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code of federal regulations

Accounts

4

Revised as of January 1, 1997

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 4 CFR 2.1 *refers to title 4, part 2, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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RICHARD L. CLAYPOOLE,
Director,
Office of the Federal Register.

January 1, 1997.

THIS TITLE

Title 4—ACCOUNTS is composed of one volume. This volume is comprised of chapter I—General Accounting Office (GAO) and chapter II—General Accounting Office jointly with the Department of Justice. The contents of this volume represent all current regulations codified under this title of the CFR as of January 1, 1997.

For this volume, Carol Conroy was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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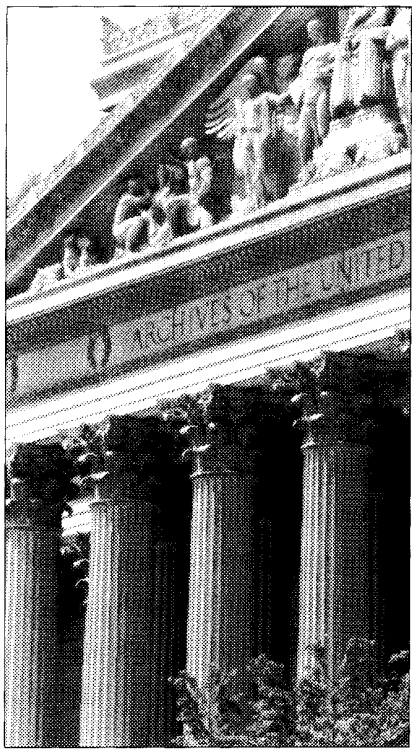

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SUBCHAPTER A—PERSONNEL SYSTEM

PART 2—PURPOSE AND GENERAL PROVISION

Sec.
2.1 Purpose, scope, and applicability.
2.2 References.
2.3 GAO Personnel Appeals Board.
2.4 Merit system principles.
2.5 Prohibited personnel practices.
2.6 Veterans' preference.

AUTHORITY: 31 U.S.C. 732.

SOURCE: 45 FR 68375, Oct. 15, 1980, unless otherwise noted.

§ 2.1 Purpose, scope, and applicability.

(a) This regulation establishes and sets forth the basic policy for the General Accounting Office (GAO) personnel system. Personnel management is a primary responsibility of all who plan, direct, or supervise the work of employees. The objective of personnel management is to contribute to the effective accomplishment of GAO's mission through proper acquisition, development, fair treatment, motivation, compensation and productive utilization of employees.

(b) Nothing in this regulation prohibits or restricts any lawful effort to achieve equal employment opportunity through affirmative action.

§ 2.2 References.

(a) Subchapters III and IV of Chapter 7 of Title 31 U.S.C.

(b) Title 5, United States Code.

[45 FR 68375, Oct. 15, 1980, as amended at 47 FR 56979, Dec. 22, 1982]

§ 2.3 GAO Personnel Appeals Board.

The General Accounting Office Personnel Appeals Board is established by 31 U.S.C. 751. This board will promulgate regulations providing for employee appeals and establishing its operating procedures.

[47 FR 56979, Dec. 22, 1982]

§ 2.4 Merit system principles.

(a) Merit personnel systems are based on the principle that an organization is best served by motivated, competent, honest and productive workers. In a merit system, employees are hired, promoted, rewarded, and retained on the basis of individual ability and fitness for employment without regard to race, color, sex, religion, age, or national origin. Central to this principle is the protection of employees from discrimination, improper political influence and personal favoritism.

(b) Equal employment opportunity is an integral part of every merit system. Affirmative action plans, designed to provide a work force reflective of the Nation's diversity, must assure that both in operation and results the merit system reflects equal opportunity at every step of the personnel process.

(c) GAO personnel systems shall embody the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of substantially equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will

not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be protected against arbitrary action, personal favoritism, or coercion from partisan political purposes and prohibited from using their official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employee reasonably believes evidences: a violation of any law, rule or regulation; or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

§ 2.5 Prohibited personnel practices.

