

this section [amending this section and sections 1301, 1331, 1341, 1351, and 1384 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2018]. Any reference to the Office of Compliance in any law, rule, regulation, or other official paper in effect as of such date shall be considered to refer and apply to the Office of Congressional Workplace Rights.”

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

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-349, §1(b), Oct. 21, 2004, 118 Stat. 1389, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to individuals serving on the Board of Directors of the Office of Compliance on or after September 30, 2004.”

APPOINTMENT OF MEMBERS OF BOARD OF DIRECTORS OF OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

Pub. L. 115-19, §1(a), (b), Apr. 3, 2017, 131 Stat. 84, provided that:

“(a) APPOINTMENT OF MEMBERS.—

“(1) MEMBERS REPLACING MEMBERS WHOSE TERMS EXPIRE IN MARCH 2017.—Notwithstanding the first sentence of section 301(e) of the Congressional Accountability Act of 1995 (2 U.S.C. 1381(e)), of the members of the Board of Directors of the Office of Compliance [now Office of Congressional Workplace Rights] who are appointed to replace the 3 members whose terms expire in March 2017—

“(A) one shall have a term of office of 3 years; and

“(B) 2 shall have a term of office of 4 years,

“as designated at the time of appointment by the persons specified in section 301(b) of such Act (2 U.S.C. 1381(b)).

“(2) MEMBERS REPLACING MEMBERS WHOSE TERMS EXPIRE IN MAY 2017.—In accordance with the first sentence of section 301(e) of the Congressional Accountability Act of 1995 (2 U.S.C. 1381(e)), the members of the Board of Directors of the Office of Compliance [now Office of Congressional Workplace Rights] who are appointed to replace the 2 members whose terms expire in May 2017 shall each have a term of office of 5 years.

“(b) SERVICE OF CURRENT MEMBERS.—Notwithstanding the second sentence of section 301(e) of the Congressional Accountability Act of 1995 (2 U.S.C. 1381(e)) or section 3 of the Office of Compliance Administrative and Technical Corrections Act of 2015 (Public Law 114-6; 2 U.S.C. 1381 note)—

“(1) an individual serving as a member of the Board of Directors of the Office of Compliance [now Office of Congressional Workplace Rights] whose term expires in March 2017 may be reappointed to serve one additional term at the length designated under paragraph (1) of subsection (a), but may not be reappointed to any additional terms after that additional term expires; and

“(2) an individual serving as a member of the Board of Directors of the Office of Compliance [now Office of Congressional Workplace Rights] whose term expires in May 2017 may be reappointed to serve one additional term at the length referred to in paragraph (2) of subsection (a), but may not be reappointed to any additional terms after that additional term expires.”

Pub. L. 114-6, §3, Mar. 20, 2015, 129 Stat. 82, provided that: “Notwithstanding section 301(e)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1381(e)(1)), any individual serving as a member of the Board of Directors of the Office of Compliance [now Office of Congressional Workplace Rights] as of February 28, 2015, may be appointed to serve for one additional term of 2 years.”

Pub. L. 111-114, §1, Dec. 14, 2009, 123 Stat. 3028, provided that: “Notwithstanding the second sentence of section 301(e)(1) of the Congressional Accountability

Act of 1995 (2 U.S.C. 1381(e)(1)), any individual serving as a member of the Board of Directors of the Office of Compliance [now Office of Congressional Workplace Rights] as of September 30, 2009, may serve for 3 terms.”

§ 1382. Officers, staff, and other personnel

(a) Executive Director

(1) Appointment and removal

(A) In general

The Chair, subject to the approval of the Board, shall appoint and may remove an Executive Director. Selection and appointment of the Executive Director shall be without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. The first Executive Director shall be appointed no later than 90 days after the initial appointment of the Board of Directors.

(B) Qualifications

The Executive Director shall be an individual with training or expertise in the application of laws referred to in section 1302(a) of this title.

(C) Disqualifications

The disqualifications in section 1381(d)(2) of this title shall apply to the appointment of the Executive Director.

(2) Compensation

(A) Authority to fix compensation

The Chair may fix the compensation of the Executive Director.

(B) Limitation

The rate of pay for the Executive Director may not exceed the maximum rate of pay in effect under section 4575(f) of this title.

