Rules and Regulations

Federal Register
Vol. 60, No. 129
Thursday, July 6, 1995

GENERAL ACCOUNTING OFFICE

4 CFR Parts 28 and 29

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board is issuing final regulations to govern appeals filed by employees of the Architect of the Capitol alleging discrimination based on race, color, sex, national origin, religion, age or disability. The regulations implement the Board's authority under § 312(e) of the Architect of the Capitol Human Resources Act.

EFFECTIVE DATE: July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Lipsky, Attorney, Personnel Appeals Board, 202–512–6137.

SUPPLEMENTARY INFORMATION: On July 22, 1994, the Architect of the Capitol Human Resources Act (ACHRA), Pub. L. 103–283, § 312, 108 Stat. 1443, was signed into law. ACHRA requires the Architect of the Capitol to establish a personnel management system incorporating the fundamental principles that exist in other modern personnel systems. Section 312(e) of ACHRA prohibits employment discrimination against Architect of the Capitol employees based on race, color, sex, national origin, religion, age or disability. It also bans intimidation of or reprisal against employees who exercise their rights under the act. In order to ensure enforcement of these rights, ACHRA permits employees of the Architect of the Capitol to file charges of discrimination or retaliation with the General Accounting Office Personnel Appeals Board (''PAB'' or ''Board'').

On November 16, 1994, the PAB adopted interim regulations to implement its new authority under ACHRA. *See*, 59 FR 59103 (Nov. 16, 1994). Congress, however, significantly changed the enforcement scheme applicable to employees of the Architect of the Capitol when it enacted the Congressional Accountability Act of 1995 (CAA), Pub. L. 104–1, 109 Stat. 3 (Jan. 23, 1995). This statute makes 11 civil rights and worker protection laws applicable to employees of Congress and legislative branch agencies. It also creates a new Office of Compliance within the legislative branch to adjudicate complaints of violations of these laws. The CAA repeals § 312(e) of ACHRA, which is the section that prohibits discrimination against employees of the Architect of the Capitol and permits those employees to file appeals with the PAB. *See*, CAA, § 504(c), 109 Stat. 41. Effective January 23, 1996, Architect of the Capitol employees will be covered by the new non-discrimination provisions of the CAA and may file complaints with the new Office of Compliance.

The PAB will, however, continue for a transitional period to have a role in adjudicating claims from Architect of the Capitol employees. The provisions of the CAA will not apply to Architect of the Capitol employees until January 23, 1996. Until that date, the PAB will continue to have jurisdiction over discrimination claims from Architect of the Capitol employees. Even after that date, employees of the Architect of the Capitol may file charges with the Board if their claims arose before January 23, 1996. In such cases, the provisions of § 312(e) of ACHRA will remain in effect and provide the exclusive procedure for that case until its completion. See, § 506(b)(1) of the CAA, 109 Stat. 43. The PAB may also have a further role to play if the opening of the new Office of Compliance is delayed for any reason. If a claim arises after the effective date of the CAA but before the opening of the new Office of Compliance, the employee is first to exhaust administrative procedures before the Architect of the Capitol. If the Office of Compliance still has not opened after that exhaustion, then the employee has the choice of either filing a charge with the PAB or filing suit in court. If the employee elects to file with the PAB, then he or she must proceed exclusively under the provisions of § 312(e) of ACHRA. The provisions of § 312(e) remain in effect for that case until the case is completed. *See*, § 506(b)(2) of the CAA, 109 Stat. 43.

In view of this continuing role for the PAB, the Board deems it necessary to finalize its interim regulations, even though it recognizes that its relationship with the Office of the Architect of the Capitol and its employees will be a relatively brief one.

