

**Subpart J—Statement of Policy or Guidance**

**§ 28.155 Statement of policy or guidance.**

Upon petition by any person, or on its own motion, the Board may issue statements of policy or guidance. In determining whether to issue such a statement, the criteria to be considered by the Board will include, but not be limited to, the following:

- (a) Whether the question presented can more appropriately be resolved by other means;
- (b) Where other means are available, whether a Board statement would prevent the proliferation of cases;
- (c) Whether the resolution of the question presented would have general applicability;
- (d) Whether the question currently confronts the parties as part of their employee-management relationship;
- (e) Whether the question is presented jointly by the parties involved; and
- (f) Whether the issuance by the Board of a statement of policy or guidance would promote the purposes of the General Accounting Office Personnel Act.

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

- Sec.
- 29.1 Purpose and scope.
- 29.2 Definitions.
- 29.3 Jurisdiction of the Board.
- 29.4 Computation of time.
- 29.5 Informal procedural advice.
- 29.6 Requirement for exhaustion of internal administrative remedies provided by the Architect of the Capitol.
- 29.7 Notice of appeal rights.
- 29.8 Filing a charge with the General Counsel.
- 29.9 General Counsel procedures.
- 29.10 Filing a petition for review with the Board.
- 29.11 Board procedures on petitions for review.
- 29.12 [Reserved]
- 29.13 Applicability of this part.

AUTHORITY: 31 U.S.C. 753.

SOURCE: 59 FR 59106, Nov. 16, 1994, unless otherwise noted.

**§ 29.1 Purpose and scope.**

(a) The purpose of this part is to implement the Board's authority under the Architect of the Capitol Human Resources Act, Public Law 103-283, sec. 312, 108 Stat. 1443 (July 22, 1994). That act authorizes the Board to adjudicate certain claims of discrimination and retaliation brought by employees of the Architect of the Capitol. The rules contained in this part establish the procedures to be followed by:

- (1) Employees of the Architect of the Capitol in pursuing discrimination and retaliation claims before the Board;
- (2) The Architect of the Capitol in its dealings with the Board; and
- (3) The Board in carrying out its responsibilities under the Architect of the Capitol Human Resources Act.

(b) In considering any procedural matter not specifically addressed by these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

**§ 29.2 Definitions.**

In this part—

*Board* means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

*Charge* means an allegation, filed with the Board's General Counsel, of an unlawful discriminatory practice that is within the Board's jurisdiction under the Architect of the Capitol Human Resources Act, Public Law 103-283, sec. 312, 108 Stat. 1443 (July 22, 1994).

*Charging party* means an individual filing a charge with the Board's General Counsel.

*Clerk of the Board* means the individual appointed by the Board to receive papers filed with the Board, to maintain the Board's official files, and to advise parties and members of the public on the Board's procedures.

*Days* mean calendar days.

*Employee of the Architect of the Capitol* means any employee of or applicant for employment with the Architect of the Capitol, the Botanic Garden, or the Senate restaurants. It also includes, within 180 days after the termination of such employment, any individual who was formerly an employee of the

## General Accounting Office

## § 29.6

Architect of the Capitol, the Botanic Garden, or the Senate restaurants, and whose claim of violation arises out of such employment. The term “employee of the Architect of the Capitol” does not include any individual who is a House of Representatives garage or parking lot attendant, including the superintendent.

*General Counsel* means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

*Petition for Review* means any request filed with the Board for action to be taken on matters within the Board’s jurisdiction pursuant to the Architect of the Capitol Human Resources Act, Public Law 103–283, sec. 312, 108 Stat. 1443 (July 22, 1994).

*Petitioner* means any individual filing a petition for review with the Board.

*Solicitor* means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to advise parties and members of the public on the Board’s procedures.

### § 29.3 Jurisdiction of the Board.

(a) The Board has jurisdiction to hear and adjudicate claims brought by employees of the Architect of the Capitol alleging discrimination in employment based on:

(1) Race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16;

(2) Age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a; or

(3) Handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and sections 102 through 104 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12112–12114.

(b) The Board has jurisdiction to hear and adjudicate claims brought by any individual alleging that he or she was subjected, by any employee of the Architect of the Capitol, to intimidation or reprisal because of the exercise of any right under the Architect of the Capitol Human Resources Act. This includes claims of retaliation against an individual because he or she:

(1) Opposed practices made unlawful by the Architect of the Capitol Human Resources Act;

(2) Filed a charge or petition for review with the Board;

(3) Utilized the internal procedures provided by the Architect of the Capitol for the resolution of claims of discrimination or reprisal including, but not limited to, the filing of a request for formal or informal advice or the filing of a formal complaint; or

(4) Participated in any proceedings before the Board or the Architect of the Capitol for the resolution of complaints of discrimination or reprisal.

