be raised to the Mediator during the mediation period. This is not required by the statute, and the Board declines to add such a requirement because it would be overly restrictive.

One commenter suggested including additional exceptions to confidentiality under section 4.07(n) of the proposed Rules. While we agree that there might be other exceptions to confidentiality, the intent of this subparagraph was to direct the parties to the exceptions expressly set forth in the statute itself.

Several commenters requested that the Board include in the Procedural Rules the qualifications required for Preliminary Hearing Officers and Merits Hearing Officers. The Board declines to do so. The Board notes that the statute at section 405(c) already contains a requirement that the Executive Director must develop master lists from which all Hearing Officers must be selected for appointment, and sets forth the qualifications that individuals must possess in order to be included on those lists.

Proposed section 4.08(b) was originally modeled on the existing Procedural Rule governing the disqualification of a Hearing Officer. Upon further consideration of the purpose and scope of the preliminary review, the Board has determined that requests to disqualify a Preliminary Hearing Officer should be made to the Executive Director of the Office rather than in the form of a motion to the Preliminary Hearing Officer. Sections 4.08(b)(2) and (b)(3) have been revised accordingly. Additionally, one commenter suggested adding a provision requiring prompt notification of the parties once a Preliminary Hearing Officer is appointed. We agree, and have added such a provision to section 4.08(a).

Several commenters suggested that the Procedural Rules should specifically state that in conducting the preliminary review pursuant to section 403 of the Act, the Preliminary Hearing Officer must apply the same standard during preliminary review that federal courts apply under Federal Rule of Civil Procedure 12(b)(6). Although some of the language in section 403(b)(6) of the Act also appears in FRCP 12(b)(6), the Act specifically directs the Preliminary Hearing Officer to make the determination whether the claimant is a covered employee who has stated a claim upon which relief can be granted ''on the basis of the assessments made under paragraphs (1) through (5)'' of section 403(b). In light of the foregoing, and in consideration of the purpose of the preliminary review—i.e., to determine whether a claimant may proceed to an administrative hearing or must pursue his or her claims in federal court—the Board declines to adopt a standard equivalent to that of FRCP 12(b)(6) for the preliminary review of claim forms. We note, however, that the Board has long applied a 12(b)(6) standard in considering motions to dismiss; under these Procedural Rules, should a claimant proceed to an administrative hearing, the parties will continue to have a full and fair opportunity to litigate over whether the claimant has satisfied the FRCP 12(b)(6) pleading standard.

We received a variety of comments regarding whether amendments to the claim form should be permitted during the preliminary review stage. The Board considered those comments, as well as the purpose and scope of preliminary review, and determined that no prejudice or undue delay would result from adopting the suggestion made by one commenter that claimants be allowed one amendment as of right within 15 days of the initial filing. Section 4.08(d) has been revised accordingly. Section 4.08(e)(1) has also been revised to provide that the Preliminary Hearing Officer must not issue the preliminary review report until at least 20 days after the claim form is filed, to ensure that the report is not issued before the deadline for submitting an amended claim form has passed.

Several commenters suggested adding provisions for answers, motions, and/or discovery before the Preliminary Hearing Officer. The Board does not believe that allowing additional pleadings, motions, or discovery during this stage would be consistent with the limited purpose of preliminary review, which is to determine whether a claimant may proceed to an administrative hearing or must pursue his or her claims in federal court. There is no indication in the statute that Congress intended for the preliminary review by a Preliminary Hearing Officer and subsequent administrative proceedings before a Merits Hearing Officer to be duplicative processes requiring the parties to litigate the same matter twice.

One commenter suggested that the Preliminary Hearing Officer's determinations should be appealable to the Board. The statute does not grant the Board authority to review the Preliminary Hearing Officer's determinations, and therefore the Board declines to adopt that suggestion. Moreover, nothing in the Act would permit the Board to toll the time limit for filing a civil action pending the outcome of such an appeal to the Board. Section 4.08(e)(5) has been added to clarify that the preliminary review report is not subject to appellate review by the Merits Hearing Officer or the Board.

Another commenter suggested adding a provision to the effect that the Preliminary

Hearing Officer's report has no evidentiary weight or preclusive effect on subsequent administrative proceedings before a Merits Hearing Officer. We agree, and we have added a subparagraph designated 4.08(e)(4) to incorporate that provision. It is the Board's view that the limited purpose of the preliminary review is to determine whether a claimant may request an administrative hearing pursuant to section 405(a) of the Act.

We received numerous comments suggesting that claimants should not be allowed to pursue some claims through the OCWR administrative process while pursuing others in federal district court. We agree that bifurcation of claims in such a manner is not practicable, efficient, or consistent with the CAARA. One commenter suggested that if some claims on a claim form pass the preliminary review but others do not, then a claimant should be required to waive those claims that did not pass preliminary review in order to pursue an administrative hearing on those claims that did; most commenters took the view that as long as a claimant has succeeded at the preliminary review stage on at least one claim, then the claimant should be allowed to request an administrative hearing on all claims asserted in the claim form. The Board agrees that as long as the Preliminary Review Officer determines that the claimant is a covered employee who has stated at least one claim for which relief may be granted under the Act, then the employee may request a hearing on all claims asserted in the claim form, and the parties will be afforded a full and fair opportunity to litigate those claims before the Merits Hearing Officer. Accordingly, a new provision has been added to clarify the effect of a Preliminary Hearing Officer's determination that a claimant is a covered employee who has stated at least one claim for which relief may be granted; that provision appears at section 4.08(f) of the Rules, and the numbering of the following subparagraphs in section 4.08 has been revised accordingly.

A paragraph has been added at section 4.09(c) providing for notification of employing offices and Members who have the right to intervene regarding the filing of a request for administrative hearing. Subsequent paragraphs in section 4.09 have been renumbered accordingly.

The proposed Procedural Rules did not address motions to amend claim forms after the filing of a request for an administrative hearing. A provision has been added regarding amendments, and appears at section 4.09(e) of the Rules. Subsequent paragraphs in section 4.09 have been renumbered accordingly.

Several commenters opposed the provision in the proposed Procedural Rules that would reduce the time period for a respondent to file an answer from 15 days to 10 days. Upon further consideration, the Board agrees with these commenters. The provision for answers to claim forms, which is now located at section 4.09(f) of the Rules, has been amended to reflect the 15-day deadline. Section 5.01(f) has also been amended to reflect a 15-day deadline for respondents to submit answers to complaints filed by the General Counsel. Additionally, in response to a comment, the language of section 4.09(f) has been modified to reflect that the 15–day period begins to run as of the date that the respondent is notified of the filing of the request for a hearing, not the date that the request is filed.

A few commenters suggested that the filing of a motion to dismiss should stay the time period for filing an answer. The Board feels that this determination should be left to the discretion of the Merits Hearing Officer. Accordingly, language from the proposed Rules stating that the filing of a motion to dismiss does not stay the time period for filing an answer has been removed. Corresponding language has also been removed from section 5.01(f).

Multiple commenters suggested that the Procedural Rules specifically allow for respondents to state in an answer that they lack sufficient knowledge to admit or deny specific allegations, and that such a statement should constitute a denial. We agree, and have added language to that effect in section 4.09(f)(2). Corresponding language has also been added to section 5.01(f)(2).

For purposes of clarification, especially in light of the many comments we received regarding the standard for preliminary review, we have added provisions under section 4.10 to make clear that the Merits Hearing Officer may dismiss claims for reasons equivalent to those specified in Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). These provisions parallel the provisions regarding dismissal of complaints filed by the General Counsel under section 5.03 of the Rules.

Several commenters raised questions about the language in section 4.10(b) of the proposed Rules regarding motions to dismiss being treated as motions for summary judgment. The language of that section has been modified and moved to section 4.09(a) to clarify that motions to dismiss will be treated as motions for summary judgment if matters outside the pleadings are considered. New sections have been added to clarify that parties still have the option to file motions to dismiss and the Merits Hearing Officer has the authority to dismiss claims based on the allegations set forth in the claim form, prior to engaging in discovery; those provisions are located at sections 4.09(g) and 4.10(a)–(b), and subsequent paragraphs under section 4.10 have been renumbered accordingly. Section 5.01(g), concerning motions to dismiss complaints filed by the General Counsel, has been updated in the same manner.

One commenter suggested that section 4.10(e) of the proposed Rules, which concerned the withdrawal of a representative after an administrative hearing has been requested, should be moved to section 1.07(c), which covers designation of representatives. We agree, and have modified those sections accordingly.