(3) Term

The term of office of the Executive Director shall be not more than 2 terms of 5 years, except that the first Executive Director shall have a single term of 7 years.

(4) Duties

The Executive Director shall serve as the chief operating officer of the Office. Except as otherwise specified in this chapter, the Executive Director shall carry out all of the responsibilities of the Office under this chapter.

(b) Deputy Executive Directors

(1) In general

The Chair, subject to the approval of the Board, shall appoint and may remove a Deputy Executive Director for the Senate and a Deputy Executive Director for the House of Representatives. Selection and appointment of a Deputy Executive Director shall be without regard to political affiliation and solely on the basis of fitness to perform the duties of the office. The disqualifications in section 1381(d)(2) of this title shall apply to the appointment of a Deputy Executive Director.

(2) Term

The term of office of a Deputy Executive Director shall be not more than 2 terms of 5

years, except that the first Deputy Executive Directors shall have a single term of 6 years.

(3) Compensation

(A) Authority to fix compensation

The Chair may fix the compensation of the Deputy Executive Directors.

(B) Limitation

The rate of pay for a Deputy Executive Director may not exceed 96 percent of the lesser of—

- (i) the highest annual rate of compensation of any officer of the Senate; or
- (ii) the highest annual rate of compensation of any officer of the House of Representatives.

(4) Duties

The Deputy Executive Director for the Senate shall recommend to the Board regulations under section 1384(a)(2)(B)(i) of this title, maintain the regulations and all records pertaining to the regulations, and shall assume such other responsibilities as may be delegated by the Executive Director. The Deputy Executive Director for the House of Representatives shall recommend to the Board the regulations under section 1384(a)(2)(B)(ii) of this title, maintain the regulations and all records pertaining to the regulations, and shall assume such other responsibilities as may be delegated by the Executive Director.

(c) General Counsel

(1) In general

The Chair, subject to the approval of the Board, shall appoint a General Counsel. Selection and appointment of the General Counsel shall be without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. The disqualifications in section 1381(d)(2) of this title shall apply to the appointment of a General Counsel.

(2) Compensation

(A) Authority to fix compensation

The Chair may fix the compensation of the General Counsel.

(B) Limitation

The rate of pay for the General Counsel may not exceed the lesser of—

- (i) the highest annual rate of compensation of any officer of the Senate; or
- (ii) the highest annual rate of compensation of any officer of the House of Representatives.

(3) Duties

The General Counsel shall—

(A) exercise the authorities and perform the duties of the General Counsel as specified in this chapter; and

(B) otherwise assist the Board and the Executive Director in carrying out their duties and powers, including representing the Office in any judicial proceeding under this chapter.

(4) Attorneys in the office of the General Counsel

The General Counsel shall appoint, and fix the compensation of, and may remove, such

additional attorneys as may be necessary to enable the General Counsel to perform the General Counsel's duties.

(5) Term

The term of office of the General Counsel shall be not more than 2 terms of 5 years.

(6) Removal

(A) Authority

The General Counsel may be removed from office by the Chair but only for—

- (i) disability that substantially prevents the General Counsel from carrying out the duties of the General Counsel,
- (ii) incompetence,
- (iii) neglect of duty,
- (iv) malfeasance, including a felony or conduct involving moral turpitude, or
- (v) holding an office or employment or engaging in an activity that disqualifies the individual from service as the General Counsel under paragraph (1).

(B) Statement of reasons for removal

In removing the General Counsel, the Speaker of the House of Representatives and the President pro tempore of the Senate shall state in writing to the General Counsel the specific reasons for the removal.

(d) Confidential advisors

(1) In general

The Executive Director shall—

(A) appoint, and fix the compensation of, and may remove, 1 or more confidential advisors to carry out the duties described in this subsection; or

(B) designate 1 or more employees of the Office to serve as a confidential advisor.

(2) Duties

(A) Voluntary services

A confidential advisor appointed or designated under paragraph (1) shall offer to provide to covered employees described in paragraph (4) the services described in subparagraph (B), which a covered employee may accept or decline.