[59 FR 59106, Nov. 16, 1994, as amended at 60 FR 35119, July 6, 1995]

### § 29.4 Computation of time.

For the purposes of this part, time will be computed in the manner described in 4 CFR 28.4.

### § 29.5 Informal procedural advice.

Any party or member of the public may seek advice on all aspects of the Board’s procedures by contacting the Board’s Solicitor, the Board’s General Counsel or the Clerk of the Board. Informal advice will be supplied within the limits of available time and staff.

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

(a) *General.* Under the provisions of the Architect of the Capitol Human Resources Act, any employee of the Architect of the Capitol who wishes to pursue a claim of discrimination or retaliation before the Board must first file an internal complaint with the Architect of the Capitol and exhaust the procedures for resolving such complaints. The procedures for filing such complaints are at present set forth in the Equal Employment Opportunity Procedures Manual issued by the Architect of the Capitol. The internal procedures for resolving complaints of discrimination or retaliation 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

## § 29.7

(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.

(b) *Class claims.* An employee of the Architect of the Capitol who wishes to seek relief before the Board for a class of employees shall first file an internal complaint of discrimination or retaliation with the Architect of the Capitol and exhaust the internal remedies for resolution of such complaints as described in paragraph (a) of this section. It is not necessary that the employee raise class allegations in his or her internal complaint in order to be able to pursue the matter as a class action before the Board.

(c) *Filing a charge with the Board's General Counsel following exhaustion of administrative remedies.* If, following the exhaustion of internal administrative remedies as described in paragraphs (a) or (b) of this section, an employee of the Architect of the Capitol wishes to pursue the matter before the Board, the employee may file a charge with the Board's General Counsel. The procedures for filing such a charge are set forth in § 29.8.

[59 FR 59106, Nov. 16, 1994, as amended at 60 FR 35119, July 6, 1995]

## § 29.7 Notice of appeal rights.

(a) The Architect of the Capitol shall be responsible for ensuring that employees are routinely advised of their appeal rights to the Board. Any final decision on an internal complaint of discrimination shall include a notice of the complainant's right to pursue the matter before the Board including:

(1) The time limits for appealing to the Board;

(2) The address of the Board;

(3) The employee's right to representation before the Board;

(4) The availability of a hearing before the Board where factual issues are in dispute; and

(5) The employee's right to a reasonable amount of official time for the preparation and presentation of his or her appeal.

(b) A copy of the Board's regulations shall be attached to the notice required by paragraph (a) of this section. The

## 4 CFR Ch. I (1-1-03 Edition)

notice shall also be accompanied by proof of service.

## § 29.8 Filing a charge with the General Counsel.

(a) *Who may file.* Any employee of the Architect of the Capitol who claims that he or she has been subjected to unlawful discrimination or retaliation (as defined in § 29.3) may file a charge with the Board's General Counsel. One or more employees may file a charge as representative of a class of employees of the Architect of the Capitol.

(b) *When to file.* A charge by an employee of the Architect of the Capitol must be filed at either of the following times:

(1) Within 30 days after the receipt of a final decision by the Architect of the Capitol on the employee's internal complaint of discrimination or retaliation; or

(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.

(c) *How to file.* Charges may be filed with the General Counsel in person or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First St. NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. When filed by mail, the postmark shall be date of filing for all submissions to the General Counsel.

(d) *What to file.* The charge should include the following information:

(1) Name, address, and telephone number of the charging party. In the case of a class action, a clear description of the class of employees on whose behalf a charge is filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

## General Accounting Office

## § 29.10

(3) The actions complained about, including dates and reason given;

(4) The charging party's reasons for believing that the actions taken constitute unlawful discrimination;

(5) Remedies sought by the charging party;

(6) Information concerning the charging party's exhaustion of administrative remedies before the Architect of the Capitol, including the date the internal complaint of discrimination was filed and, if applicable, the date on which the employee received a final decision from the Architect of the Capitol on his or her complaint of discrimination;

(7) Name and address of the representative, if any, who will act for the charging party;

(8) Signature of the charging party or the charging party's representative.