Brief Summary of the Interim Regulations

The interim regulations published by the Board on November 16, 1994, contained a new part, 4 CFR part 29, establishing the procedures that the Board will follow in receiving and adjudicating cases brought by Architect of the Capitol employees. *See*, 59 FR 59103 (Nov. 16, 1994). The interim regulations also included some conforming amendments to the procedures applicable to charges filed by employees of the General Accounting Office (GAO). *See*, changes to 4 CFR part 28, 59 FR 59105. The most significant change for GAO employees is that the time in which they may file a charge with the Board has been expanded. GAO employees now have 30 days following the relevant action by GAO in which to file a charge with the Board's General Counsel. *See*, amendments to 4 CFR 28.11 and 28.98, 59 FR 59106. Finally, the Board's regulations concerning judicial review of Board decisions were amended in light of *Ramey* v. *Bowsher*, 9 F.3d 133 (D.C. Cir. 1993). In that case, the court held that an employee's only recourse following a final decision of the Board on a complaint of discrimination is to seek appellate review before the United States Court of Appeals for the Federal Circuit. The Board deleted 4 CFR 28.100, which contained contrary provisions, from its regulations. *See*, 59 FR 59106. The preamble to the interim regulations contained a detailed summary of the significant features of the regulations and an explanation of the choices made by the Board in drafting the regulations. This material will not be repeated here.

History of Rulemaking Proceedings

The regulations were made effective on an interim basis because of the need to have some procedures in place to govern any charges of discrimination received from Architect of the Capitol employees. The PAB invited comments from the public and stated that it would

carefully consider such comments before the regulations were adopted in final form. *See,* 59 FR 59103. The original **Federal Register** notice announced that comments would be received through February 24, 1995. *Id.* This deadline was later extended to March 15, 1995. *See,* 60 FR 9773 (Feb. 22, 1995). In addition to publishing the interim regulations in the **Federal Register**, the PAB also prepared a four-page ''plain English'' summary of the regulations and distributed this summary to every employee of the Architect of the Capitol. The summary contained information on how to submit comments to the Board. The Board stated that it would receive comments either in writing or orally, on a special voice-mail line. GAO employees were provided notice of the rulemaking proceedings through two notices published in the ''GAO Management News.'' *See,* GAO Management News, Vol. 22, No. 9 (Week of Nov. 28–Dec. 2, 1994); Vol. 22, No. 20 (Week of Feb. 20–24, 1995). Copies of the **Federal Register** notice concerning the regulatory changes were also sent to representatives of the GAO employee councils.

The Board received two comments concerning the interim regulations. One comment, apparently from an Architect of the Capitol employee, praised the regulations. The employee stated that: ''I'm particularly pleased * * * that a person can remain anonymous when reporting an alleged illegal personnel practice * * * .'' The employee also stressed the importance of follow-up investigations by the Board's General Counsel to ensure that required changes are taking place. The other comment received by the Board was from Mr. George M. White, the Architect of the Capitol. Mr. White objected to certain provisions of the interim regulations, arguing that they went beyond the statutory authority of the Board.

After carefully considering the comments received, the Board has adopted several modifications to the interim regulations. The Board has, however, decided to retain three elements of the regulations that were challenged by the Architect of the Capitol. The Board will discuss below the primary concerns raised by the Architect and the Board's views on those matters. Each change to the interim regulations will also be explained.

Response to Comments Received from the Architect of the Capitol

The Architect of the Capitol argues that the Board lacks statutory authority for three provisions of the interim regulations: (1) The provision requiring that all charges be filed with and investigated by the PAB General Counsel, prior to being considered by the Board; (2) the provision defining ''exhaustion'' of administrative proceedings before the Architect and stating that an employee may file a charge with the Board if the Architect fails to issue a final decision on his or her EEO complaint within 120 days; and (3) the provision permitting Architect employees to file charges with the Board seeking class-wide relief, even if such relief had not been sought from the Architect. Each of these provisions will be discussed below.