Any GAO employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority engage in the following prohibited personnel practices.

(a) *Discrimination.* GAO employees shall not discriminate for or against any employee or applicant for employment—

(1) On the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000 e–16);

(2) On the basis of age, as prohibited under section 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(3) On the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(4) On the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(5) On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.

(b) *Recommendations or statements.* GAO employees shall not solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(1) An evaluation of the work performance, ability, aptitude, or general qualifications of such individual, or

(2) An evaluation of the character, loyalty, or suitability of such individual.

(c) *Political activity.* GAO employees shall not coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

(d) *Compete for employment.* GAO employees shall not deceive or willfully obstruct any person with respect to such person's right to compete for employment.

(e) *Influencing competition.* GAO employees shall not influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

(f) *Preference or advantage.* GAO employees shall not grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

(g) *Relatives.* GAO employees who are serving as public officials (as defined in section 3110(a)(2) of title 5, United States Code) shall not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a GAO position any individual who is a relative (as defined in section 3110(a)(3) of title 5, U.S. Code) of such employee.

(h) *Reprisals.* GAO employees shall not take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

(1) A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) A violation of any law, rule, or regulation, or

(ii) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) A disclosure to the General Counsel of the GAO Personnel Appeals Board of information which the employee or applicant reasonably believes evidences—

(i) A violation of any law, rule, or regulation, or

(ii) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(i) *Reprisals for appeals.* GAO employees shall not take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation.

(j) *Discrimination for conduct.* GAO employees shall not discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, or the District of Columbia, or of the United States.

(k) *Other personnel actions.* GAO employees shall not take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule or regulation implementing, or directly concerning, the merit system principles described in §2.4.

(l) *Information to the Congress.* Nothing in this section shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

§2.6 Veterans' preference.

(a) GAO will provide preference, for any individual who would be a preference eligible in the executive branch, in a manner and to an extent consistent with preference eligibles in the executive branch.

(b) Appeals from preference decisions will be heard by the GAO Personnel Appeals Board.

PART 3—EMPLOYMENT

Sec.
3.1 Appointment, promotion, and assignment.
3.2 Oath of office.
3.3 Assignments to and from States.

AUTHORITY: 31 U.S.C. 732.

SOURCE: 45 FR 68376, Oct. 15, 1980, unless otherwise noted.

§3.1 Appointment, promotion, and assignment.

Employees of GAO shall be appointed, promoted and assigned solely on the basis of merit and fitness, but without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service.

§3.2 Oath of office.

The provisions of subchapter II of chapter 33 of title 5, U.S. Code, and Office of Personnel Management implementing regulations apply to General Accounting Office employees.

§3.3 Assignments to and from States.

The provisions of subchapter VI of chapter 33 of title 5, U.S. Code, and Office of Personnel Management implementing regulations apply to General Accounting Office employees.

PART 4—EMPLOYEE PERFORMANCE AND UTILIZATION

Sec.
4.1 Training.
4.2 Performance appraisal.
4.3 Removal for unacceptable performance.
4.4 Incentive awards.

AUTHORITY: 31 U.S.C. 732.

SOURCE: 45 FR 68376, Oct. 15, 1980, unless otherwise noted.

§ 4.1 Training.

The provisions of chapter 41, of title 5, United States Code, and Office of Personnel Management implementing regulations apply to General Accounting Office employees.

§ 4.2 Performance appraisal.

(a) The GAO shall develop one or more performance appraisal systems which provide for periodic appraisals of job performance of employees; encourages employee participation in establishing performance standards; and uses the results of performance appraisal as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

(b) Each performance appraisal system shall provide for—

(1) Establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of job-related criteria (which may include the extent of courtesy demonstrated to the public) for each GAO employee.

(2) As soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to reach GAO employee the performance standards and the critical elements of the employee's position.

(3) Annually evaluating each employee during the appraisal period on such standards.

(4) Recognizing and rewarding employees whose performance so warrants.

(5) Assisting employees in improving unacceptable performance.

(6) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

§ 4.3 Removal for unacceptable performance.