Subpart F—Discovery and Subpoenas

Several commenters observed that the proposed Rules at section 6.01(a) retained a discovery standard from an outdated version of the Federal Rules of Civil Procedure that permitted discovery of nonprivileged information ''reasonably calculated to lead to the discovery of admissible evidence.'' The commenters suggested that, because OCWR Hearing Officers frequently rely on case law interpreting the Federal Rules when resolving discovery disputes under the CAA, section 6.01(a) should be updated to reflect the current standard under Rule 26(b) which, among other things, requires discovery requests to be relevant and proportional to the needs of the case. We agree, and have revised section 6.01(a) accordingly.

The Board declines, however, to further amend the Procedural Rules to incorporate specific timeframes or limits on the forms or extent of discovery, or to more closely align discovery under the Procedural Rules with discovery under the Federal Rules of Civil Procedure. Administrative proceedings under the CAA are intended to serve as a less formal, more expeditious alternative to litigation in the federal courts for resolving disputes. In the OCWR's experience, section 6.01 of the Rules—which grants the Merits Hearing Officer the discretion to order reasonable prehearing discovery and to issue orders setting forth the forms and extent of discovery—is best suited to this purpose and to ensure that discovery requests will be relevant and proportional to the particular needs of each case.

Subpart G—Hearings

A commenter proposed that section 7.02(b)(4) be revised to recognize the Merits Hearing Officer's discretion to dismiss an action in whole or in part, with or without prejudice, when a claimant files a claim that fails to meet the requirements of section 401(f) of the Act. We agree, and have revised the Rule accordingly. We have also revised section 7.02(b)(2) to recognize that the Merits Hearing Officer has the same discretion if a party fails to prosecute or defend a position.

One commenter recommended that the prehearing procedures at section 7.04 be modified to provide for two phases: the initial establishment of a framework for prehearing discovery, and subsequent preparation for a hearing, if any. The commenter proposes two conferences: First, the Merits Hearing Officer would conduct an initial conference soon after the claimant requests an administrative hearing pursuant to section 405 of the Act; during this conference, the Merits Hearing Officer would establish an orderly process for discovery and set a schedule for dispositive motions. Second, after discovery has closed and shortly before the commencement of the administrative hearing, the Merits Hearing Officer would conduct a prehearing conference to discuss the matters that were listed in section 7.04(d) of the proposed Rules. We agree with the commenter that such a modification would provide a more meaningful process for prehearing discovery and hearing preparation. Section 7.04 has been revised accordingly.

Several commenters proposed amending section 7.05, which concerns scheduling the administrative hearing, to reflect the new time limits set forth in the CAARA. We agree. As amended by the CAARA, the CAA provides at section 405(d)(2) that an administrative hearing must commence no later than 90 days after a claimant files a request for an administrative hearing, and that this time limit may be extended by 30 days upon mutual agreement of the parties or for good cause shown. Paragraphs (a) and (b) of section 7.05 have been revised accordingly.

A commenter suggested that a new paragraph be added to section 7.05 to expressly affirm that a Merits Hearing Officer has the authority to open a hearing and stay proceedings pending the resolution of dispositive motions and other pretrial matters. The commenter further suggested that section 7.05 should also expressly permit the Merits Hearing Officer to open and stay proceedings for a reasonable amount of time when jointly requested by the parties. We agree with the commenter that, under existing practice, Hearing Officers have the authority to open a hearing and stay proceedings under the circumstances described above. This authority is unaffected by the CAARA amendments, and the Board therefore does not believe that it is necessary to amend section 7.05 in the manner proposed.

A commenter recommended that section 7.07(f)—which grants the Merits Hearing Officer the discretion to hold the hearing without the claimant if the claimant's representative is present—be amended to also grant the Merits Hearing Officer the discretion to hold a hearing without the respondent if the respondent's representative is present. The commenter also proposed to revise section 7.07(f) to make allowances for intervenor Members of Congress, whose presence throughout the duration of a hearing may not be necessary and, in some cases, may actually impede the progress of the hearing due to the Member's need to fulfill his or her constitutional duties. We agree with the commenter on both counts and have amended section 7.07(f) in the manner suggested.

A commenter suggested that section 7.16(e) be amended to provide that, in the case of a decision in which an amount of compensatory damages is found to be reimbursable as described in section 7.16(c)(4) of the Rules, the OCWR shall promptly provide a copy of the Merits Hearing Officer's written decision to the Member responsible for that reimbursement, regardless of whether the Member has intervened in the action. We agree and have revised section 7.16(e) accordingly.

Subpart I—Other Matters of General Applicability

One commenter suggested that section 9.01(b)(5), which concerns the form of a motion for attorney's fees and costs, be revised to require additional evidence of an established attorney-client relationship only if a copy of the fee agreement is not available. We agree, and have revised section 9.01(b)(5) accordingly.

A commenter objected to proposed section 9.01(c), which would require the prevailing party in arbitration proceedings to submit any request for attorney's fees and costs to the arbitrator in accordance with the established arbitration procedures. The commenter contends that OCWR's proposed rule conflicts with the CAA. We disagree. Section 220(a) of the CAA extends to employing offices, employees, and collective bargaining representatives the rights, protections, and responsibilities established under various portions of the Federal Service Labor-Management Relations Statute (''FSLMRS'') including 5 U.S.C. 7121–22, relating to grievance arbitration. Under the FSLMRS, the entitlement to attorney's fees is determined by reference to the Back Pay Act. 5 U.S.C. 7701(g). The Federal Labor Relations Authority has long recognized that the Back Pay Act confers jurisdiction on an arbitrator to consider an attorney's fees request filed after an arbitrator's decision awarding back pay. *Philadelphia Naval Shipyard & Philadelphia Metal Trades Council*, 32 F.L.R.A. 417 (1988); *accord, Fraternal Order of Police, U.S. Capitol Police Labor Comm.* v. *U.S. Capitol Police, Case No.* 17–ARB–04, 2018 WL 950096, *9 (OOC Feb. 15, 2018) (holding that arbitrator was authorized to award attorney's fees in a case arising under section 220(a) of the CAA). Section 9.01(c) clarifies that the proper procedure for a party seeking an award of attorney's fees or costs in an arbitration proceeding under the CAA is to submit the request to the arbitrator in the first instance.

A commenter suggested that section 9.03(a) of the proposed Rules, which concerns informal resolution of disputes, would improperly expand the scope of coverage of section 9.03(a) of the existing Rules to place limits on an employing office and a covered employee before that covered employee files a claim with the OCWR. The commenter contends that this would be inconsistent with section 414 of the Act, which only concerns settlements entered into by the ''parties to a process'' described in sections 210, 215, 220, or 401 of the CAA. We agree with the commenter that section 9.03 should only address resolutions between ''parties to a process'' under section 414 of the Act, and that, in the case of alleged violations of sections 102(c) or 201–207 of the Act, that process begins when an employee files a claim form.

Upon further consideration of section 9.03(a), the Board has decided to eliminate the provisions of this section concerning informal resolutions of disputes. Under section 414 of the Act, any settlement agreement entered into by parties to a process must be in writing and approved by the OCWR Executive Director. No mention is made of informal resolutions in the CAA, and the Act makes no distinction between agreements settling claims entered into before or after the employee requests an administrative hearing. In light of the foregoing, we believe that unnecessary confusion would result if the OCWR includes in the Rules a provision that concerns agreements outside the scope of section 414. Rather, section 9.03 now emphasizes the statutory requirements for settlement agreements under the CAA, including the requirement that any agreement between the parties that purports to create an obligation that is payable from the account established by section 415(a) of the Act must be in writing and approved by the OCWR Executive Director.

One commenter recommended that section 9.03 of the Rules should clarify whether funds from the section 415(a) Treasury Account are available to pay for disability-based claims, such as a back pay award based on a finding of discrimination due to a disability. Because section 415(c) of the Act clearly sets forth the exceptions to the general rule that only funds from the section 415(a) Treasury Account will be used for the payment of any amount specified in an award or settlement agreement, The Board declines to expand on these exceptions in these Procedural Rules.

A commenter noted that, although section 9.03 of the Proposed Rules correctly states that certain section 201 and 206 claims are reimbursable under the CAARA, it should also state that certain section 207 claims are also subject to the new reimbursement requirement. Commenters also recommended that section 9.03 should be amended to reflect the expanded reimbursement requirements applicable to Members of Congress under current House and Senate rules. We agree with these recommendations, and we have revised this section accordingly. We decline, however, to include citations to specific House or Senate rules that currently require reimbursement, as those rules are subject to modification.