1. Role of the PAB General Counsel

The Architect expresses concern about the role assigned to the PAB General Counsel by the interim regulations. Under the interim regulations, the PAB General Counsel has the same role with respect to charges filed by employees of the Architect of the Capitol as he does with respect to those of GAO employees. A charge of discrimination is initially filed with the General Counsel. *See,* 4 CFR 29.8(a), 59 FR 59108. The General Counsel investigates the charge and determines whether there is a reasonable basis to believe the charge is true. *Id.* at § 29.9. When the General Counsel's investigation is complete, he sends the employee a Right to Appeal Letter, which includes a confidential letter to the employee explaining the General Counsel's conclusions on the merits of the case. *Id.* at § 29.9(c). Where he concludes that the charge has merit, the General Counsel offers to represent the employee before the Board. *Id.* at § 29.9(d). Regardless of the findings of the General Counsel, the employee is free to file an appeal with the PAB within 30 days of service of the Right to Appeal Letter. *Id.* at § 29.10(a) and (b).

The Architect asserts that there is no statutory basis for the duties assigned to the PAB General Counsel in the interim regulations. He argues that ACHRA only provides for the filing of appeals with the PAB and makes no mention of any role for the General Counsel. The Board has carefully considered this argument and concludes that there is a firm statutory basis for the duties assigned to the General Counsel and that the enforcement scheme adopted by the Board is supported by sound policy considerations.

ACHRA states that any employee of the Architect of the Capitol alleging employment discrimination based on race, color, sex, national origin, religion, age or disability ''may file a charge with the General Accounting Office Personnel Appeals Board *in accordance with the General Accounting Office Personnel Act of 1980 (31 U.S.C. 751–55).*'' Section 312(e)(3)(A) of ACHRA, 108 Stat. 1445 (emphasis added). Thus, ACHRA expressly states that charges by employees of the Architect of the Capitol will be governed by the terms of the General Accounting Office Personnel Act (GAOPA) contained in 31 U.S.C. 751–755.

Sections 751 through 755 of Title 31, U.S.C., establish both the PAB and its General Counsel, and assign duties to each. The PAB is to hear and adjudicate claims relating to certain enumerated personnel matters. 31 U.S.C. 753. The Board also has the authority to issue procedural regulations. *Id.* at 753(d). The duties of the General Counsel are to:

> (A) Investigate an allegation about a prohibited personnel practice under 732(b)(3) of this title to decide if there are reasonable grounds to believe the practice has occurred, exists, or will be taken by an officer or employee of the General Accounting Office;
>
> (B) Investigate an allegation about a prohibited political activity under 732(b)(3) of this title;
>
> (C) Investigate a matter under the jurisdiction of the Board if the Board or a member of the Board requests; and
>
> (D) Help the Board carry out its duties and powers.

31 U.S.C. 752(b)(3). Thus, the GAOPA gives the General Counsel broad authority to investigate any matter within the Board's jurisdiction, if requested to do so by the Board. ACHRA amended the jurisdictional grant to the Board, contained in 31 U.S.C. 753, to include actions involving discrimination prohibited by ACHRA. *See,* ACHRA, § 312(e)(4)(B), 108 Stat. 1446. As a result, discrimination claims by Architect of the Capitol employees are ''matters under the jurisdiction of the Board'' and the Board may ask the General Counsel to investigate such claims. This is precisely what the Board has done in its interim regulations, which require the General Counsel to investigate every discrimination claim filed by an employee of the Architect of the Capitol.

An almost identical question concerning the Board's authority was raised in *General Accounting Office v. General Accounting Office Personnel Appeals Board,* 698 F.2d 516 (D.C. Cir. 1983). In that case, the General Accounting Office challenged the authority of the PAB to authorize the PAB General Counsel to prosecute appeals concerning adverse actions on behalf of GAO employees. The District of Columbia Circuit held that ''investigate'' as used in 31 U.S.C. 752

included both the investigation of claims and the prosecution of those claims before the Board. The court further held that the Board's broad authority to issue procedural regulations included the power to issue a regulation requiring the General Counsel to investigate and to prosecute any category of case within the Board's jurisdiction. The court reasoned:

