

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS INTERIM PROCEDURES
FOR CLAIMS ARISING UNDER THE FAIR CHANCE TO COMPETE FOR JOBS
ACT PROVISIONS OF THE CONGRESSIONAL ACCOUNTABILITY ACT,
2 U.S.C. § 1316b

Subpart A—General Provisions

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Except as otherwise specifically provided herein, Sections 1.01-1.08 of the Procedural Rules of the OCWR shall apply to claims alleging a violation of section 207 of the CAA.

§1.01 Scope and Policy.

Congress applied the Fair Chance to Compete For Jobs Act (FCA) to the legislative branch by amending the provisions of the Congressional Accountability Act (CAA) to add a new section 207, 2 U.S.C. § 1316b. The CAA's FCA provisions become effective on December 20, 2021. 2 U.S.C. § 1316b(e); 5 U.S.C. § 9202.

The FCA directs the Office of Congressional Workplace Rights (OCWR) Board of Directors to issue regulations implementing the FCA in the legislative branch that are parallel to those issued to implement the law in the executive branch. Specifically, the FCA directs the U.S. Office of Personnel Management (OPM) to issue implementing regulations, which are to be adopted by agencies in the executive branch charged with enforcing the law. The FCA directs the OCWR Board of Directors to issue regulations for the legislative branch that are the same as substantive regulations issued by OPM except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more

effective for the implementation of the rights and protections under the FCA in the legislative branch. Once OPM issues its regulations to implement the FCA in the executive branch, the OCWR will commence the process for issuing parallel substantive regulations for the legislative branch.

In the interim, these procedures govern the processing of: (1) claims alleging violations of the FCA, as applied by the CAA; and (2) disciplinary actions against employees of employing offices who are alleged to have violated the FCA.

§1.02 Definitions.

Applicant.—The term “Applicant” means an applicant for employment as a covered employee under the CAA.

Subpart B [Omitted]

Subpart C [Omitted]

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§4.01 Matters Covered by this Subpart.

(a) These Rules govern the processing of any allegation that section 207 of the CAA has been violated.

(b) This subpart applies to applicants, employing offices, and employees of employing offices within the coverage of section 207 of the CAA and referenced above in Section 4.01(a) of these interim procedures.

§4.02 Requests for Advice and Information.

Except as otherwise specifically provided herein, Section 4.02 of the Procedural Rules of the OCWR concerning Requests for Advice and Information shall apply to claims alleging a violation of section 207 of the CAA.

§4.03 Confidential Advising Services.

Except as otherwise specifically provided herein, Section 4.03 of the Procedural Rules of the OCWR concerning Confidential Advising services shall apply to claims alleging a violation of section 207 of the CAA.

§4.04 Claims.

(a) *Who May File.* An applicant alleging any violation of section 207 of the CAA may commence a proceeding by filing a timely claim pursuant to section 402 of the CAA.

(b) *When to File.* An applicant may not file a claim under this section alleging a violation of section 207 after the expiration of the 180-day period that begins on the date of the alleged violation.

(c) *Form and Contents.* All claims alleging violations of section 207 shall be on the form provided by the Office either on paper or electronically, signed manually or electronically under oath or affirmation by the claimant, and contain the following information, if known:

- (1) the name, mailing and e-mail addresses, and telephone number(s) of the claimant;
- (2) the name of the employing office against which the claim is brought;
- (3) the name(s) and title(s) of the individual(s) involved in the conduct that the employee alleges is a violation of section 207;
- (4) a description of the conduct being challenged, including the date(s) of the conduct;
- (5) a description of why the claimant believes the challenged conduct is a violation of section 207;
- (6) a statement of the specific relief or remedy sought; and

(7) the name, mailing and e-mail addresses, and telephone number of the representative, if any, who will act on behalf of the claimant.

§4.05 Civil Actions.

Civil Action. An applicant may not file a civil action concerning an alleged violation of section 207 of the CAA.

§4.06 Initial Processing and Transmission of Claim; Notification Requirements.

(a) After receiving a claim form alleging a violation of section 207 of the CAA, the Office shall record the pleading, transmit immediately (i.e., without undue delay) a copy of the claim form to the head of the employing office and the designated representative of that office, and provide the parties with all relevant information regarding their rights under the CAA, as well as a service list containing the names and addresses of the parties and their designated representatives. A copy of these interim procedures and the Procedural Rules of the OCWR also may be provided to the parties upon request.