One commenter contends that section 9.04, which concerns payments required pursuant to decisions, awards, or settlements under section 415(a) of the Act, conflicts with the Act because it requires employing offices, rather than the OCWR, to pay awards and settlements under the CAA, and because it permits the OCWR to circumvent certain tax reporting obligations it incurs upon payment as the entity in control of the section 415(a) Treasury Account. We disagree for the reasons that follow.

Section 415(a) of the CAA 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. Section 9.04 of the Rules provides guidance for processing certifications of payments from the funds appropriated to the section 415(a) Treasury Account. These procedures are based on regulations issued by the Department of the Treasury's Bureau of Fiscal Services at 31 C.F.R. part 256 that 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.

Like the Judgment Fund, the Section 415(a) Treasury Account is a permanent, indefinite appropriation intended to pay settlements and awards, including back pay awards, occasioned by agency liability imposed by a statute. It is clear that under existing appropriations law, an employing office must use funds from the section 415(a) Treasury account to pay awards and settlements under the CAA, and the Rules set forth the proper procedures for complying with this mandate. In the OCWR's view, section 415(b), which ''authorizes to be appropriated such sums as may be necessary for administrative, personnel, and similar expenses of employing offices which are needed to comply with'' the CAA, requires employing offices, and not the OCWR, to perform these administrative payment functions, including ensuring proper tax withholding and reporting, and to pay the expenses related to these functions.

Several commenters suggested that section 9.04 be modified to recognize that the employing offices of the House and the Senate are not actively involved in administering finances or disbursing payments, including making payments required by decisions, awards, or settlements pursuant to section 415 of the CAA. We agree, and we have amended section 9.04 to clarify that employing offices or their designated payroll administrators or disbursing offices may submit payment requests to the OCWR.

The Board declines to follow one commenter's recommendation to withdraw sections 9.04(d) of the Rules concerning back pay, as well as section 9.04(f) concerning tax reporting and withholding obligations, until language consistent with the statutes, rules, regulations, and procedures of both the Senate and the OCWR can be determined. Instead, the Board has amended section 9.04(d) to provide several options to employing offices for disbursement of back pay, including disbursement ''pursuant to a method mutually agreed upon by the OCWR and the employing office, payroll administrator, or disbursing office, as applicable.'' The OCWR welcomes this commentator's invitation to work with it, as well as other payroll administrators and disbursing offices, to craft methods that are consistent with statutes, rules, regulations, and procedures related to payroll administration.

Several commenters also suggested that the OCWR seek a formal determination from the Comptroller General to ensure that the provisions of section 4.09 are consistent with governing appropriations law principles. The Board agrees, and the OCWR will seek such a determination. Any resulting amendments to section 4.09 will be effected pursuant to the notice and comment procedures set forth in section 303 of the Act, 2 U.S.C. 1383.

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.

ADOPTED AMENDMENTS

SUBPART A—[AMENDED]

1. Subpart A has been amended to read as follows:

Subpart A—General Provisions

§ 1.01 Scope and Policy

§ 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 by the Congressional Accountability Act of 1995 (CAA), as amended by the Congressional Accountability Act of 1995 Reform Act of 2018 (CAARA). The Rules include definitions and procedures for seeking confidential advice, filing a claim with the OCWR, and participating in administrative dispute resolution proceedings at the OCWR. The Rules also address the procedures for occupational safety and health inspections, investigations, and enforcement. 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.

§ 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 sections 102(c) or 201–207 of the Act.

(e) *Claim Form.*—The term ''claim form'' means the written pleading filed by an individual or his or her designated representative to initiate proceedings with the Office of Congressional Workplace Rights, which describes the facts and law supporting one or more alleged violations of section 102(c) or 201–207 of the Act.

(f) *Claimant.*—The term ''claimant'' means the individual filing a claim form with the Office of Congressional Workplace Rights, or on whose behalf a claim is filed by a designated representative.

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

(h) *Confidential Advisor.*—The term ''Confidential Advisor'' means, pursuant to section 302 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 Act.

(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 non-retaliation or non-coercion).

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

(m) *Employee, Covered.*—The term ''covered employee'' means:

(1) any employee of the House of Representatives;

(2) any employee of the Senate;

(3) any employee of the Office of Congressional Accessibility Services;

(4) any employee of the Capitol Police;

(5) any employee of the Congressional Budget Office;

(6) any employee of the Office of the Architect of the Capitol;

(7) any employee of the Office of the Attending Physician;

(8) any employee of the Office of Congressional Workplace Rights;

(9) any employee of the Office of Technology Assessment;

(10) any employee of the Library of Congress, except for purposes of section 220 of the Act;

(11) any employee of the John C. Stennis Center for Public Service Training and Development;

(12) any employee of the China Review Commission, the Congressional Executive China Commission, or the Helsinki Commission;

(13) to the extent provided by sections 204–207 and 215 of the Act, any employee of the Government Accountability Office; or

(14) unpaid staff, as defined below in section 1.02(r) of these 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 terms ''unpaid staff'' and ''unpaid staff member'' mean 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, including an intern, an individual detailed to an employing office, and an individual participating in a fellowship program. This definition includes 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 staff member 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'' 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 Merits 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; or

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

(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 claim(s) filed, 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's 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.

Merits Hearing Officer.—see ''Hearing Officer, Merits,'' above.

(ee) *Office*.—The term ''Office'' means the Office of Congressional Workplace Rights.

(ff) *Party*.—The term ''party'' means:

(1) a covered employee or employing office in a proceeding to address an alleged violation of sections 102(c) or 201–207 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 section 210 of the Act;

(3) a covered employee, an employing office, or the General Counsel in a proceeding under section 215 of the Act;

(4) a labor organization, an employing office or entity, or the General Counsel in a proceeding under section 220 of the Act; or

(5) any individual, employing office, or Member of Congress that has intervened in a proceeding pursuant to the Act or these Rules.

Preliminary Hearing Officer.—see ''Hearing Officer, Preliminary,'' above.

(gg) *Mediator*.—The term ''Mediator'' means an individual appointed by the Executive Director as an independent neutral who serves in a confidential, interactive process communicating with the parties jointly or separately in an attempt to achieve a mutually acceptable resolution of a claim. The Mediator cannot serve in any other capacity with respect to a claim in connection with which he or she has been appointed to conduct mediation.

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

(ii) *Senior Staff*.—The term ''senior staff,'' for purposes of the reporting requirement to 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.

§ 1.03 Filing and Computation of Time.

(a) *Method of Filing*.—Documents may be filed in person, electronically, by facsimile (fax), or by mail, including express, overnight, and other expedited delivery. The filing of all documents is subject to the limitations set forth below. The Board, Hearing Officers, the Executive Director, or the General Counsel may, in their discretion, determine the method by which documents may be filed in a particular proceeding, including ordering one or more parties to use mail, fax, electronic filing, or personal delivery. Parties and their representatives are responsible for ensuring that the Office always has their current postal mailing and e-mail addresses and fax numbers.

(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, SE, Washington, D.C. 20540–1999, before 5:00 p.m. Eastern Time on the last day of the applicable time period.

(2) *By Mail*.—Documents are deemed filed on the date of their postmark or proof of mailing to the Office. Parties, including those using franked mail, are responsible for ensuring that any mailed document bears a postmark date or other proof of the actual date of mailing. Absent a legible postmark, a document will be deemed timely filed if it is received by the Office at Adams Building, Room LA 200, 110 Second Street, SE, Washington, D.C. 20540–1999, by mail within five (5) days of the expiration of the applicable filing period.

(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. Eastern Time on the last day of the applicable filing period. Any party using a fax machine to file a document is responsible for ensuring both that the document is timely and accurately transmitted and confirming that the Office has received a facsimile of the document. The time displayed as received by the Office on its fax status report will be used to show the time that the document was filed. When the Office serves a document by fax, the time displayed as sent by the Office on its fax status report will be used to show the time that the document was served. A fax filing cannot exceed 75 pages, inclusive of table of contents, table of authorities, and attachments. Attachments exceeding 75 pages must be submitted to the Office in person or by electronic delivery. The filing date is determined by the date the brief, motion, response, or supporting memorandum is received in the Office, rather than by the date the attachments are received in the Office.

(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 or adaaccess@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. The time displayed as received by the Office will be used to show the time that the document has been filed. When the Office serves a document electronically, the time displayed as sent by the Office will be used to show the time that the document was served. The time displayed as received or sent by the Office will be based on the document's timestamp information and used to show the time that the document was filed or served.

(b) *Service by the Office*.—At its discretion, the Office may serve documents by mail, fax, electronic transmission, or personal or commercial delivery.