> [T]he open-ended language of 4(g)(4) and 4(m) [of the original text of the GAOPA] supports the conclusion that, within the bounds of law and reason, the GAOPA authorizes whatever sort of advocacy role for the General Counsel the Board determines to be appropriate. Section 4(g)(4) provides that the General Counsel shall ''help the Board carry out its duties and powers,'' and section 4(m) grants the Board power to promulgate regulations ''providing for officer and employee appeals consistent with sections 7701 and 7702 of title 5.* * *'' These provisions give the Board broad discretion to design appropriate procedures for appeals cases and to include in that design whatever role for the General Counsel it deems helpful in discharging its duties and powers. Consistent with the discretion thereby granted, the PAB has concluded that the role created for the General Counsel under 4 C.F.R. § 28.17(d) ''helps'' the Board carry out its duties and powers by facilitating an efficient adjudicative procedure for *all* petitions filed with the Board, including adverse action petitions. We think that conclusion is both consistent with the statute and entirely rational and, therefore, we decline to disturb it.

General Accounting Office v. General Accounting Office Personnel Appeals Board, 698 F.2d at 529–30 (emphasis in original; footnotes deleted). Because discrimination charges by Architect of the Capitol employees are now within the Board's jurisdiction, and ACHRA states that such charges are to be filed in accordance with the GAOPA, the reasoning of the District of Columbia Circuit indicates that the Board may assign a similar role to the PAB General Counsel with respect to this new class of cases.

The Board believes that the above analysis answers the Architect's objection that there is no statutory basis for the duties assigned to the General Counsel. Moreover, the Board believes that there are sound policy reasons for the enforcement role assigned to the General Counsel by the regulations. By requiring that all charges be investigated by the General Counsel, the Board ensures that all cases come to it with well-defined issues and a fully developed factual record. The Board appreciates that the Architect will have investigated these cases as well. However, that investigation (by the agency charged with the discrimination) may not be as impartial or as thorough as one undertaken by a third-party such as the General Counsel. The General Counsel's investigation also serves a screening function, because an employee may choose not to pursue a case if an impartial investigator such as the General Counsel concludes that his or her claim lacks merit. Finally, the General Counsel's representation of employees adds to the integrity of the adjudicatory process by ensuring that employees with credible claims have a fair chance to have their cases presented to the Board and do not have to proceed pro se against an agency represented by skilled legal counsel.

For these reasons, the Board has decided to retain the basic role of the PAB General Counsel as proposed in the interim regulations. The Board has, however, decided to make one change in the duties of the General Counsel. The Architect of the Capitol raised concerns about a provision of the interim regulations that permitted the General Counsel to initiate his own investigations, even in the absence of the filing of a charge by an Architect employee. *See,* 4 CFR 29.12, 59 FR 59109. This provision mirrored a provision applicable to GAO employees in the Board's current regulations and was based on the statutory role of the General Counsel under the GAOPA. However, after the adoption of the interim regulations, Congress enacted the CAA. This new law transfers responsibility for adjudicating claims of discrimination by employees of the Architect of the Capitol to the new Office of Compliance, beginning either in January 1996 or at a later date if the opening of the Office is delayed. *See,* CAA, § 506(b), 109 Stat. 43. The PAB will thus only be hearing claims from the Architect of the Capitol for a transitional period. Because of the Board's limited role following the CAA, the Board has decided that it would not be feasible or appropriate for its General Counsel to conduct any self-initiated investigations and it has decided to drop this provision from its regulations. The Board is mindful that the one Architect employee who submitted a comment praised this provision and stated that it is important for employees to be able to provide information to the General Counsel anonymously, without filing a charge of discrimination. Nonetheless, the Board concludes that, in light of its more limited role following the passage of the CAA, the provision for self-initiated investigations is no longer appropriate. The Board is therefore deleting 4 CFR 29.12 (entitled ''Proceedings brought by the General Counsel seeking corrective action, disciplinary action or a stay''), which appeared in the interim regulations. References to the General Counsel's authority to bring self-initiated cases have also been deleted from 4 CFR 29.3 (''Jurisdiction of the Board'').

2. Exhaustion of Administrative Remedies Before the Architect of the Capitol

The interim regulations permit an employee to file a charge with the PAB at any time after the passage of 120 days, if the Architect fails to issue a final decision on the employee's internal complaint of discrimination by that date. *See,* 4 CFR 29.6(a), 59 FR 59107. The Architect of the Capitol objected to this provision, taking the position that a charge cannot be filed with the PAB until a final decision is issued by the Architect, regardless of how long it takes to issue that decision.