(b) *Notification of Availability of Mediation.*

(1) Upon receipt of a claim form, the Office shall notify the applicant who filed the claim form about the mediation process under Section 4.07 of the OCWR Procedural Rules and the deadlines applicable to mediation.

(2) Upon transmission to the employing office of the claim, the Office shall notify the employing office about the mediation process under the CAA and the deadlines applicable to mediation.

(c) *Special Requirements for Employees Alleged to have Violated the FCA.*

(1) If a claim alleges that an employee or employees of an employing office committed a violation described in section 207 of the CAA, or if such an allegation is made during any stage of the proceedings under this subpart after the filing of a claim, the Office shall notify the employee(s) of the claim, the possibility that the employee(s) may be subject to discipline pursuant to section 207(c) of the CAA after notice and an opportunity for a hearing on the record, and the right of the employee(s) to intervene in any proceeding under the CAA concerning the claim, as well as the method of intervening.

(2) As set forth in these interim procedures, any employee against whom a claim has been presented under this paragraph is entitled to—

(i) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

(ii) be represented by an attorney or other representative;

- (iii) a hearing before a Merits Hearing Officer designated by the Board;
- (iv) have a transcript kept of any hearing; and
- (v) a written decision and reasons therefor, including a copy of any final order directing the imposition of disciplinary action.

§4.07 Mediation.

Section 4.07 of the Procedural Rules of the OCWR concerning Mediation shall apply to claims alleging a violation of section 207 of the CAA, provided that, if the claimant has alleged that an employee or employees of an employing office committed a violation described in section 207 of the CAA:

- (a) the Office shall permit the employee(s) to request mediation pursuant to Section 4.07 of the Procedural Rules of the OCWR;
- (b) the Office shall notify promptly such employee of the right to intervene in any mediation concerning the claim, as well as the method of intervening, if an employee has not already done so; and
- (c) the intervening employee(s) may elect to participate in mediation proceedings through a designated representative.

§4.08 Preliminary Review of Claims.

Section 4.08 of the Procedural Rules of the OCWR concerning Preliminary Review of Claims shall not apply to claims alleging a violation of section 207 of the CAA.

§4.09 Request for Administrative Hearing.

- (a) The filing of a claim form with the Office alleging a violation of section 207 of the CAA shall be deemed a request for an administrative hearing pursuant to section 405(a) of the CAA.
- (b) *Notification of Request for Administrative Hearing.* The Office shall promptly notify the employing office or its designated representative of the claimant's request for an administrative hearing.
- (c) *Appointment of the Merits Hearing Officer.* Upon the filing of a request for an administrative hearing under paragraph (a) of this section, the Executive Director shall appoint an independent Merits Hearing Officer to consider the claim(s) and render a decision, who shall have the authority specified in Sections 4.10 and 7.01 of these interim procedures below. When a claimant alleges that an employee of an employing office committed a violation described in section 207 of the CAA, if the employee has not already intervened in the matter, the Office shall

notify promptly such employee of the right to intervene in any hearing concerning the claim, as well as the method of intervening.

(d) *Amendments to Claims.* Any request to amend the claim(s) after a hearing has been requested must be made by motion to the Merits Hearing Officer. The motion must be accompanied by a copy of the proposed amended claim form. Amendments to claims may be permitted in the Merits Hearing Officer's discretion, provided that such amendments will not unduly prejudice the rights of the employing office or of other parties, unduly delay the proceedings, or otherwise interfere with or impede the proceedings.

(e) *Answer.*

(1) Within 15 days after receiving notice of a request for an administrative hearing under paragraph (a), the respondent(s) shall file an answer with the Office and serve one copy on the claimant.

(2) In answering a claim form, a respondent must state in short and plain terms its defenses to each claim asserted against it, and admit or deny the allegations asserted against it. If the respondent lacks knowledge or information sufficient to form a belief about the truth of an allegation, the respondent must so state, and the statement has the effect of a denial.

(3) Failure to deny an allegation, other than one relating to the amount of damages, or to raise a defense as to any allegation(s) shall constitute an admission of such allegation(s). Affirmative defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the claim form shall be deemed waived.