(c) *Computation of Time*.—All time periods in these Rules that are stated in terms of days are calendar days unless otherwise noted. However, when the period of time prescribed is five (5) days or less, intermediate Saturdays, Sundays, Federal government holidays, and other full days that the Office is officially closed for business shall be excluded in the computation. To compute the number of days for taking any action required or permitted under these Rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing or service shall be included in the computation. When the last day falls on a Saturday, Sunday, Federal government holiday, or a day the Office is officially closed, the last day for taking the action shall be the next regular Federal government workday.

(d) *Time Allowances for Mailing, Fax, or Electronic Delivery of Official Notices*.—Whenever a person or party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her and the notice or document is served by mail, 5 days shall be added to the prescribed period. When documents are served by certified mail, return-receipt requested, the prescribed period shall be calculated from the date of receipt as evidenced by the return receipt. When documents are served electronically or by fax, the prescribed period shall be calculated from the date of transmission by the Office.

§ 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 manner designated by the Board, the Executive Director, the General Counsel, or the Merits Hearing Officer, with receipt confirmed by electronic transmittal in the same manner.

(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 a request for advising, a request for mediation, or a claim. Service shall be made by mailing, by fax or e-mailing, or by hand delivering a copy of the motion, brief, response, or other document to each party, or if represented, the party's representative, on the service list previously provided by the Office. Each of these documents must be accompanied by a certificate of service specifying how, when and on whom service was made. It shall be the duty of each party to notify the Office and all other parties in writing of any changes in the names or addresses on the service list.

(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 and serve 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. Footnotes, endnotes, and block quotes may be single-spaced. 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 (8½″ x 11″) and shall use a font size no smaller than 12-point. 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.

§ 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, except that a claim form must be signed by the claimant under oath or affirmation pursuant to section 4.04(c) of these Rules. 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, and 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.

(b) *Sanctions.*—If a pleading, motion, or other filing is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person who is required to sign. If a pleading, motion, or other filing is signed in violation of this rule, a Hearing Officer or the Board, as appropriate, upon motion or upon their own initiative, may impose an appropriate sanction, which may include the sanctions specified in section 7.02 of these Rules.

§ 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 paragraph (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. As ordered by the Board, the Office may withhold or place under seal identifying details or other necessary matters, and, in each case, the reason for the withholding or sealing shall be stated in writing.

(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.

(d) *Final Decisions.*—Pursuant to section 416(e) of the Act, a final decision entered by a Hearing Officer or by the Board under section 405(g) or 406(e) of the Act that is in favor of the claimant, or is in favor of the charging party under section 210 of the Act, or reverses a Hearing Officer's decision which had been in favor of a claimant or charging party, shall be made public. The Board may make public any other decision at its discretion.

(e) *Release of Records for Judicial Action.*—The records of Hearing Officers and the Board may be made public if required for the purpose of judicial review under section 407 of the Act.

§ 1.07 Designation of Representative; Revocation of Designation.

(a) *Designation of Representative.*—A party wishing to be represented must file with the Office a written notice of designation of representative. The representative may be, but is not required to be, an attorney. If the representative is an attorney, he or she may sign the designation of representative on behalf of the party. No more than one representative, firm, or other entity may be designated as representative for a party for the purpose of receiving service, unless approved in writing by the Hearing Officer or Executive Director.

(b) *Service When There is a Representative.*—Service of documents shall be on the representative unless and until such time as the represented party or representative, with notice to the party, notifies the Executive Director in writing of a modification or revocation of the designation of representative. Where a designation of representative is in effect, all time limitations for receipt of materials shall be computed in the same manner as for those who are unrepresented, with service of the documents, however, directed to the 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. A representative who withdraws after an administrative hearing has been requested under section 405 of the Act must provide sufficient notice to the Merits Hearing Officer and the parties of record of his or her withdrawal from the case. 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. Until the party designates another representative in writing, the party will be regarded as appearing pro se.

§ 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 covered employee, 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, 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, or the proceedings or deliberations of Hearing Officers or 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 disclosures between a party and that party's designated representative, provided that the party or designated representative to whom the information is disclosed maintains 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,

the particulars of which must be stated in the sanction order.

SUBPART B—[AMENDED]

2. Subpart B has been amended by:

(a) Removing sections 2.01 through 2.07; and

(b) 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]

3. Subpart C has been amended 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.

(c) Amending 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.

(d) Amending 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. * * *

(e) Amending 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.

(f) Amending redesignated section 3.25 by:

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

(ii) 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.

* * * * *

(g) Amending redesignated section 3.26 by:

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

(ii) 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.

* * * * *

(h) Amending 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.

* * * * *

(i) Amending 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.

(j) Amending redesignated section 3.30 by

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

(ii) Revising paragraph (b)(3);

(iii) Revising paragraph (c); and

(iv) 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.

(k) Amending 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]

4. Subpart D has been amended as follows:

Subpart D—Claims Procedures Applicable to Consideration of Alleged Violations of Sections 102(c) and 201–207 of the Congressional Accountability Act of 1995, as amended by the CAA Reform Act of 2018.

§ 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 201–206 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 Nondiscrimination Act of 2008

(b) This subpart applies to the covered employees and employing offices as defined in sections 1.02(m) and 1.02(s) of these Rules and any activities within the coverage of sections 102(c) and 201–207 of the Act and referenced above in section 4.01(a) of these Rules.

§ 4.02 Requests for Information.

At any time, an employee or an employing office may seek from the Office information

on the protections, rights, responsibilities, and available procedures under the Act. The Office will maintain the confidentiality of requests for such 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, including 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 201–207 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 201–207 of the Act regarding—

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

(B) the relative merits of securing private counsel, designating a non-attorney 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 201–207 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 201–207 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 about the option of providing information to 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 paragraph (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 documents reflecting the Confidential Advisor's communications with the employee are not records of the Office within the meaning of section 301(m) of the Act. 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 201–207 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, 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 before the date that is 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) *Civil Action*.—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, except where:

(1) the 70–day period is tolled as a result of the parties engaging in mediation prior to the conclusion of the 70-day period, or

(2) the Preliminary Hearing Officer determines that the claimant is not a covered employee who has stated a claim for which relief may be granted, as provided in section 4.08(f) of these Rules, in which case the civil action must be filed within a 90-day period beginning on the date the claimant receives written notice of the Preliminary Hearing Officer's decision.

(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 3 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 (i.e., without undue delay) 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, as well as a service list containing the names and addresses of the parties and their designated representatives. An employee filing an amended claim form shall serve a copy of the amended claim form upon all other parties in the manner provided by section 1.04(b). A copy of these Rules also may be provided to the parties upon request.

(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 Member personally committed a violation described in section 415(d)(1)(C) of the Act, or a violation of an applicable rule of the Senate or the House of Representatives that would require reimbursement by the Member of the Treasury account established by section 415(a) of the Act, the Office shall notify immediately (i.e., without undue delay) 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 concerning the claim, as well as the method of intervening.

(d) *Special Rule for Architect of the Capitol and Capitol Police 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 or the Capitol Police. 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 by which covered 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 personally committed a violation described in section 415(d)(1)(C) of the Act, or a violation of an applicable rule of the Senate or the House of Representatives that would require reimbursement by the Member of the Treasury account established by section 415(a) of the Act, 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.

(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, and any intervenor Member or the intervenor Member's designated representative, of the request for mediation and the deadlines applicable to such mediation. When a claim alleges a Member personally committed a violation described in section 415(d)(1)(C) of the Act, or a violation of an applicable rule of the Senate or the House of Representatives that would require reimbursement by the Member of the Treasury account established by section 415(a) of the Act, if the Member has not already intervened in the matter, the Office shall notify promptly such Member of the right to intervene in any mediation concerning the claim, as well as the method of intervening.

(e) *Selection of Mediators; Disqualification.*—Upon receipt of the opposing 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 opposing 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 claimant and respondent, or of the appointed Mediator on behalf of the claimant and respondent. 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 claimant's and respondent's 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, including the deadline for filing a civil action, 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 representative 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) *Participation.*—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 requested. 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) *Settlement Agreements.*—At any time during mediation the parties may settle a dispute in accordance with section 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, the Member (when applicable), 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 allegation of a 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. The Office shall promptly notify the parties of the appointment of the Preliminary Hearing Officer, with the notice to include the Preliminary Hearing Officer's name.

(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 submit a request to the Executive Director 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 request shall specifically set forth the reasons supporting the request and be submitted as soon as the party has reason to believe that there is a basis for disqualification.