For the reasons set forth below, the Board rejects the Architect's argument. However, after reviewing the material submitted by the Architect, the Board has decided to lengthen to 150 days the time period that an employee must wait before filing a charge with the Board. The Board recognizes that the Architect has adopted a detailed procedure for considering claims of discrimination. Because those procedures may in some instances take as long as 140 days to complete, the Board concludes that an expansion of the time period in its regulations is warranted. *See* change to 4 CFR 29.6(a), set forth below.

ACHRA requires that employees of the Architect of the Capitol exhaust the administrative remedies for discrimination within their own agency before filing a charge with the PAB. The act states:

> Such a charge may be filed [with the PAB] only after the employee has filed a complaint with the Architect of the Capitol in accordance with requirements prescribed by the Architect of the Capitol and has exhausted all remedies pursuant to such requirements.

ACHRA, § 312(e)(3)(A), 108 Stat. 1445–46. Although ACHRA states that employees must exhaust their internal administrative remedies before filing a charge with the Board, the statute does not define when such remedies will be considered ''exhausted.'' The Board's regulations merely supply a reasonable definition of ''exhaustion.'' The regulations, as amended below, state that administrative remedies will be considered exhausted when either of the following occurs:

> (1) The employee receives a final decision by the Architect of the Capitol on his or her complaint of discrimination or retaliation; or

(2) 150 days have passed after the filing of an internal complaint of discrimination or retaliation and the Architect of the Capitol has not issued a final decision on the complaint.

See, 4 CFR 29.6(a), as amended below.

Such a definition of ''exhaustion'' is extremely important. If an employee had to await a final decision by the employing agency in all cases, the agency effectively could deny employees access to the Board by delaying the issuance of a decision indefinitely. Moreover, for the right to appeal to the Board to be meaningful, an employee needs to be able to file his or her charge when witness memories are still fresh and effective relief can still be fashioned.

Although the statutory language and legislative history for ACHRA are remarkably brief, two important policies are evident on the face of the statute. On the one hand, Congress clearly intended that Architect of the Capitol employees have a meaningful right to have their complaints heard by an impartial adjudicatory body outside the control of the Architect. On the other hand, Congress also wished to give the Architect the first chance to investigate and rectify any improprieties in his own personnel practices. The Board's definition of exhaustion gives effect to both of these statutory policies. The regulations give the Architect an exclusive period of time in which to investigate and act on employee complaints. But they also ensure that employees will be able to obtain an independent review by the PAB if their employer withholds action on their complaints for an unreasonable period of time.

ACHRA needs to be read against the background of the discrimination complaint procedures that are in effect throughout the federal government. In every other discrimination complaint process within the federal government, employees are permitted to take an appeal to an external adjudicatory body if their own agency fails to act on their complaint within some specified period of time. *See,* 4 CFR 28.98(b)(2) (GAO employees may file with the PAB if GAO fails to issue decision within 120 days); 5 CFR 1201.154(b)(2) (in ''mixed cases'', executive branch employees may file a discrimination appeal with the MSPB if their agency fails to decide their internal EEO complaints within 120 days); 29 CFR 1614.108(e) and (f) (executive branch employees may request hearing before EEOC administrative judge if agency does not complete its investigation within 180 days). In adopting ACHRA, Congress was essentially extending the protection of nondiscrimination laws to employees of the Architect of the Capitol and stating that those protections should be enforced in accordance with the procedures of the GAOPA. It is thus reasonable to assume that Congress intended the Board to interpret ''exhaustion of administrative remedies'' in a manner consistent with other federal civil rights laws and with the Board's longstanding regulations.

For these reasons, the Board concludes that it has a sound legal basis for adopting its definition of exhaustion of administrative remedies.

