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United States Senate

OFFICE OF THE SECRETARY

DISBURSING OFFICE
WASHINGTON, DC 20510-7104

May 10, 2019

Ms. Susan Tsui Grundmann
Executive Director
Office of Congressional Workplace Rights
110 Second Street, S.E., Room LA-200
Washington, D.C. 20540-1999

via fax: (202) 426-1913
via email: Alexander.Ruvinsky@ocwr.gov

Re: Comments on Proposed Amendments to the Rules of Procedures

Dear Ms. Grundmann:

General Comments

We appreciate the opportunity to submit comments to the Proposed Amendments to the Rules of Procedures ("Proposed Rules") of the Office of Congressional Workplace Rights ("OCWR"). These comments relate specifically to Sections 9.03 and 9.04 of the proposed Rules as they relate to the role of the Senate Disbursing Office and Financial Clerk of the Senate as the payroll administrator for the Senate (designated by the Secretary of the Senate). As recently discussed with your general counsel, Mr. Uelmen, because the Proposed Rules fail to consider the difference between an Employing Office and the payroll administrator, and fail to take into account relevant requirements related to compensation and payroll administration in the Senate, we propose that the Proposed Rules related to back pay (described more fully below) be withdrawn. We will be happy to work with OCWR in the future to determine how to craft such procedures in a way that is consistent with statutes, rules, regulations and procedures related to Senate payroll administration.

In addition, because the Senate Disbursing Office is not an Employing Office under the CAA or Proposed Rules, or under the direction of any Senate Employing Office (except where the Secretary of the Senate is the Employing Office in a particular matter), it is not appropriate to direct the actions of the Disbursing Office through the adoption of procedural rules pursuant to 2 U.S.C. §1383, but rather any such mandates should be submitted through the adoption procedures of substantive regulations pursuant to 2 U.S.C. §1384.

Specific Comments

Section 9.03(c)(3) - The Proposed Rule does not direct the parties to provide sufficient information to a payroll administrator to determine actual amounts of withholding and deductions. Confidentiality of employee records in the Disbursing Office would prevent the office from discussing such information with an Employing Office, or anyone but the employee, in any event. It is unclear at this time how to draft procedures respectful of employee confidentiality that would permit the Disbursing Office to assist in this process, and so Section 9.03(c)(3) should be withdrawn at this time and further consideration should be given.

Section 9.03(d) - The reference to Section 9.03(c)(3) should be withdrawn for the reasons cited in the previous comment.

Section 9.04(d) - Due to statutory and procedural requirements for disbursements in the Senate, it is not consistent with other sections of the Procedural Rules to have the Senate make compensatory payments on behalf of the Treasury Fund, in the place of OCWR. Furthermore, Employing Offices in the Senate are not able to take the actions required in this Section. Therefore, this Section should be withdrawn until proper language consistent with the statutes, rules, regulations and procedures of both the Senate and of OCWR can be determined.

Section 9.04(f) - Senate Employing Offices are not capable of tax withholding or reporting, or of issuing W-2 or 1099 forms on their own. Instead, OCWR is capable of issuing net payments and calculating withholding pursuant to specific agreements or awards, and of working with payroll administrators to find appropriate procedures for transmitting and reporting withholdings, and issuing W-2 and 1099 forms where necessary. However, there may still be statutes, rules, regulations or procedures of both the Senate and OCWR that would need to be reconciled with some instances of back pay awards. Therefore, this Section should be withdrawn until proper language consistent with the statutes, rules, regulations and procedures of both the Senate and of OCWR can be determined.

Thank you for the opportunity to submit these comments and for your office's willingness to speak with us about these issues. We look forward to collaborating with you in the future to find an appropriate way to articulate procedures related to back pay.

Very truly yours,

Ileana Garcia
Financial Clerk of the Senate

cc: United States Senate Committee on Rules and Administration
Julie E. Adams, Secretary of the Senate