(3) The Executive Director shall promptly decide on the withdrawal request. If the request is granted, the Executive Director will appoint another Preliminary Hearing Officer within 3 days. Any objection to the Executive Director's decision 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 subparagraphs (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.*—A claimant may file one amended claim form as a matter of right within 15 days after the filing of the initial claim form.

(e) *Report on Preliminary Review.*

(1) Except as provided in subparagraph (3), not earlier than 20 days but not later than 30 days after a claim form is filed, the Preliminary Hearing Officer shall submit to the parties, including any intervenor Member, a report on the preliminary review. The report shall include a determination whether the claimant is a covered employee who has stated at least one 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.

(4) *No Evidentiary Value or Preclusive Effect.*—The determinations in a report on preliminary review shall have no evidentiary value or preclusive effect in any administrative hearing before a Merits Hearing Officer or in any appeal to the Board.

(5) *No Appellate Review.*—A report on preliminary review is not subject to review by the Merits Hearing Officer or the Board.

(f) *Effect of Determination That a Claimant Is a Covered Employee Who Has Stated a Claim for Which Relief May Be Granted.*

(1) If the Preliminary Hearing Officer's report under paragraph (e) includes the determination that the claimant is a covered employee who has stated at least one claim for which relief may be granted under the Act:

(A) the claimant (including a Library claimant) may either obtain an administrative hearing as provided under section 405 of the Act concerning all claims asserted in the claim form, or file a civil action as provided under section 408 of the Act concerning all claims asserted in the claim form; and

(B) the Preliminary Hearing Officer shall provide the claimant and the Executive Director with written notice that the claimant may either obtain an administrative hearing or file a civil action pursuant to subparagraph (A).

(2) A claimant who chooses to obtain an administrative hearing must make a request for a hearing not later than 10 days after receiving the written notice referred to in subparagraph (1)(B).

(3) A claimant who chooses to file a civil action must do so not later than 70 days after the initial filing of the claim form.

(g) *Effect of Determination That a Claimant Is Not a Covered Employee Who Has Stated a Claim for Which Relief May Be Granted.*

(1) If the Preliminary Hearing Officer's report under paragraph (e) includes the determination that the claimant is not a covered employee who has stated at least one 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 concerning the claims asserted in the claim form; 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 concerning the claims asserted in the claim form 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).

(h) *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)(C) 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 paragraph (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) A claimant may not request an administrative hearing under section 405 of the Act 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 at least one 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 concerning any of the claims asserted in the claim form as provided in section 408 of the Act.

(c) *Notification of Request for Administrative Hearing.*—The Office shall promptly notify the employing office or its designated representative, as well as any intervenor Member or the intervenor Member's designated representative, of the claimant's request for an administrative hearing. When a claim alleges a Member personally committed a violation described in section 415(d)(1)(A) of the Act, or a violation of an applicable rule of the Senate or the House of Representatives that would require reimbursement by the Member of the Treasury account established by section 415(a) of the Act, if the Member has not already intervened in the matter, the Office shall notify promptly such Member of the right to intervene in any hearing concerning the claim, as well as the method of intervening.

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

(1) Upon the filing of a request for an administrative hearing under paragraph (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.

(e) *Amendments to Claims.* Any request to amend the claim(s) after a hearing has been requested must be made by motion to the Merits Hearing Officer. The motion must be accompanied by a copy of the proposed amended claim form. Amendments to claims may be permitted in the Merits Hearing Officer's discretion provided that:

(1) the amendments relate to the claims that were subject to preliminary review pursuant to section 4.08 of these Rules; and

(2) such amendments will not unduly prejudice the rights of the employing office or of other parties, unduly delay the proceedings, or otherwise interfere with or impede the proceedings.

(f) *Answer.*

(1) Within 15 days after receiving notice of a request for an administrative hearing under paragraph (a), the respondent(s) shall file an answer with the Office and serve one copy on the claimant.

(2) In answering a claim form, 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. If the respondent lacks knowledge or information sufficient to form a belief about the truth of an allegation, the respondent must so state, and the statement has the effect of a denial.

(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.

(g) *Motions to Dismiss.*—In addition to an answer, a respondent or intervening Member may file a motion to dismiss, or other responsive pleading with the Office and serve one copy on the claimant. Responses to any motions shall comply with section 1.04(c) of these Rules. If, on a motion to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Merits Hearing Officer, the motion must be treated as one for summary judgment, and all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

§ 4.10 Dismissal, Summary Judgment, and Withdrawal of Claim.

(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. The findings of the Preliminary Hearing Officer shall have no evidentiary value or preclusive effect on the Merits Hearing Officer's determination.

(b) A Merits Hearing Officer may, after notice and an opportunity to respond, dismiss a claim because it fails to comply with the applicable time limits or other requirements under the Act or these Rules. The findings of the Preliminary Hearing Officer shall have no evidentiary value or preclusive effect on the Merits Hearing Officer's determination.

(c) *Failure to Proceed.*—If a claimant fails to proceed with a claim, the Merits Hearing Officer may dismiss the claim 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 the claim.

(e) *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 sections 4.10(a)–(d) of these Rules that does not resolve all of the issues in the case 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 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.

§ 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 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.

(a) 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 member of the House of Representatives or Senate, the Executive Director shall refer the claim to—

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

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

(b) Within 5 business days after the referral of a claim to the Committee on Ethics of the House of Representatives or the Select Committee on Ethics of the Senate pursuant to paragraph (a), the Executive Director shall provide the Committee with access to the records of any preliminary reviews, hearings, or decisions of the Hearing Officers and the Board concerning the claim, and any information relating to an award or settlement paid in response to the claim.

SUBPART E—[AMENDED]

5. Subpart E has been amended as follows:

Subpart E—General Counsel Complaints

§ 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 or her 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 Merits Hearing Officer, on the following conditions: that all parties to the proceeding have adequate notice to prepare to address 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; written notice of the availability of these Rules at www.ocwr.gov; and a service list containing the names and addresses of the parties and their designated representatives. A copy of these Rules may also be provided if requested by either party.

(f) *Answer.*

(1) Within 15 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.

(2) In answering a complaint, a respondent must state in short and plain terms its defenses to each alleged violation, and admit or deny the allegations asserted against it by an opposing party. If a respondent lacks knowledge or information sufficient to form a belief about the truth of an allegation, the respondent must so state, and the statement has the effect of a denial.

(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 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 section 1.04(c) of these Rules. If, on a motion to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Merits Hearing Officer, the motion must be treated as one for summary judgment, and all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

§ 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 sections 5.03 and 7.01(b) of these Rules.

§ 5.03 Dismissal, Summary Judgment, and Withdrawal of Complaints.

(a) A Merits Hearing Officer may, after notice and an opportunity to respond, dismiss any complaint 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 sections 5.03(a)–(d) 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.

(f) *Withdrawal of Complaint by the General Counsel.*—At any time prior to the opening of the hearing, the General Counsel may withdraw his or her complaint by filing a notice with the Office for transmittal to the Merits Hearing Officer and by serving a copy on the respondent. After the 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]

6. Subpart F has been amended as follows:

Subpart F—Discovery and Subpoenas

§ 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 relevant to any party's cause of action or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving legal issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible in evidence in order to be discoverable. 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 initial 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, 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 of the claimant in connection with the hearing.

(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 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 created by such employee of the Office during the confidential advising process, in mediation, or at the hearing. Employing offices shall endeavor to 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 of Subpoena.

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 of Subpoena.

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 Subpoena.

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 of Subpoena.

(a) *Objections and Requests for Enforcement.*—If a person has been served with a subpoena pursuant to section 6.03 of these 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 Merits Hearing Officer's own initiative, the Merits 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 Merits 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 foregoing 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]

7. Subpart G has been amended 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 4.08 of these Rules.

(a) *Exercise of Authority*.—The Merits Hearing Officer may exercise authority as provided in paragraph (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 initial and prehearing conferences for simplifying issues and exploring settlement;

(7) convene a hearing, regulate the course of the hearing, maintain decorum at the hearing, 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, complaint, or portion thereof 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 (including an order to submit to a deposition, to produce evidence within the party's possession, custody, or 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, complaint, 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 in whole or in part, with or without 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 the party's designated 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 or without prejudice, or decide the matter for the opposing party. If a party or the party's designated representative presents a pleading, discovery request or response, motion, or other paper containing claims, defenses, or 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 pleading, discovery request or response, motion, or other paper, in whole or in part. A pleading, discovery request or response, motion, or other paper containing claims, defenses, or other legal contentions shall not be subject to sanctions if it is supported by or 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 contained in the Act, these Rules, or an order of a Merits Hearing Officer 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 confidentiality, 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, the particulars of which must be stated in the sanction order.