(e) *Attorney fees only issue raised.* The General Counsel shall not represent the petitioner when the only issue raised is attorney fees. When attorney fees are the only issue raised in a charge to the General Counsel, the General Counsel shall transmit the charge to the Board for processing as a petition for review.

[59 FR 59106, Nov. 16, 1994, as amended at 60 FR 35119, July 6, 1995; 61 FR 36811, July 15, 1996]

### § 29.9 General Counsel procedures.

(a) The General Counsel shall serve on the Architect of the Capitol a copy of the charge, investigate the matters raised in the charge, refine the issues where appropriate, and attempt to settle all matters at issue.

(b) The General Counsel's investigation may include gathering information from the Architect of the Capitol, and interviewing and taking statements from witnesses. Employees of the Architect of the Capitol shall be on official time during the time that they are responding to any requests from the General Counsel.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not sub-

ject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party has been subjected to unlawful discrimination or retaliation as described in § 29.3, then the General Counsel shall not represent the charging party. If the General Counsel determines that there are reasonable grounds to believe that the charging party has been subjected to such discrimination or retaliation, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent him- or herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of the private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with respect to any issue in which the General Counsel finds a significant public interest in the enforcement of the right to be free of unlawful discrimination and retaliation in employment.

### § 29.10 Filing a petition for review with the Board.

(a) *Who may file.* A petition for review may be filed with the Board by any employee of the Architect of the Capitol who has received a Right to Appeal Letter from the General Counsel and who is claiming to have been subjected to unlawful discrimination or retaliation as described in § 29.3.

(b) *When to file.* Petitions for review must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the General Counsel.

(c) *How to file.* Petitions for review may be filed in person or by mail. Please note that the address to be used differs for the two kinds of filing.

## § 29.11

(1) *Filing in person*: A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail*: A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file*. The petition for review shall include the following information:

(1) The name, address, and telephone number of the petitioner. In the case of a class action, a clear description of the class of employees on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for the actions the petitioner wishes to have the Board review;

(3) The actions being complained about including dates and reasons given;

(4) Petitioner's reasons for believing that the actions constituted unlawful discrimination or retaliation;

(5) Remedies sought by petitioner;

(6) Information concerning petitioner's exhaustion of administrative remedies before the Architect of the Capitol, including the date that an internal complaint of discrimination or retaliation was filed and the date, if applicable, that the petitioner received a final decision from the Architect of the Capitol;

(7) Name, address, and telephone number of the representative, if any, who will act for the petitioner;

(8) Signature of the petitioner or the petitioner's representative.

(e) *Amendments to a petition for review*. Failure to raise a claim in the petition for review shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Class Actions*. One or more employees of the Architect of the Capitol may file a petition for review as representatives of a class of employees in any matter within the Board's jurisdiction as set forth in § 29.3. In determining whether it is appropriate to treat an appeal as a class action, the Board will be guided, but not controlled, by the

## 4 CFR Ch. I (1–1–03 Edition)

applicable provisions of the Federal Rules of Civil Procedure.

[59 FR 59106, Nov. 16, 1994, as amended at 61 FR 36811, July 15, 1996]

### § 29.11 Board procedures on petitions for review.

In adjudicating petitions for review filed by employees of the Architect of the Capitol, the Board will generally follow the same procedures as it does for adjudicating petitions for review filed by General Accounting Office (GAO) employees under 4 CFR part 28, subpart B. The Board specifically adopts the regulations contained in 4 CFR 28.19 through 28.90 as the procedures it will follow for petitions for review filed by Architect of the Capitol employees. The Architect of the Capitol will have the same obligations and responsibilities as are assigned to the GAO under those regulations. The regulations concerning ex parte communications, contained in 4 CFR part 28, subpart I, will also be applicable to all proceedings brought by or on behalf of employees of the Architect of the Capitol.

### § 29.12 [Reserved]

### § 29.13 Applicability of this part.

(a) The regulations in this part do not apply to any claim of discrimination or retaliation by an employee of the Architect of the Capitol which was pending before, or an appeal from, the Office of Senate Fair Employment Practices on the July 22, 1994, effective date of the Architect of the Capitol Human Resources Act. Any such claims shall continue to be processed pursuant to the procedures established in the Government Employee Rights Act of 1991, 2 U.S.C. 1201, *et seq.*

(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.

[59 FR 59106, Nov. 16, 1994, as amended at 60 FR 35119, July 6, 1995]