(B) Services

The services referred to in subparagraph (A) are—

(i) informing, on a privileged and confidential basis, a covered employee who has been subject to a practice that may be a violation of part A of subchapter II about the employee's rights under this chapter;

(ii) consulting, on a privileged and confidential basis, with a covered employee who has been subject to a practice that may be a violation of part A of subchapter II regarding—

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

(II) the relative merits of securing private counsel, designating a non-attorney representative, or proceeding without representation for proceedings before the Office;

(iii) advising and consulting with, on a privileged and confidential basis, a covered

employee who has been subject to a practice that may be a violation of part A of subchapter II regarding any claims the covered employee may have under subchapter IV, the factual allegations that support each such claim, and the relative merits of the procedural options available to the employee for each such claim;

(iv) assisting, on a privileged and confidential basis, a covered employee who seeks consideration under title IV of an allegation of a violation of part A of subchapter II in understanding the procedures, and the significance of the procedures, described in subchapter IV, including—

(I) assisting or consulting with the covered employee regarding the drafting of a claim to be filed under section 1402(a) of this title; and

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

(v) informing, on a privileged and confidential basis, a covered employee who has been subject to a practice that may be a violation of part A of subchapter II about the option of pursuing, in appropriate circumstances, a complaint with the Committee on Ethics of the House of Representatives or the Select Committee on Ethics of the Senate.

(C) Continuity of service

Once a covered employee has accepted and received any services offered under this section from a confidential advisor appointed or designated under paragraph (1), any other services requested under this subsection by the covered employee shall be provided, to the extent practicable, by the same confidential advisor.

(3) Qualifications

A confidential advisor appointed or designated under paragraph (1) shall be a lawyer who—

(A) is admitted to practice before, and is in good standing with, the bar of a State of the United States, the District of Columbia, or a territory of the United States; and

(B) has experience representing clients in cases involving the workplace laws incorporated by part A of subchapter II.

(4) Individuals covered

The services described in paragraph (2) are available to any covered employee (which, for purposes of this subsection, shall include any staff member described in section 1311(d) of this title and any former covered employee (including any such former staff member)), except that—

(A) a former covered employee may only request such services if the practice that may be a violation of part A of subchapter II occurred during the employment or service of the employee; and

(B) a covered employee described in this paragraph may only request such services

before the expiration of the 180-day period described in section 1402(d) of this title.

(5) Restrictions

A confidential advisor appointed or designated under paragraph (1)—

(A) shall 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 this chapter, any judicial proceeding, or any proceeding before any committee of Congress;

(B) shall not offer or provide services described in paragraph (2)(B) to a covered employee if the covered employee has designated an attorney representative in connection with the covered employee's participation in any proceeding under this chapter, except that a confidential advisor may provide general assistance and information to such attorney representative regarding this chapter and the role of the Office as the confidential advisor determines appropriate; and

(C) shall not serve as a mediator in any mediation conducted pursuant to section 1403 of this title.

(e) Other staff

The Executive Director shall appoint, and fix the compensation of, and may remove, such other additional staff, including hearing officers, but not including attorneys employed in the office of the General Counsel, as may be necessary to enable the Office to perform its duties.

(f) Detailed personnel

The Executive Director may, with the prior consent of the department or agency of the Federal Government concerned, use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency, including the services of members or personnel of the Government Accountability Office Personnel Appeals Board.

(g) Consultants

In carrying out the functions of the Office, the Executive Director may procure the temporary (not to exceed 1 year) or intermittent services of consultants.

(Pub. L. 104-1, title III, §302, Jan. 23, 1995, 109 Stat. 26; Pub. L. 110-161, div. H, title I, §1101(b), Dec. 26, 2007, 121 Stat. 2237; Pub. L. 110-164, §2(a), Dec. 26, 2007, 121 Stat. 2459; Pub. L. 115-397, title II, §204, Dec. 21, 2018, 132 Stat. 5318; Pub. L. 116-94, div. E, title II, §212(a)(3)(C), Dec. 20, 2019, 133 Stat. 2775.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4), (c)(3), and (d)(2)(B)(i), (5)(A), (B), 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.

Part A of subchapter II, referred to in subsec. (d)(2)(B), (3)(B), (4)(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.

AMENDMENTS

2019—Subsec. (a)(2)(B). Pub. L. 116-94 substituted “the maximum rate of pay in effect under section 4575(f) of this title.” for “the lesser of—

“(i) the highest annual rate of compensation of any officer of the Senate; or

“(ii) the highest annual rate of compensation of any officer of the House of Representatives.”