§ 7.03 Disqualification or Withdrawal of 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, Initial Conference, and Prehearing Conference.

(a) *Motions*.—Unless otherwise provided in these Rules, 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 Initial Conference.*—Within 7 days after a claim is assigned to a Merits Hearing Officer, the Merits Hearing Officer shall serve on the parties and their designated representatives written notice setting forth the time, date, and place of the initial conference, except that the Executive Director may, for good cause, extend up to an additional 7 days the time for serving notice of the initial conference. As required by section 6.01(b) of these Rules, initial disclosures shall be due within 14 days of the initial conference.

(c) *Initial Conference Memoranda.*—The Merits Hearing Officer may order each party to prepare an initial conference memorandum. The memorandum may include:

(1) a proposed discovery plan, including the number of depositions, interrogatories, requests for production, requests for admissions, and other discovery devices that the party anticipates requesting;

(2) a proposed schedule for the filing of any dispositive motions;

(3) a proposed date for the prehearing conference; and

(4) a proposed schedule for the hearing.

(d) *The Prehearing Conference.*—Within 7 days after the initial conference, 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, which shall not take place until the period provided for discovery, if any, has ended. The Merits Hearing Officer may order each party to prepare a prehearing conference memorandum 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, a list of documents that the party is seeking from the opposing party, and 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 (d) 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 hearing, 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 on a claim pursuant to section 405 of the Act must commence no later than 90 days after the Executive Director receives the claimant's request for a hearing under section 405 of the Act.

(b) *Motions for Postponement of Commencement of a Hearing.*—Motions for postponement of the commencement of a hearing by either party shall be made in writing to the Office, shall set forth the reasons for the request, and shall state whether the opposing party consents to or opposes postponement. Upon mutual agreement of the parties or for good cause shown, the Office shall extend the time for commencing a hearing for not more than an additional 30 days.

(c) *Continuance of Hearing after Commencement.*—A party seeking a continuance of a hearing may do so by oral or written motion to the Merits Hearing Officer. Such motion shall include the reasons for the requested continuance and shall state whether any opposing party consents to or opposes the requested continuance. The Merits Hearing Officer may grant such a motion upon mutual agreement of the parties or for good cause shown.

§ 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 (prior to or 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 electronically and/or stenographically.

(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 commencement of the hearing, or as otherwise ordered by the Merits Hearing Officer, each party shall submit to the Merits Hearing Officer and to each opposing party typed lists of the party's hearing exhibits and the witnesses the party expects to call to testify. A party may exclude from the lists any documents or witnesses intended solely for impeachment or rebuttal.

(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 these Rules, take official notice of certain facts pursuant to section 7.11 of these 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 any party to appear at the hearing, to present witnesses or evidence, 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 a party if the party's representative is present. Unless called to testify as a witness, an intervenor Member shall be permitted, but not required, to attend the hearing either in person or through the presence of a representative.

(g) If the Merits Hearing Officer concludes that the representative of a claimant, 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. 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 section 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 section 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 while a proceeding is ongoing (an interlocutory appeal) is strongly disfavored. In general, the Board may consider a request for interlocutory appeal only if the Merits Hearing Officer, on his or her own motion or on motion of a party, certifies and forwards a request for interlocutory appeal to the Board.

(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 materially 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) 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 before 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 these 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.

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 these Rules, the record shall close when the hearing ends. However, the Merits 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 another 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 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 the Merits Hearing Officer's written 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 written decision shall be entered into the Office's records.

(e) The Office shall promptly provide a copy of the Merits Hearing Officer's written decision to the parties. In the case of a decision that finds that an amount of damages is reimbursable, as described in subparagraph (c)(4) of this section, the Office shall promptly provide a copy of the Merits Hearing Officer's written decision to the Member responsible for that reimbursement, regardless of whether the Member has intervened in the action.

(f) If there is no appeal of a Merits Hearing Officer's decision, 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 correctible mistakes. The Merits Hearing Officer may do so on a party's 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; (5) the decision has been satisfied, released, or discharged; (6) the decision

is based on an earlier decision that has been reversed or vacated or on a provision of law that has been amended, repealed, or ruled unconstitutional; or (7) applying the decision 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]

8. Subpart H has been amended as follows:

Subpart H—Proceedings before the Board
§ 8.01 Appeal to the Board
§ 8.02 Reconsideration
§ 8.03 Compliance with Final Decisions, Requests for Enforcement
§ 8.04 Judicial Review
§ 8.05 Application for Review of an Executive Director Action
§ 8.06 Exceptions to Arbitration Awards
§ 8.07 Expedited Review of Negotiability
§ 8.08 Procedures of the Board in Impasse Proceedings

§ 8.01 Appeal to the Board.

(a) *Petition for Review.*—No later than 30 days after the entry of the decision of the Merits Hearing Officer in the records of the Office pursuant to section 7.16(d) of these Rules, an aggrieved party may seek review of that decision and order by the Board by filing with the Office a petition for review by the Board. The appeal must be served on all opposing parties or their representatives.

(b) *No Appeal of Report on Preliminary Review.*—A Report on Preliminary Review issued pursuant to section 403(c) of the Act is not appealable to the Board.

(c) *Briefs on Appeal.*

(1) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review by the Board, the appellant shall file and serve a supporting brief in accordance with section 1.04 of these Rules. That brief shall identify with particularity those findings or conclusions in the Merits Hearing Officer's decision that are being challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

(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.

(3) In any case in which the Board has not rendered a determination on the merits, the Executive Director is authorized to: determine any request for extensions of time to file any post-petition for review document or submission with the Board; determine any request for enlargement of page limitation of any post-petition for review document or submission with the Board; or require proof of service where there are questions of proper service.

(d) *Oral Argument.*—Upon the request of any party or upon its own order, the Board, in its discretion, may hold oral argument on an appeal.

(e) *Decision of the Board.*—Upon appeal, the Board shall issue a written decision setting forth the reasons for its decision. The Board may dismiss the appeal or affirm, reverse, modify, or remand the decision of the Merits Hearing Officer in whole or in part. Where there is no remand, the decision of the Board shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review.

(f) *Remand.*—The Board may remand the matter to a Merits Hearing Officer for further action or proceedings, including the reopening of the record for the taking of additional evidence. The decision by the Board to remand a case is not subject to judicial review under section 407 of the Act. The procedures for a remanded hearing shall be governed by subparts F, G, and H of these Rules. The Merits Hearing Officer shall render a decision or report to the Board, as ordered, at the conclusion of proceedings on the remanded matters. A decision of the Board following completion of the remand shall be entered in the records of the Office as the final decision of the Board and shall be subject to judicial review under section 407 of the Act.

(g) *Standard of Review.*—Pursuant to section 406(c) of the Act, in conducting its review of the decision of a Merits Hearing Officer, the Board shall set aside a decision if it determines that the decision was:

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

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

(h) *Review of Record.*—In making determinations under paragraph (g), the Board shall review the whole record, or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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

(k) *Withdrawal of Petition for Review.*—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.

§ 8.02 Reconsideration.

After a final decision or order of the Board has been issued, a party to the proceeding before the Board who can establish in its moving papers that reconsideration is necessary because the Board has overlooked or misapprehended points of law or fact, may move for reconsideration of such final decision or order. The motion shall be filed within 15 days after service of the Board's decision or order. No response shall be filed unless the Board 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 action of the Board unless so ordered by the Board. The decision to grant or deny a motion for reconsideration is within the sole discretion of the Board and is not appealable.

§ 8.03 Compliance with Final Decisions, Requests for Enforcement.

(a) *Compliance Report and Petitions.*—Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to section 407 of the Act, and except as provided in sections 210(d)(5) and 215(c)(6) of the Act, a party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all other parties to the proceedings with a compliance report specifying the manner in which compliance with the provisions of the decision or order has been accomplished. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision or order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved. A party may also file a petition for attorney's fees and/or damages unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of the appeal pursuant to section 407 of the Act.

(b) *Additional Reports.*—The Office may require additional reports as necessary.

(c) *Failure to File Compliance Report.*—If the Office does not receive notice of compliance in accordance with paragraph (a) of this section, the Office shall make inquiries to determine the status of compliance. If the Office cannot determine that full compliance is forthcoming, the Office shall report the failure to comply to the Board and recommend whether court enforcement of the decision should be sought.