(4) A respondent's motion for leave to amend an answer to interpose a denial or affirmative defense will ordinarily be granted unless to do so would unduly prejudice the rights of the other party or unduly delay or otherwise interfere with or impede the proceedings.

(f) *Motions to Dismiss.* In addition to an answer, a respondent may file a motion to dismiss, or other responsive pleading with the Office and serve one copy on the claimant. Responses to any motions shall comply with Section 1.04(c) of the OCWR's Procedural Rules. If, on a motion to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Merits Hearing Officer, the motion must be treated as one for summary judgment, and all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

§4.10 Dismissal, Summary Judgment, and Withdrawal of Claim.

Except as otherwise specifically provided herein, Section 4.10 of the Procedural Rules of the OCWR concerning Dismissal, Summary Judgment, and Withdrawal of Claims shall apply to claims alleging a violation of section 207 of the CAA.

§4.11 Confidentiality.

Except as otherwise specifically provided herein, Section 4.11 of the Procedural Rules of the OCWR concerning Confidentiality shall apply to claims alleging a violation of section 207 of the CAA.

Subpart E—[omitted]

Subpart F—Discovery and Subpoenas

§6.01 Discovery

§6.02 Requests for Subpoenas

§6.03 Service of Subpoena

§6.04 Proof of Service of Subpoena

§6.05 Motion to Quash or Limit Subpoena

§6.06 Enforcement of Subpoena

§6.07 Requirements for Sworn Statements in Support of Subpoena

Except as otherwise specifically provided herein, Sections 6.01—6.07 of the Procedural Rules of the OCWR shall apply to claims alleging a violation of section 207 of the CAA.

Subpart G—Hearings

§7.01 The Merits Hearing Officer

§7.02 Sanctions

§7.03 Disqualification or Withdrawal of a Merits Hearing Officer

§7.04 Motions, Initial Conference, and Prehearing Conference

§7.05 Scheduling the Hearing

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§7.13 Immediate Board Review of a Merits Hearing Officer's Ruling

§7.14 Proposed Findings of Fact and Conclusions of Law; Posthearing Briefs

§7.15 Closing the Record

§7.16 Merits Hearing Officer Decisions; Entry in Office Records; Correcting the Record; Motions to Alter, Amend or Vacate the Decision.

Except as otherwise specifically provided herein, sections 7.01—7.16 of the Procedural Rules of the OCWR concerning the Merits Hearing Officer shall apply to claims alleging a violation of section 207 of the CAA.

§7.16 Merits Hearing Officer Decisions; Entry in Office Records; Corrections to the Record; Motions to Alter, Amend, or Vacate the Decision.

(a) The Merits Hearing Officer shall issue a written decision no later than 90 days after the hearing ends, pursuant to section 405(g) of the CAA.

(b) The Merits Hearing Officer's written decision shall:

- (1) state the issues raised in the claim form;
- (2) describe the evidence in the record;
- (3) contain findings of fact and conclusions of law, and the reasons or bases therefore, on all the material issues of fact, law, or discretion presented on the record, including:

(i) findings whether the alleged violation or violations of section 207 of the CAA occurred;

(ii) findings whether any violations found to have occurred were committed by a current employee or employees of an employing office named in the claim or during proceedings following the filing of a claim; and

(iii) where any violations by a current employee or employees of an employing office named in the claim are found, an order directing the employing office to impose disciplinary action as specified in section 9204 of title 5, United States Code.

(c) Upon issuance, the Merits Hearing Officer's written decision shall be entered into the Office's records.

(d) The Office shall promptly provide a copy of the Merits Hearing Officer's written decision to the parties.

(e) If there is no appeal of a Merits Hearing Officer's decision, that decision becomes a final decision of the Office.

(f) *Corrections to the Record.* After a Merits Hearing Officer's decision has been issued, but before an appeal is made to the Board, or absent an appeal, before the decision becomes final, the Merits Hearing Officer may issue an erratum notice to correct simple errors or easily correctible mistakes. The Merits Hearing Officer may do so on a party's motion or on his or her own motion with or without advance notice.