The interim regulations also included a special rule, permitting the Architect of the Capitol an additional 60 days to investigate charges filed with the Board's General Counsel prior to March 1, 1995. As noted in the preamble to the interim regulations, this provision was intended as an interim measure only. It has already expired and now is deleted from the final regulations. *See,* deletion of 4 CFR 29.6(d), set forth below.

3. Class Actions

The interim regulations permit an employee of the Architect of the Capitol to file a charge with the PAB as the representative of a class of employees. *See,* 4 CFR 29.8(a) and 29.10(f), 59 FR 59108. The regulations further require that such an employee first file an internal complaint of discrimination with the Architect of the Capitol and exhaust administrative remedies on that complaint. 4 CFR 29.6(b). The regulations do not require, however, that such a complaint be filed with the Architect of the Capitol as a class action, or treated by the Architect of the Capitol as a class action, in order to meet the requirements of exhaustion of administrative remedies.

The Architect of the Capitol opposes these provisions concerning class actions. He argues that the PAB has no authority to entertain any claim or issue that was not raised before his office. However, his letter also makes clear that the procedures adopted by his office do not permit the filing of class actions. Thus, his argument in effect is that employees of the Architect of the Capitol have no avenue for seeking relief on a class-wide basis.

The PAB disagrees with the Architect's interpretation of ACHRA and has decided to retain these provisions of its regulations. ACHRA prohibits the Architect of the Capitol from engaging in employment discrimination that would be unlawful under Title VII of the Civil Rights Act and other nondiscrimination statutes. *See,* ACHRA, § 312(e)(2), 108 Stat. 1445. It has long been recognized that the kind of discrimination prohibited by Title VII is often class-wide in nature and that class actions are critical to effective enforcement of the statute. *See,* e.g., discussion in *Hackley* v. *Roudebush,* 520 F.2d 108, 152, n.177 (D.C. Cir. 1975). In interpreting Title VII's prohibition of discrimination by the federal government, the United States District Court for the District of Columbia ruled that executive branch agencies must accept class complaints of discrimination filed by their employees and must afford class-wide relief in appropriate circumstances. *Barrett* v. *U.S. Civil Service Commission,* 69 F.R.D. 544, 549–552 (D.D.C. 1975). Thus, the PAB concludes that it has an obligation to permit the filing of class actions in proceedings before it.

In determining what exhaustion of administrative remedies is necessary before an Architect employee may file a class action with the Board, the PAB followed well-established Title VII case law. Under Title VII, a class action may be pursued in court so long as the named representative of the class filed an individual administrative complaint of discrimination. It is not necessary that each class member have filed an administrative complaint or that remedies were sought at the administrative level on behalf of the class members. *Chisholm* v. *U.S. Postal Service,* 665 F.2d 482, 490 (4th Cir. 1981); *Bowe* v. *Colgate-Palmolive Co.,* 416 F.2d 711, 720 (7th Cir. 1969); *see also, Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 414–15, n.8 (1975). In light of the Architect's own representations that he will not permit the filing of class complaints in his internal EEO complaint process, it is particularly important that Architect employees be permitted to pursue class remedies before the Board after having filed an individual complaint with the Architect.

Applicability of Part 29

In addition to the changes discussed above that respond to the public comments, the Board has also revised the final section of part 29, § 29.13, entitled ''Applicability of this part.'' Following the adoption of the interim regulations, Congress enacted the CAA. As discussed above, that statute terminates the Board's jurisdiction over claims by employees of the Architect of the Capitol, after a transitional period. The CAA generally limits the Board's jurisdiction to cases arising before January 23, 1996, except in certain cases where the opening of the new Office of Compliance is delayed. The revised text of § 29.13 makes reference to these new

limitations on the Board's jurisdiction contained in the CAA.

Interim Regulations Concerning GAO Employees

As noted above, the interim regulations contained a few changes to 4 CFR part 28 concerning charges brought by employees of GAO. Because no comments were received from either GAO or its employees on these provisions, the Board now adopts them in final form, without change.

List of Subjects

4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations.

4 CFR Part 29

Administrative practice and procedure, Equal employment opportunity, Government employees.