(d) *Petition for Enforcement.*—To the extent provided in section 407(a) of the Act and section 8.04 of these Rules, the appropriate party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

(e) *Notice to Show Cause.*—Upon receipt of a report of noncompliance or a petition for enforcement of a final decision, or as it otherwise determines, the Board may issue a notice to any person or party to show cause why the Board should not seek judicial enforcement of its decision or order.

(f) *Petition to Court.*—The Board, in its discretion, may direct the General Counsel to petition the court for enforcement under section 407(a)(2) of the Act of a decision under section 406(e) of the Act whenever the Board finds that a party has failed to comply with its decision and order.

§ 8.04 Judicial Review.

Pursuant to section 407 of the Act,

(a) the United States Court of Appeals for the Federal Circuit shall have jurisdiction over any proceeding commenced by a petition of:

(1) a party aggrieved by a final decision of the Board under section 406(e) of the Act in cases arising under sections 102(c) or 201–207 of the Act;

(2) a charging individual or respondent before the Board who files a petition under section 210(d)(4) of the Act;

(3) the General Counsel or a respondent before the Board who files a petition under section 215(c)(5) of the Act; or

(4) the General Counsel or a respondent before the Board who files a petition under section 220(c)(3) of the Act.

(b) The United States Court of Appeals for the Federal Circuit shall have jurisdiction over any petition of the General Counsel, filed in the name of the Office and at the direction of the Board, to enforce a final decision under section 405(g) or 406(e) of the Act with respect to a violation of part A, B, C, or D of title II of the Act.

(c) The party filing a petition for review shall serve a copy on the opposing party or parties or their representative(s).

§ 8.05 Application for Review of an Executive Director's Action.

For additional rules on the procedures pertaining to the Board's review of an Executive Director action in Representation proceedings, refer to parts 2422.30–31 of the Substantive Regulations of the Board, available at www.ocwr.gov.

§ 8.06 Expedited Review of Negotiability Issues.

For additional rules on the procedures pertaining to the Board's expedited review of negotiability issues, refer to part 2424 of the Substantive Regulations of the Board, available at www.ocwr.gov.

§ 8.07 Review of Arbitration Awards.

For additional rules on the procedures pertaining to the Board's review of arbitration awards, refer to part 2425 of the Substantive Regulations of the Board, available at www.ocwr.gov.

§ 8.08 Procedures of the Board in Impasse Proceedings.

For additional rules on the procedures of the Board in impasse proceedings, refer to part 2471 of the Substantive Regulations of the Board, available at www.ocwr.gov.

SUBPART I—[AMENDED]

9. Subpart I has been amended as follows:

Subpart I—Other Matters of General Applicability

§ 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.

(b) *Form of Motion.*—In addition to setting forth the legal and factual bases upon which the attorney's fees and/or costs are sought, a motion for an award of attorney's fees and/or costs shall be accompanied by:

(1) accurate and contemporaneous time records;

(2) a copy of the terms of the fee agreement (if any);

(3) the attorney's customary billing rate for similar work with evidence that the rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices;

(4) an itemization of costs related to the matter in question; and

(5) evidence of an established attorney-client relationship (if a copy of the fee agreement is not available).

(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.

§ 9.02 Ex Parte Communications.

(a) *Definitions.*

(1) The term ''interested person outside the Office'' means any covered employee and agent thereof who is not an employee or agent of the Office, any labor organization and agent thereof, any employing office and agent thereof, and any individual or organization and agent thereof, who is or may reasonably be expected to be involved in a proceeding or a rulemaking, and the General Counsel and any agent thereof when prosecuting a complaint proceeding before the Office pursuant to sections 210, 215, or 220 of the Act. The term also includes any employee of the Office who becomes a party or a witness for a party other than the Office in proceedings as defined in these Rules.

(2) The term ''ex parte communication'' means an oral or written communication—

(A) that is between an interested person outside the Office and a Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking;

(B) that is related to a proceeding or a rulemaking;

(C) that is not made on the public record;

(D) that is not made in the presence of all parties to a proceeding or a rulemaking; and

(E) that is made without reasonable prior notice to all parties to a proceeding or a rulemaking.

(3) For purposes of this section, the term ''proceeding'' means a hearing proceeding under section 405 of the Act, an appeal to the Board under section 406 of the Act, a preelection investigatory hearing under section 220 of the Act, and any other proceeding of the Office established pursuant to regulations issued by the Board under the Act.

(4) The term ''period of rulemaking'' means the period commencing with the issuance of an advance notice of proposed rulemaking or of a notice of proposed rulemaking, whichever issues first, and concluding with the issuance of a final rule.

(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.*

(c) *Prohibited Ex Parte Communications and Exceptions.*

(1) During a proceeding, it is prohibited knowingly to make or cause to be made:

(A) a written ex parte communication if copies thereof are not promptly served by the communicator on all parties to the proceeding in accordance with section 1.04 of these Rules; or

(B) an oral ex parte communication unless all parties have received advance notice thereof by the communicator and have an adequate opportunity to be present.

(2) The Hearing Officer or the Office may initiate attempts to settle a matter informally at any time. The parties may agree to waive the prohibitions against ex parte communications during settlement discussions, and they may agree to any limits on the waiver.

(3) During the period of rulemaking, it is prohibited knowingly to make or cause to be made a written or an oral ex parte communication. During the period of rulemaking, the Office shall treat any written ex parte communication as a comment in response to the advance notice of proposed rulemaking or the notice of proposed rulemaking, whichever is pending, and such communications will therefore be part of the public rulemaking record.

(4) Notwithstanding the prohibitions set forth in subparagraphs (1) and (2) above, the following ex parte communications are not prohibited:

(A) those which relate solely to matters which the Board member or Hearing Officer is authorized by law, Office rules, or order of the Board or Hearing Officer to entertain or dispose of on an ex parte basis;

(B) those which all parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(C) those which concern only matters of general significance to the field of labor and employment law or administrative practice;

(D) those from the General Counsel to the Office or the Board when the General Counsel is acting on behalf of the Office or the Board under any section of the Act; and

(E) those which could not reasonably be construed to create either unfairness or the appearance of unfairness in a proceeding or rulemaking.

(5) It is prohibited knowingly to solicit or cause to be solicited any prohibited ex parte communication.

(d) *Reporting of Prohibited Ex Parte Communications.*

(1) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who determines that he or she is being asked to receive a prohibited ex parte communication shall refuse to do so and inform the communicator of this Rule.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding who knowingly receives a prohibited ex parte communication shall (i) notify the parties to the proceeding that such a communication has been received; and (ii) provide the parties with a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). If a proceeding is then pending before either the Board or a Hearing Officer, and if the Board or Hearing Officer so orders, these materials shall then be placed in the record of the proceeding. Upon order of the Hearing Officer or the Board, the parties may be provided with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(3) Any Board member involved in a rulemaking who knowingly receives a prohibited ex parte communication shall cause to be published in the Congressional Record a notice that such a communication has been received and a copy of the communication and of any response thereto (if written) or with a memorandum stating the substance of the communication and any response thereto (if oral). Upon order of the Board, these materials shall then be placed in the record of the rulemaking and the Board shall provide interested persons with a full opportunity to respond to the alleged prohibited ex parte communication and to address what action, if any, should be taken in the proceeding as a result of the prohibited communication.

(4) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly receives a prohibited ex parte communication and who fails to comply with the requirements of subparagraphs (1), (2), or (3) above, is subject to internal censure or discipline through the same procedures that the Board uses to address and resolve ethical issues.

(e) *Penalties and Enforcement.*

(1) When a person is alleged to have made or caused another to make a prohibited ex parte communication, the Board or the Hearing Officer (as appropriate) may issue to the person a notice to show cause, returnable within a stated period not less than 7 days from the date thereof, why the Board or the Hearing Officer should not determine that the interests of law or justice require that the person be sanctioned by, when applicable, dismissal of his or her claim or interest,

the striking of his or her answer, or the imposition of some other appropriate sanction, including but not limited to the award of attorney's fees and costs incurred in responding to a prohibited ex parte communication. Sanctions shall be commensurate with the seriousness and unreasonableness of the offense, accounting for, among other things, the advertency or inadvertency of the prohibited communication.

(2) Any Board member or Hearing Officer who is or may reasonably be expected to be involved in a proceeding or a rulemaking and who knowingly makes or causes to be made a prohibited ex parte communication is subject to internal censure or discipline through the same procedures that the Board uses to address and resolve ethical issues.

§ 9.03 Settlement of Claims and Complaints.