(g) After a Merits Hearing Officer's decision has been issued, but before an appeal is made to the Board, or absent an appeal, before the decision becomes final, a party to the proceeding before the Merits Hearing Officer may move to alter, amend, or vacate the decision. The moving party must establish that relief from the decision is warranted because: (1) of mistake, inadvertence, surprise, or excusable neglect; (2) there is newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new hearing; (3) there has been fraud (misrepresentation or misconduct) by an opposing party; (4) the decision is void; (5) the decision has been satisfied, released, or discharged; (6) the decision is based on an earlier decision that has been reversed or vacated or on a provision of law that has been amended, repealed, or ruled unconstitutional; or (7) applying the decision prospectively is no longer equitable. The motion shall be filed within 15 days after service of the Merits Hearing Officer's decision. No response shall be filed unless the Merits Hearing Officer so orders. The filing and pendency of a motion under this provision shall not relieve a party of the obligation to file a timely appeal or operate to stay the Merits Hearing Officer's action unless the Merits Hearing Officer so orders.

Subpart H—Proceedings before the Board

§8.01 Appeal to the Board

§8.02 Reconsideration

§8.03 Compliance with Final Decisions, Requests for Enforcement

§8.04 Judicial Review

§8.05 Application for Review of an Executive Director Action

§8.06 Exceptions to Arbitration Awards

§8.07 Expedited Review of Negotiability

§8.08 Procedures of the Board in Impasse Proceedings

§8.01 Appeal to the Board.

Except as otherwise specifically provided herein, Section 8.01 of the Procedural Rules of the OCWR concerning Appeals to the Board shall apply to claims alleging a violation of section 207 of the CAA.

§8.02 Reconsideration.

Except as otherwise specifically provided herein, Section 8.02 of the Procedural Rules of the OCWR concerning Reconsideration shall apply to claims alleging a violation of section 207 of the CAA.

§8.03 Compliance with Final Decisions, Requests for Enforcement.

(a) *Compliance Report and Petitions.*

(1) Unless the Board has, in its discretion, stayed the final decision of the Office during the pendency of an appeal pursuant to section 407 of the CAA, a party required to take any action under the terms of a final decision of the Office shall carry out its terms promptly, and shall within 30 days after the decision or order becomes final and goes into effect by its terms, provide the Office and all other parties to the proceedings with a compliance report specifying the manner in which compliance with the provisions of the decision or order has been accomplished.

(2) In any case in which the Merits Hearing Officer directs the employing office to impose disciplinary action pursuant to Section 7.16(b)(3) of these interim procedures, the

employing office head shall, within 60 days after receiving the final order, transmit a report to the Executive Director on each action taken or proposed to be taken. If complete compliance has not been accomplished within 30 days, the party required to take any such action shall submit a compliance report specifying why compliance with any provision of the decision or order has not yet been fully accomplished, the steps being taken to assure full compliance, and the anticipated date by which full compliance will be achieved.

(b) *Additional Reports.* The Office may require additional reports as necessary.

(c) *Failure to File Compliance Report.* If the Office does not receive notice of compliance in accordance with paragraph (a) of this Section, the Office shall make inquiries to determine the status of compliance. If the Office cannot determine that full compliance is forthcoming, the Office shall report the failure to comply to the Board and recommend whether court enforcement of the decision should be sought.

(d) *Petition for Enforcement.* To the extent provided in section 407(a) of the CAA and Section 8.04 of these interim procedures, the appropriate party may petition the Board for enforcement of a final decision of the Office or the Board. The petition shall specifically set forth the reasons why the petitioner believes enforcement is necessary.

(e) *Notice to Show Cause.* Upon receipt of a report of noncompliance or a petition for enforcement of a final decision, or as it otherwise determines, the Board may issue a notice to any person or party to show cause why the Board should not seek judicial enforcement of its decision or order.

(f) *Petition to Court.* Within the discretion of the Board, it may direct the General Counsel to petition the court for enforcement under section 407(a)(2) of the CAA of a decision under section 406(e) of the CAA whenever the Board finds that a party has failed to comply with its decision and order.

§8.04 Judicial Review.

Section 8.04 of the Procedural Rules of the OCWR concerning Judicial Review shall not apply to claims alleging a violation of section 207 of the CAA.

§§ 8.05—8.08

Subpart I—[omitted]

Except as otherwise specifically provided herein, subpart I of the Procedural Rules of the OCWR concerning Other Matters of General Applicability shall apply to claims alleging a violation of section 207 of the CAA.