GAO may reduce in grade/pay level or remove an employee for unacceptable performance in accordance with the provisions of this section.

(a) *Employee entitlement.* A GAO employee whose reduction in grade/pay level or removal is proposed under this section is entitled to—

(1) An advance written notice of the proposed action which identifies—

(i) Specifies instances of unacceptable performance by the employee on which the proposed action is based; and

(ii) The critical elements of the employee's position involved in each instance of unacceptable performance.

(2) Be represented by an attorney or other representative.

(3) A reasonable time to answer orally and in writing.

(4) A written decision which—

(i) Specific the instances of unacceptable performance by the employee on which the reduction in grade/pay level or removal is based.

(ii) Unless proposed by the Comptroller General or by a senior manager (e.g., the Deputy Comptroller General, an Assistant Comptroller General, or a Division or Office Director) has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(b) *Decisions to retain, reduce in grade/pay level or remove.* The decision to retain, reduce in grade or remove a GAO employee—

(1) Shall be made within 30 days after the date of expiration of the notice period, and

(2) In the case of reduction in grade/pay level or removal, may be based only on those instances of unacceptable performance by the employee—

(i) Which occurred during the 1-year period ending on the date of the notice of the proposed action.

(ii) For which the notice and other requirements of this section are complied with.

(c) *Performance improvement.* If because of performance improvement by the employee during the notice period, the employee is not reduced in grade/pay level or removed, and the employee's performance continues to be acceptable for 1 year from the date of advance written notice, any records shall be retained only as prescribed by other recordkeeping requirements, such as grievances, adverse action appeals, or

discrimination complaints. In these circumstances any entry or notation of unacceptable performance shall be removed from the employee's official personnel folder and maintained in separate files to be used only in connection with an employee initiated complaint.

(d) *Appeals.* A GAO employee who has been reduced in grade/pay level or removed under this section is entitled to appeal the action to the GAO Personnel Appeals Board.

(e) *Nonapplicability.* This section does not apply to—

(1) The reduction to the grade/pay level previously held of a supervisor or manager who has not completed the trial period.

(2) The reduction in grade/pay level or removal of a GAO employee who is serving a trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.

(3) Employees in the GAO Senior Executive Service.

§4.4 Incentive awards.

The provisions of chapter 45 of title 5, United States Code and Office of Personnel Management implementing regulations apply to General Accounting Office employees.

PART 5—COMPENSATION

Sec.
5.1 Pay.
5.2 Grade and pay retention.
5.3 Merit pay.
5.4 Pay administration.
5.5 Travel, transportation, and subsistence.
5.6 Allowances.

AUTHORITY: 31 U.S.C. 732.

SOURCE: 45 FR 68377, Oct. 15, 1980, unless otherwise noted.

§5.1 Pay.

(a) *Pay principles.* Pay of the employees of GAO shall be fixed by the Comptroller General consistent with the principles that—

(1) There be equal pay for work of substantially equal value.

(2) Pay distinctions be maintained in keeping with work and performance distinctions.

(3) Pay rates be comparable with private enterprise pay rates for the same levels of work.

(4) Pay levels be interrelated to the General Schedule.

(b) *Pay rates.* (1) The Comptroller General shall publish a schedule of pay rates which shall apply to GAO employees. Except as provided in paragraph (b) (2) of this section, and regulations for the GAO Senior Executive Service, the highest rate under such schedule shall not exceed the highest rate of basic pay payable for grade GS–15 under the General Schedule.

(2) Such schedule may provide for rates which do not exceed the maximum rate payable for grade GS–18 of the General Schedule for up to one hundred employees, reduced by the number of employees who are in the GAO Senior Executive Service, other than those in such service pursuant to 31 U.S.C. 733(c).

(c) Pay adjustments. Except as provided in regulations for the GAO Senior Executive Service and the Merit Pay System, the pay of GAO employees shall be adjusted at the same time and to the same extent as rates of basic pay are adjusted for the General Schedule.