Accordingly, the interim rule amending Title 4, Chapter I, Subchapter B, Code of Federal Regulations, which was published at 59 FR 59103 on November 16, 1994, is adopted as a final rule with the following changes:

PART 29—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE ARCHITECT OF THE CAPITOL

1. The authority citation for Part 29 continues to read as follows:

Authority: 31 U.S.C. 753.

2. Section 29.3 is amended by removing paragraph (c).

3. Section 29.6 is amended by revising paragraph (a)(2) and removing paragraph (d) to read as follows:

§ 29.6 Requirement for exhaustion of internal administrative remedies provided by the Architect of the Capitol.

(a) * * *

(2) 150 days have passed after the filing of an internal complaint of discrimination or retaliation and the Architect of the Capitol has not issued a final decision on the complaint.

* * * * *

3. Section 29.8 is amended by revising paragraph (b)(2) as follows:

§ 29.8 Filing a charge with the General Counsel.

* * * * *

(b) * * *

(2) At any time after the passage of 150 days following the filing of an internal complaint of discrimination or retaliation, if the Architect of the Capitol has not yet issued a final decision on the internal complaint.

* * * * *

§ 29.12 [Removed and reserved]

4. Section 29.12 is removed and reserved.

5. Section 29.13 is amended by revising the section heading, removing paragraph (a), redesignating paragraph (b) as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 29.13 Applicability of this part.

* * * * *

(b) The regulations in this part apply to all charges filed with the Board prior to January 23, 1996, the effective date of § 201 of the Congressional Accountability Act of 1995 (CAA), Pub. L. 104–1, 109 Stat. 3 (January 23, 1995). They also apply to any charge filed after that date pursuant to the terms of § 506(b) of the CAA.

Nancy A. McBride,

Chair, Personnel Appeals Board, U.S. General Accounting Office.

[FR Doc. 95–16475 Filed 7–5–95; 8:45 am]

BILLING CODE 1610–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 316

RIN 3206–AF56

Temporary Schedule C Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations which permit agencies to establish temporary Schedule C positions in order to assist a department or agency head during the period immediately following a change in presidential administration, when a new department or agency head has entered on duty, or when a new department or agency is created. To simplify the Schedule C appointment process, OPM is combining two separate, temporary Schedule C authorities into a single transitional appointing authority, and is setting a new overall limit on the number of new positions agencies may establish.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole, (202) 606–0950, or fax (202) 606–0390.

SUPPLEMENTARY INFORMATION: On December 7, 1994 (59 FR 63064), OPM published proposed regulations to merge the Identical Temporary Schedule C (ITC) and New Temporary Schedule C (NTC) authorities into a single temporary transitional authority. Agencies could use this authority without prior OPM approval for up to a year after a Presidential transition or a new agency head came on board, and individual appointments could be made for up to 120 days, with one extension for an additional 120 days.

In addition, OPM proposed to revise the overall limit on the number of positions an agency could establish to either 50 percent of the highest number of permanent Schedule C positions filled by that agency at any time over the previous 5 years, or three positions, whichever is higher.

The proposed regulations also codified a requirement in law on the detailing of Schedule C incumbents to the White House, and contained a conforming amendment to part 316, § 316.403, pertaining to provisional appointments, to change the terminology of ITC and NTC appointments to temporary transitional.

We received comments from one Federal agency that was in favor of establishing a single transitional authority, but felt the agency quota of new positions should be increased or eliminated to reduce potential delays in filling critical positions. The agency suggested that this decision should be delegated to the head of each agency. We did not adopt this suggestion. The quota is designed to permit agencies to bring a reasonable number of Schedule C appointees on board during transition periods when OPM may not be able to process agency requests in a timely manner. Not all Schedule C positions are critical. Therefore, the quota of 50 percent of the highest number of permanent Schedule C positions filled at any time over the previous 5 years should meet the needs of most agencies. However, we recognize there may be extenuating circumstances in individual cases, and have included a provision under which OPM may approve increases in the quota to meet critical needs or in unusual circumstances.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.