

fect on pending proceedings, see section 401 of Pub. L. 115-397, set out as an Effective Date of 2018 Amendment note under section 1301 of this title.

SUBCHAPTER IV—ADMINISTRATIVE AND JUDICIAL DISPUTE-RESOLUTION PROCEDURES

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

**(a) Filing and review of claims**

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

- (1) the filing of a claim by the covered employee alleging the violation, as provided in section 1402 of this title;
- (2) the preliminary review of the claim, to be conducted by a hearing officer as provided in section 1402a of this title;
- (3) mediation as provided in section 1403 of this title, if requested and agreed to by the parties under that section; and
- (4) a formal hearing as provided in section 1405 of this title, subject to Board review as provided in section 1406 of this title and judicial review in the United States Court of Appeals for the Federal Circuit as provided in section 1407 of this title.

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

**(1) Civil action**

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

**(2) Effect of filing civil action**

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

- (A) the preliminary review of the claim by the hearing officer as provided in section 1402a of this title shall terminate upon the filing of the action by the covered employee; and
- (B) the procedure for consideration of the alleged violation shall not include any further review of the claim by the hearing officer as provided in section 1402a of this title.

**(3) Period for filing civil action**

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

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

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

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

In the case of an employee of the Office of the Architect of the Capitol or of the Capitol Police, the Office, after receiving a claim filed under section 1402 of this title, may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police for resolution of the employee's grievance for a specific period of time. Any deadline in this chapter relating to a claim for which the employee is using the grievance procedures, that has not already passed by the first day of that specific period, shall be stayed during that specific period.

**(d) Election of remedies for Library of Congress**

**(1) Definitions**

In this subsection:

**(A) Direct Act**

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

**(B) Direct provision**

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

**(C) Library claimant**

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

**(2) Election after proceedings initially brought under this chapter**

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

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

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

- (A) continue with the agency's procedures and preserve the option (if any) to bring any civil action relating to the claim, complaint, or charge, that is available to the Library claimant; or
- (B) file a claim with the Office under section 1402 of this title and continue with the corresponding procedures of this title available and applicable to a covered employee.

**(4) Timing**

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

**(5) Application**

This subsection shall take effect and shall apply as described in section 153(c) of the Legislative Branch Appropriations Act, 2018 (Public Law 115-141) (except to the extent such section applies to any violation of section 1331 of this title or a provision of an Act specified in section 1331 of this title).

**(e) Rights of parties to retain private counsel**

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

**(f) Standards for assertions made by parties**

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

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

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

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

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

**(g) Procedure**

Nothing in this chapter shall be construed to supersede or limit section 1361(d)(2) of this title. (Pub. L. 104-1, title IV, §401, Jan. 23, 1995, 109 Stat. 32; Pub. L. 115-141, div. I, title I, §153(b)(1), Mar. 23, 2018, 132 Stat. 786; Pub. L. 115-397, title I, §101(a), Dec. 21, 2018, 132 Stat. 5298.)

## REFERENCES IN TEXT

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

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

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

## AMENDMENTS

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

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

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

## EFFECTIVE DATE OF 2018 AMENDMENT

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

**§ 1402. Initiation of procedures****(a) Claim****(1) Filing of claim**

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

**(2) Contents of claim**

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

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

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

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

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