[45 FR 68377, Oct. 15, 1980, as amended at 47 FR 56979, Dec. 22, 1982]

§5.2 Grade and pay retention.

(a) *Change of positions.* Any GAO employee who is placed in a lower grade position as a result of a reduction-in-force may be entitled to the retained grade of the higher position he or she previously held. The employee receives this entitlement (which is for a period of 2 years) if he or she has served for at least 52 consecutive weeks in one or more positions at a grade or grades higher than the new position. The 2-year period begins on the date of placement to the lower grade position.

(b) *Reclassification.* Any GAO employee who is in a position which is reduced in grade is entitled to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of reduction in grade. However, this section shall not apply to any reduction in the grade of a position which had not been classified at

the higher grade for a continuous period of at least 1 year immediately before such reduction.

(c) *Retained grade.* For the 2-year period referred to in paragraphs (a) and (b) of this section, the retained grade of GAO employees shall be treated as the grade of the employee's position for all purposes (including pay and pay administration, retirement, life insurance and eligibility for training and promotion) except—

(1) For purposes of § 5.2(a).

(2) For purposes of applying any reduction-in-force procedures.

(3) For purposes of determining whether the employee is covered by a merit pay system.

(4) For such other purposes as the Comptroller General may provide by regulation.

(d) *Termination of retained grade.* The foregoing provisions of this section shall cease to apply to any GAO employee who—

(1) Has a break in service of 1 workday or more;

(2) Is demoted for personal cause or at the employee's request;

(3) Is placed in, or declines, a reasonable offer of, a position the grade of which is equal or higher than the retained grade; or

(4) Elects in writing to have the benefits of this chapter terminate.

(e) *Pay retention.* (1) Any GAO employee: who ceases to be entitled to a retained grade by reason of the expiration of the 2-year period; or who (but for this paragraph) would be subject to a reduction in pay under circumstances prescribed by the Comptroller General by regulation to warrant the application of this paragraph is entitled to—

(2) Basic pay at a rate equal to the employee's allowable former rate of basic pay, plus 50 percent of the amount of each increase in the maximum rate of basic pay payable for the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

(f) ''*Allowable former rate of basic pay.*'' This means the lower of—

(1) The rate of basic pay payable to the employee immediately before the reduction in pay; or

(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

(g) *Termination of retained pay.* The pay retention provisions in § 5.2(e) shall cease to apply to a GAO employee who—

(1) Has a break in service of 1 workday or more.

(2) Is entitled by operation of §§ 5.1, 5.2, and 5.3 to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under § 5.2(e); or

(3) Is demoted for personal cause or at the employee's request.

(h) *Remedial actions.* Under regulations prescribed by the Comptroller General, Personnel shall—

(1) Obtain and make available to employees receiving benefits under this section, information on vacancies in other Federal agencies.

(2) Take such steps as may be appropriate to assure employees receiving benefits under this section have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of this section; and

(3) Establish a program under which employees receiving benefits under this section are given priority in the consideration for or placement in positions which are equal to their retained grade or pay.

(i) *Appeals.* In the case of the termination of any benefits to a GAO employee under this section on the grounds that such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than their retained grade or pay, after administrative remedies have been exhausted, such termination may be appealed to the GAO Personnel Appeals Board under procedures prescribed by the Board.

§ 5.3 Merit pay.

The Comptroller General may promulgate regulations establishing a merit pay system for such employees of the General Accounting Office as the Comptroller General considers appropriate. The merit pay system shall be

designed to carry out purposes consistent with those set forth in section 5401(a) of title 5, United States Code, which provides—

§5401. Purpose

(a) It is the purpose of this chapter to provide for—

(1) A merit pay system which shall—

(A) Within available funds, recognize and reward quality performance by varying merit pay adjustments;

(B) Use performance appraisals as the basis for determining merit pay adjustments;

(C) Within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and

(D) Regulate the costs of merit pay by establishing appropriate control techniques; and

(2) A cash award program which shall provide cash awards for superior accomplishment and special service.

§5.4 Pay administration.