2018—Subsecs. (d) to (g). Pub. L. 115-397 added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

2007—Subsec. (a)(2). Pub. L. 110-161, §1101(b)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The Chair may fix the compensation of the Executive Director. The rate of pay for the Executive Director may not exceed the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5.”

Subsec. (a)(3). Pub. L. 110-164, §2(a)(1), substituted “not more than 2 terms” for “a single term” the first time appearing.

Subsec. (b)(2). Pub. L. 110-164, §2(a)(2), substituted “not more than 2 terms” for “a single term” the first time appearing.

Subsec. (b)(3). Pub. L. 110-161, §1101(b)(2), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “The Chair may fix the compensation of the Deputy Executive Directors. The rate of pay for a Deputy Executive Director may not exceed 96 percent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5.”

Subsec. (c)(2). Pub. L. 110-161, §1101(b)(3), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The Chair may fix the compensation of the General Counsel. The rate of pay for the General Counsel may not exceed the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5.”

Subsec. (c)(5). Pub. L. 110-164, §2(a)(3), substituted “not more than 2 terms” for “a single term”.

Subsec. (e). Pub. L. 110-161, §1101(b)(4), substituted “Government Accountability Office” for “General Accounting Office”.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116-94 effective on the later of the first day of the first applicable pay period beginning on or after Jan. 1, 2020, or the first day of the first applicable pay period beginning on or after Dec. 20, 2019, see section 212(c) of Pub. L. 116-94, set out as a note under section 282b of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-164, §2(b), Dec. 26, 2007, 121 Stat. 2459, provided that: “The amendments made by this section [amending this section] shall apply with respect to an individual who is first appointed to the position of Executive Director, Deputy Executive Director, or General Counsel of the Office of Compliance after the date of the enactment of this Act [Dec. 26, 2007].”

PERMITTING CURRENT EXECUTIVE DIRECTOR, DEPUTY EXECUTIVE DIRECTORS, AND GENERAL COUNSEL OF OFFICE OF COMPLIANCE TO SERVE ONE ADDITIONAL TERM

Pub. L. 109-38, §1, July 27, 2005, 119 Stat. 408, provided that:

“(a) EXECUTIVE DIRECTOR.—Notwithstanding section 302(a)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1382(a)(3)), the individual serving as Executive

Director of the Office of Compliance [now Office of Congressional Workplace Rights] as of the date of the enactment of this Act [July 27, 2005] may serve one additional term.

“(b) DEPUTY EXECUTIVE DIRECTORS.—Notwithstanding section 302(b)(2) of such Act (2 U.S.C. 1382(b)(2)), any individual serving as a Deputy Executive Director of the Office of Compliance [now Office of Congressional Workplace Rights] as of the date of the enactment of this Act may serve one additional term.

“(c) GENERAL COUNSEL.—Notwithstanding section 302(c)(5) of such Act (2 U.S.C. 1382(c)(5)), the individual serving as General Counsel of the Office of Compliance [now Office of Congressional Workplace Rights] as of the date of the enactment of this Act may serve one additional term.”

§ 1383. Procedural rules

(a) In general

The Executive Director shall, subject to the approval of the Board, adopt rules governing the procedures of the Office, including the procedures of hearing officers, which shall be submitted for publication in the Congressional Record. The rules may be amended in the same manner.

(b) Procedure

The Executive Director shall adopt rules referred to in subsection (a) in accordance with the principles and procedures set forth in section 553 of title 5. The Executive Director shall publish a general notice of proposed rulemaking under section 553(b) of title 5, but, instead of publication of a general notice of proposed rulemaking in the Federal Register, the Executive Director shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal. Before adopting rules, the Executive Director shall provide a comment period of at least 30 days after publication of a general notice of proposed rulemaking. Upon adopting rules, the Executive Director 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 on which both Houses are in session following such transmittal. Rules shall be considered issued by the Executive Director as of the date on which they are published in the Congressional Record.

(Pub. L. 104-1, title III, §303, Jan. 23, 1995, 109 Stat. 28.)

§ 1384. Substantive regulations

(a) Regulations

(1) In general

The procedures applicable to the regulations of the Board issued for the implementation of this chapter, which shall include regulations the Board is required to issue under subchapter II (including regulations on the appropriate application of exemptions under the laws made applicable in subchapter II) are as prescribed in this section.

(2) Rulemaking procedure

Such regulations of the Board—