(a) *Settlement Agreements.*—Parties to a process described in section 210, 215, 220, or 401 of the CAA may agree to settle all or part of a disputed matter. In accordance with section 414 of the Act, the agreement shall be in writing and submitted to the Executive Director for review and approval. The settlement is not effective until it has been approved by the Executive Director. If the Executive Director does not approve the settlement, such disapproval shall be in writing, shall set forth the grounds for disapproval, and shall render the settlement ineffective.

(b) *Obligations Payable from Account Established by Section 415(a) of the Act.*—Any agreement between the parties that purports to create an obligation that is payable from the account established by section 415(a) of the Act (''Section 415(a) Treasury Account'') must be in writing and approved by the Executive Director.

(c) *General Requirements for Approval of Settlement Agreements.*—Except as provided in paragraph (d), a settlement agreement must contain the signatures of all parties or their designated representatives on the agreement document. A 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 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 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 Approval of Settlement Agreements Involving Claims Against Members of Congress.*—If a settlement agreement concerns allegations against a Member of Congress subject to the payment reimbursement provisions of section 415(d) of the Act or any applicable rule of the Senate or the House of Representatives that would require reimbursement by the Member of the Treasury account established by section 415(a) of the Act, the settlement agreement must comply with sections 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 because it is being used to settle an allegation that a Member personally committed a violation of section 201(a), 206(a), or 207 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 415(d)(8) of the Act or an applicable provision of these Rules.

(e) *Violation of a Settlement Agreement.*—Parties are encouraged to include in their settlements specific dispute resolution proceedings. If a party should allege that a settlement agreement has been violated, the issue shall be determined by reference to those procedures. If the settlement agreement does not have a stipulated method for dispute resolution of an alleged violation, the Office may provide assistance in resolving the dispute, including the services of a Mediator as determined by the Executive Director. When the settlement agreement does not have a stipulated method for resolving violation allegations, an allegation of a violation must be filed with the Executive Director no later than 60 days after the party to the agreement becomes aware of the alleged violation. Such allegations will be reviewed, investigated or mediated, as appropriate, by the Executive Director or designee.

§ 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, or its designated payroll administrator, or disbursing office, as applicable, may submit a payment request from the Section 415(a) Treasury Account.

(2) Employing offices, payroll administrators, or disbursing 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 employing office, payroll administrator, or disbursing 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 employing office, payroll administrator, or disbursing office, as applicable, may request that the payment be disbursed from the Section 415(a) Treasury Account pursuant to one of the following methods:

(1) The gross amount of the back pay will be disbursed to the employing office, payroll administrator, or disbursing office, as applicable, which will then promptly issue amounts representing back pay (and interest if authorized) to the employee and retain amounts representing withholding and deductions;

(2) Deductions from gross back pay will be disbursed to the employing office, payroll administrator, or disbursing office, as applicable. Net back pay (and interest if authorized), will be disbursed to the employee or to the employee's attorney, as directed by the submitting employing office, payroll administrator, or disbursing office; or

(3) The payment will be disbursed pursuant to a method mutually agreed upon by the OCWR and the employing office, payroll administrator, or disbursing office, as applicable.

(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, payroll administrator, or disbursing office submitting the payment request to do so. The employing office or its designated payroll administrator, or disbursing office, as applicable, 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 certain violations 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 and the employing office's designated representative 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]

§ 9.05 Revocation, Amendment, or Waiver of Rules.

(a) The Executive Director, subject to the approval of the Board, may revoke or amend these Rules by publishing proposed changes in the Congressional Record and providing for a comment period of not less than 30 days. Following the comment period, any changes to the Rules are final once they are published in the Congressional Record.

(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.

§ 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 employees are customarily posted.

§ 9.07 Training and Education Programs.

(a) Not later than June 19, 2019 (i.e., 180 days after the date of the enactment of the Reform Act), 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.

ORDERS FOR THURSDAY, JUNE 20, 2019

Mr. INHOFE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Thursday, June 20; 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 resume consideration of the pending joint resolutions en bloc; further, that 15 minutes be under the control of Senator MENENDEZ and 5 minutes be under control of Senator RISCH prior to 11:30 a.m. tomorrow; finally, that all time since cloture on the motion to proceed to S. 1790 was invoked, recess, adjournment, morning business, and leader remarks and during the consideration of the resolutions en bloc, count postcloture on the motion to proceed to S. 1790.

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

Mr. INHOFE. For the information of all Senators, the Senate will vote on the confirmation of the Baranwal nomination at 1:45 p.m. tomorrow.

ORDER FOR ADJOURNMENT

Mr. INHOFE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order, following the remarks of our Democratic colleagues.

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

The Senator from New Jersey.

S.J. RES. 36

Mr. MENENDEZ. Mr. President, I rise to begin the debate in support of 22 resolutions of disapproval and ask my colleagues to join me in asserting congressional prerogative over arms sales to foreign governments and to say unequivocally that our security partnership with Saudi Arabia, the United Arab Emirates, or any other nation is not a blank check.

On May 24, the Secretary of State attempted to bypass this body in order to push through 22 separate arms sales to Saudi Arabia and United Arab Emirates, claiming an ill-defined emergency regarding Iran. Make no mistake. Iran continues to be a threat to U.S. interests in the Middle East. It continues to jeopardize the greater stability of the region. It has been rightly designated a state sponsor of terrorism. I think it is safe to say that no one in this body has been tougher on Iran than I. But we must ask whether the administration's actions are making us safer from Iranian threats or actually putting us more at risk. Does this administration have a strategic, maximum pressure campaign in place to address Iran's nuclear capabilities or its destructive behavior or is the Trump administration's only plan to turn the Middle East into a pressure cooker with no release valve? I fear it is the latter.

Let me address the resolutions at hand, highlighting just a few. Arms sales are a critical national security tool, and reviewing and approving them are core functions of the Senate Foreign Relations Committee. We are responsible for considering how each proposed sale fits into our broader foreign policy goals and our national security interests, including the capacity and interoperability of our partners.

The congressional review of arms sales is mandated for a reason—so that the Secretary of State explicitly cannot do what he tried to do last month with these 22 sales to Saudi Arabia and the UAE.

Despite the Secretary of State's claims, his May 24 justification lacks any detailed, persuasive information to demonstrate that these sales will somehow better enable the United States or our allies to address an imminent threat or ''emergency'' or that he was justified in trying to bypass Congress.

Beyond failing to consult with Congress, I am troubled by the administration's continued willingness to withhold information from Senators. Just 3 days prior to the announcement, this ''emergency,'' Secretary Pompeo briefed the Senate on the very threat he now claims justifies invoking emergency authorities. Yet during this briefing, the Secretary did not mention, not once, any need to sell more arms to Saudi Arabia to address such a threat.

An ''emergency'' by definition is an urgent and unexpected event requiring immediate action. Yet last week, Assistant Secretary of State Clarke Cooper admitted in an open House hearing that the decision to make the emergency determination was in the works for months—for months. When pressed on how an emergency declaration couldn't be in the works for months, Cooper tried to argue that the ''emergency'' showed up sometime in between the 2 days that the Secretary briefed members and then made the notifications.

It doesn't work that way. If it is in the works for months, as you testified, and you were thinking about it, you should have told us.

Their abuse of emergency authorities will ultimately be detrimental to the State Department, the defense industry, and U.S. national security.

For decades, the Congress, multiple Presidential administrations, and the defense industry have engaged in the arms sales process in good faith. The Senate has approved billions of dollars of arms sales to dozens of countries.

Whenever I am concerned about a particular sale, I have sought to work with the administration, the recipient country, as well as defense firms to explain those concerns and to reach a mutually acceptable solution. This approach has served all parties well. It ensures that there is a check on the Executive, whoever that Executive is. It ensures there is oversight over the number and types of U.S. weapons that make their way around the world.

Allow me to outline a little bit of background regarding two of the resolutions we will vote on individually: S.J. Res. 36 and 38, for those keeping score. Then I would like to address border concerns with Saudi Arabia and implications for some of the other sales.

These two resolutions are related to the sale of precision-guided munitions and parts to the Kingdom of Saudi Arabia, weapons they have used in the killing of untold numbers of innocent civilians in their ongoing campaign in Yemen.

Over the course of 4 years, Saudi Arabia's air operations in Yemen have killed and maimed thousands of Yemeni civilians. Ninety thousand Yemenis have died. Eighty thousand children have died of starvation. Seven thousand or more cases of cholera are reported. Three million people are displaced—3 million people are displaced. Some statistics tell us that there are 14 million more on the brink of starvation. The United Arab Emirates has joined in this coalition in this fight on Yemen, and there are credible reports, concerns that I raised about abusive torture at Emirati detention centers