The provisions of chapter 55 of title 5, U.S. Code and the Office of Personnel Management implementing regulations apply to General Accounting Office employees.

§5.5 Travel, transportation, and subsistence.

The provisions of chapter 57 of title 5, U.S. Code and the implementing regulations for the Executive Branch apply to General Accounting Office employees.

§5.6 Allowances.

The provisions of chapter 59 of title 5, U.S. Code and the implementing regulations for the Executive Branch apply to General Accounting Office employees.

PART 6—ATTENDANCE AND LEAVE

AUTHORITY: 31 U.S.C. 732.

§6.1 Applicable law and regulations.

The provision of subpart E, title 5, United States Code and the Office of Personnel Management implementing regulations regarding ''Attendance and Leave'' apply to General Accounting Office employees. This includes hours of work, annual leave, sick leave, and other paid leave.

[45 FR 68378, Oct. 15, 1980, as amended at 47 FR 56979, Dec. 22, 1982]

PART 7—PERSONNEL RELATIONS AND SERVICES

Sec.

7.1 Labor management relations.
7.2 Equal employment opportunity.
7.3 Political activities.
7.4 Employment limitations, foreign gifts and decorations, and misconduct.
7.5 Adverse actions: Suspensions for 14 days or less.
7.6 Adverse actions: Removal, suspension for more than 14 days, reduced in grade, reduced in pay or furloughed for 30 days or less.
7.7 Other appeals and grievances.
7.8 Services to employees.

AUTHORITY: 31 U.S.C. 732.

SOURCE: 45 FR 68378, Oct. 15, 1980, unless otherwise noted.

§7.1 Labor management relations.

(a) *Policy*. Each employee of GAO has the right, freely and without fear of penalty or reprisal, to form, join, or assist an employee organization, or to refrain from such activity.

(b) *Labor relations program*. A labor relations program consistent with chapter 71 of title 5, United States Code will be developed for the General Accounting Office.

§7.2 Equal employment opportunity.

(a) *Policy*. All personnel actions affecting employees or applicants for employment in GAO shall be taken without regard to race, color, religion, age, sex, national origin, political affiliation, marital status or handicapping condition.

(b) *Equal opportunity recruiting program*. GAO shall conduct continuing programs for the recruitment of members of minorities and women for positions in GAO in a manner designed to eliminate underrepresentation of minorities and women in the various categories of employment in GAO. Special efforts will be directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited. GAO will conduct a continuing program of evaluation and oversight of such recruiting programs to determine their effectiveness in eliminating minority and women underrepresentation.

(c) *Statutory rights and remedies.* Nothing in this order shall be construed to abolish or diminish any right or remedy granted to employees of or applicants for employment in GAO—

(1) By section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(2) By sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(3) By section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(4) By sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a); or

(5) By any other law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status or handicapping condition.

(d) *Authorities granted thereunder to the Equal Employment Opportunity Commission, Office of Personnel Management, the Merit Systems Protection Board, or any other agency in the executive branch concerning oversight and appeals shall be exercised by the GAO Personnel Appeals Board.* Other responsibilities shall be exercised by the Comptroller General.

§ 7.3 Political activities.

(a) In this section:

(1) *Contribution* means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(2) *Election* includes a primary, special, and general election.

(3) *Employee* means an individual who occupies a position in the General Accounting Office.

(4) *Employer* or *employing authority* means the Comptroller General, his principals, or an employee's supervisor.

(5) *Federal workplace* means any place, site, installation, building, room, or facility in which any department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

(6) *Nonpartisan election* means—

(i) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(ii) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

(7) *Partisan* when used as an adjective refers to a political party.

(8) *Political fund* means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity.

(9) *Political party* means a national political party, a state political party, and an affiliated organization.

(b) All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this section. Each employee retains the right to—

(1) Register and vote in any election;

(2) Express his opinion as an individual privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge, or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund-raising function, or other political gathering;

(7) Sign a political petition as an individual;

(8) Make a financial contribution to a political fund, political party, or organization;

(9) Take an active part, as an independent candidate, or in support of an independent candidate in a partisan

election covered by paragraphs (h), (i), and (j) of this section;

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his/her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency.

