

ceeding under this chapter other than rule-making shall be paid the same fee and mileage allowances as are paid subpoenaed witnesses in the courts of the United States. Covered employees who are summoned, or are assigned by their employer, to testify in their official capacity or to produce official records in any proceeding under this chapter shall be entitled to travel expenses under subchapter I and section 5751 of chapter 57 of title 5.

(Pub. L. 104-1, title III, § 305, Jan. 23, 1995, 109 Stat. 31.)

#### REFERENCES IN TEXT

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

### § 1386. Disposition of surplus or obsolete personal property

The Executive Director may, within the limits of available appropriations, dispose of surplus or obsolete personal property by interagency transfer, donation, or discarding.

(Pub. L. 104-1, title III, § 306, as added Pub. L. 111-68, div. A, title I, § 1101(a), Oct. 1, 2009, 123 Stat. 2031.)

#### EFFECTIVE DATE

Pub. L. 111-68, div. A, title I, § 1101(c), Oct. 1, 2009, 123 Stat. 2031, provided that: “The amendments made by this section [enacting this section] shall apply with respect to fiscal year 2010, and each fiscal year thereafter.”

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

### § 1401. Procedure for consideration of alleged violations

Except as otherwise provided, the procedure for consideration of alleged violations of part A of subchapter II of this chapter consists of—

- (1) counseling as provided in section 1402 of this title;
- (2) mediation as provided in section 1403 of this title; and
- (3) election, as provided in section 1404 of this title, of either—

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

(B) a civil action in a district court of the United States as provided in section 1408 of this title.

In the case of an employee of the Office of the Architect of the Capitol or of the Capitol Police, the Executive Director, after receiving a request for counseling under section 1402 of this title, may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police for resolution of

the employee’s grievance for a specific period of time, which shall not count against the time available for counseling or mediation.

(Pub. L. 104-1, title IV, § 401, Jan. 23, 1995, 109 Stat. 32.)

#### REFERENCES IN TEXT

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

### § 1402. Counseling

#### (a) In general

To commence a proceeding, a covered employee alleging a violation of a law made applicable under part A of subchapter II of this chapter shall request counseling by the Office. The Office shall provide the employee with all relevant information with respect to the rights of the employee. A request for counseling shall be made not later than 180 days after the date of the alleged violation.

#### (b) Period of counseling

The period for counseling shall be 30 days unless the employee and the Office agree to reduce the period. The period shall begin on the date the request for counseling is received.

#### (c) Notification of end of counseling period

The Office shall notify the employee in writing when the counseling period has ended.

(Pub. L. 104-1, title IV, § 402, Jan. 23, 1995, 109 Stat. 32.)

#### REFERENCES IN TEXT

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

### § 1403. Mediation

#### (a) Initiation

Not later than 15 days after receipt by the employee of notice of the end of the counseling period under section 1402 of this title, but prior to and as a condition of making an election under section 1404 of this title, the covered employee who alleged a violation of a law shall file a request for mediation with the Office.

#### (b) Process

Mediation under this section—

(1) may include the Office, the covered employee, the employing office, and one or more individuals appointed by the Executive Director after considering recommendations by organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters, and

(2) shall involve meetings with the parties separately or jointly for the purpose of resolving the dispute between the covered employee and the employing office.

#### (c) Mediation period

The mediation period shall be 30 days beginning on the date the request for mediation is re-

ceived. The mediation period may be extended for additional periods at the joint request of the covered employee and the employing office. The Office shall notify in writing the covered employee and the employing office when the mediation period has ended.

**(d) Independence of mediation process**

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

(Pub. L. 104-1, title IV, §403, Jan. 23, 1995, 109 Stat. 32.)

**§ 1404. Election of proceeding**

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

- (1) file a complaint with the Office in accordance with section 1405 of this title, or
- (2) file a civil action in accordance with section 1408 of this title in the United States district court for the district in which the employee is employed or for the District of Columbia.

(Pub. L. 104-1, title IV, §404, Jan. 23, 1995, 109 Stat. 33.)

**§ 1405. Complaint and hearing**

**(a) In general**

A covered employee may, upon the completion of mediation under section 1403 of this title, file a complaint with the Office. The respondent to the complaint shall be the employing office—

- (1) involved in the violation, or
- (2) in which the violation is alleged to have occurred,

and about which mediation was conducted.

**(b) Dismissal**

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

**(c) Hearing officer**

**(1) Appointment**

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

**(2) Lists**

The Executive Director shall develop master lists, composed of—

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

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

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

**(d) Hearing**

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

- (1) conducted in closed session on the record by the hearing officer;
- (2) commenced no later than 60 days after filing of the complaint under subsection (a) of this section, except that the Office may, for good cause, extend up to an additional 30 days the time for commencing a hearing; and
- (3) conducted, except as specifically provided in this chapter and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5.

**(e) Discovery**

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

**(f) Subpoenas**

**(1) In general**

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

**(2) Objections**

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

**(3) Enforcement**

**(A) In general**

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