(c) Paragraph (b) of this section does not authorize an employee to engage in political activity in violation of law, while on duty. The Comptroller General may prohibit or limit the participation of an employee or class of employees in an activity permitted by paragraph (b) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

(d) An employee may not use his/her official authority or influence for the purpose of interfering with or affecting the result of an election.

(e) An employee may not take an active part in political management or in a political campaign, except as permitted by this section.

(f) Activities prohibited by paragraph (e) of this section include but are not limited to—

(1) Serving as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(4) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution at or in the federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient.

(g) Paragraph (f) of this section does not apply to—

(1) The Comptroller General or the Deputy Comptroller General;

(2) An employee who resides in a municipality or other political subdivision designated under paragraph (i), subject to the conditions of paragraphs (i) and (j) of this section; or

(3) An employee who works on an irregular or occasional basis, on the days that he/she performs no services.

(h) Paragraph (f) of this section does not prohibit activity in political management or in a political campaign by an employee in connection with—

(1) A nonpartisan election, or

(2) Subject to the conditions and limitations established by the Comptroller General, an election held in a municipality or political subdivision designated under paragraph (i) of this section.

(i) For the purpose of paragraph (h)(2) of this section, the Comptroller General may designate a municipality or political subdivision in Maryland or Virginia in the immediate vicinity of the District of Columbia or a municipality in which the majority of voters are employed by the Government of the United States, when the Comptroller General determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections. The following municipalities and political subdivisions have been designated:

In Maryland

Annapolis
Anne Arundel County
Berwyn Heights
Bethesda
Bladensburg
Bowie
Brentwood
Capitol Heights
Cheverly
Chevy Chase, sections 1, 2, 3, and 4 Martin's Additions 1, 2, 3, and 4 to Chevy Chase
Chevy Chase View
College Park
Cottage City
District Heights
Edmonston
Fairmont Heights
Forest Heights
Garrett Park
Glendarden
Glen Echo
Greenbelt
Howard County
Hyattsville
Kensington
Landover Hills
Montgomery County
Morningside
Mount Rainier
New Carrollton
North Beach
North Brentwood
North Chevy Chase
Northwest Park
Prince Georges County
Riverdale
Rockville
Seat Pleasant
Somerset
Takoma Park
University Park
Washington Grove

In Virginia

Alexandria
Arlington County
Clifton
Fairfax County
Town of Fairfax
Falls Church
Herndon
Loudoun County
Manassas
Manassas Park
Portsmouth
Prince William County
Stafford County
Vienna

Other Municipalities

Anchorage, AK
Benicia, CA
Bremerton, WA
Centerville, GA
Crane, IN
District of Columbia
Elmer City, WA
Huachuca City, AZ
New Johnsonville, TN
Norris, TN
Port Orchard, WA
Sierra Vista, AZ
Warner Robins, GA

(j) An employee who resides in a municipality or political subdivision listed in paragraph (i) of this section may take an active part in political management and political campaigns in connection with partisan elections for local offices of the municipality or political subdivision, subject to the following limitations:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

[53 FR 26421, July 13, 1988]

§7.4 Employment limitations, foreign gifts and decorations, and misconduct.

The provisions of subchapters II, IV, and V of chapter 73 of title 5, United States Code and implementing regulations thereunder continue to apply to this office.

§7.5 Adverse actions: Suspensions for 14 days or less.

(a) *Policy*. A GAO employee may be suspended for 14 days or less for such cause as will promote the efficiency of GAO (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any 1-year period or any other pattern of discourteous conduct). Suspension means placing an employee, for disciplinary reasons, temporarily in a status without duties and pay.

(b) *Employee entitlement*. An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) An advance written notice stating the specific reasons for the proposed action;

(2) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) Be represented by an attorney or other representative; and

(4) A written decision and the specific reasons therefore at the earliest practicable date.

(c) *Documentation*. Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by Personnel and shall be furnished to the employee affected upon the employee's request.

(d) *Nonapplicability*. This section is not applicable to—(1) An employee who is serving a trial period under an initial appointment in GAO or who has not completed 1 year of current continuous employment in the same or similar positions in GAO under other than a temporary appointment limited to 1 year or less.

(2) A suspension in the interest of national security.

§7.6 Adverse actions: Removal, suspension for more than 14 days, reduced in grade, reduced in pay or furloughed for 30 days or less.

(a) *Policy*. A GAO employee may be removed, suspended for more than 14 days, reduction in grade or pay, or furlough for 30 days or less for such cause as will promote the efficiency of GAO. Furloughed means placing an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) *Employee entitlement*. An employee against whom an action is proposed under this section is entitled to—

(1) At least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action,

(2) A reasonable time to answer orally and in writing and to furnish affidavits and other documents in support of the answer.

(3) Be represented by an attorney or other representative; and

(4) A written decision and the specific reasons therefor at the earliest practicable date.

(c) *Appeals*. After administrative remedies have been exhausted, an employee against whom an action is taken under this section is entitled to appeal to the GAO Personnel Appeals Board.

(d) *Documentation*. Copies of the notice of proposed action, the answer of the employee if written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order affecting an action covered by this section, together with any supporting material, shall be maintained by Personnel and shall be furnished to the GAO Personnel Appeals Board upon its request and to the employee affected upon the employee's request.

(e) *Nonapplicability*. This section does not apply to—

(1) Employees who are serving a trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.

(2) A suspension or removal of an employee in the interests of national security.

(3) A reduction in force.

(4) The reduction in grade of a supervisor or manager who has not completed the probationary period.

(5) A reduction in grade or removal for unacceptable performance under part 4.

(6) An action ordered by the GAO Personnel Appeals Board.

§ 7.7 Other appeals and grievances.

The personnel system shall provide procedures for the processing of complaints and grievances which are not otherwise provided for.

§ 7.8 Services to employees.

The provisions of chapter 79 of title 5, United States Code, and the Office of Personnel Management implementing regulations apply to General Accounting Office employees.

PART 8—INSURANCE AND ANNUITIES

AUTHORITY: 31 U.S.C. 732.

§ 8.1 Applicable law and regulations.

The provisions of subpart G, title 5, United States Code and implementing regulations for the Executive Branch covering compensation for work injuries, retirement, unemployment compensation, life insurance, and health insurance apply to General Accounting Office employees.

[45 FR 68380, Oct. 15, 1980, as amended at 47 FR 56979, Dec. 22, 1982]

PART 9—SENIOR EXECUTIVE SERVICE

AUTHORITY: 31 U.S.C. 733.

§ 9.1 GAO Senior Executive Service.

(a) The Comptroller General may promulgate regulations establishing a General Accounting Office Senior Executive Service which meets the requirements set forth in section 3131 of title 5, United States Code, which provides—

§ 3131 The GAO Senior Executive Service

The Senior Executive Service shall be administered so as to—

(1) Provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

(2) Ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

(3) Assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

(4) Recognize exceptional accomplishment;

(5) Enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

(6) Provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

(7) Protect senior executives from arbitrary or capricious actions;

(8) Provide for program continuity in the management of GAO programs;

(9) Maintain a merit personnel system free of prohibited personnel practices;

(10) Ensure accountability for honest, economical, and efficient Government;

(11) Ensure compliance with all applicable personnel laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

(12) Provide for the initial and continuing systematic development of highly competent senior executives;

(13) Provide for an executive system which is guided by the public interest and free from improper political interference; and

(14) Appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

(b) Requirements for positions included in the GAO Senior Executive System. The GAO Senior Executive Service may include—

(1) The 100 positions authorized by 31 U.S.C. 732(c)(4);

(2) The position of the General Counsel authorized by 31 U.S.C. 731(c);

(3) The 5 positions authorized by 31 U.S.C. 731(d); and

(4) The 10 positions authorized by 31 U.S.C. 731(e)(2).

[45 FR 68380, Oct. 15, 1980, as amended at 47 FR 56979, Dec. 22, 1982]

PART 11—RECOGNITION OF ATTORNEYS AND OTHER REPRESENTATIVES

Sec.
11.1 Right to representation before the General Accounting Office.
11.2 Practice by attorneys.
11.3 Authority to represent in payment cases.
11.4 Authority to represent in other cases.
11.5 Revocation of authority to represent.

AUTHORITY: 31 U.S.C. 711.

SOURCE: 41 FR 35155, Aug. 20, 1976. Redesignated at 45 FR 68374, Oct. 15, 1980, unless otherwise noted.

§11.1 Right to representation before the General Accounting Office.

Each person having a claim or other rights assertable in the General Accounting Office may pursue such claim or right individually or through an attorney or other representative.

§11.2 Practice by attorneys.

Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State, territory, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, may represent others before the General Accounting Office.

§11.3 Authority to represent in payment cases.

In the prosecution of claims involving payments to be made by the United States, a proper power of attorney is required before an attorney or other representative may be recognized. A power of attorney from the principal may also be requested in other cases.

§11.4 Authority to represent in other cases.

When an attorney acting in a representative capacity appears in person or signs a document submitted to the General Accounting Office in connection with a matter other than one involving a payment to be made by the United States, his personal appearance or signature shall constitute a representation that he is authorized and qualified to represent the particular party in whose behalf he acts. In the case of representatives other than attorneys, a simple written declaration from the principal will be accepted as evidence of the authority of the representative to act on behalf of the principal.

§11.5 Revocation of authority to represent.

Prior to the conclusion of action by the General Accounting Office on a matter in which a principal is represented by another person whose authority to act is established under either §11.3 or §11.4, the principal may revoke the authority of his representative. Such revocation is not effective unless it is in writing and signed by the principal and until the written revocation is received by the General Accounting Office. Upon notification of the death of the principal during the pendency of any matter involving representation of the principal by an attorney or other party, the General Accounting Office will consider the representative's authority to have been automatically revoked.

SUBCHAPTER B—GENERAL PROCEDURES

PART 21—BID PROTEST REGULATIONS

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21.1 Filing a protest.
21.2 Time for filing.
21.3 Notice of protest, submission of agency report, and time for filing of comments on report.
21.4 Protective orders.
21.5 Protest issues not for consideration.
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21.7 Hearings.
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21.10 Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status and other conferences.
21.11 Effect of judicial proceedings.
21.12 Distribution of decisions.
21.13 Nonstatutory protests.
21.14 Request for reconsideration.

AUTHORITY: 31 U.S.C. 3551–3556.

SOURCE: 61 FR 39042, July 26, 1996, unless otherwise noted.

§ 21.0 Definitions.

(a) *Interested party* means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) *Intervenor* means an awardee if the award has been made or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

(c) *Federal agency* means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

(d) *Contracting agency* means a Federal agency which has awarded or proposes to award a contract under a protested procurement.

(e) *Days* are calendar days. In computing any period of time described in Subchapter V, Chapter 35 of Title 31, United States Code, including those described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the General Accounting Office (GAO), or another Federal agency where a submission is due, is closed for all or part of the last day, the period extends to the next day on which the agency is open.

(f) *Adverse agency action* is any action or inaction by a contracting agency which is prejudicial to the position taken in a protest filed with the agency, including a decision on the merits of a protest; the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid despite a pending protest; or contracting agency acquiescence in continued and substantial contract performance.

(g) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., eastern time, on that day. A document may be filed by hand delivery, mail, or commercial carrier; parties wishing to file a document by facsimile transmission or other electronic means must ensure that the necessary equipment is operational at GAO's Procurement Law Control Group.

§ 21.1 Filing a protest.

(a) An interested party may protest a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges that the termination was based on improprieties in the award of the contract.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548, Attention: Procurement Law Control Group.

(c) A protest filed with GAO shall:

(1) Include the name, address, and telephone and facsimile numbers of the protester,

(2) Be signed by the protester or its representative,

(3) Identify the contracting agency and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Set forth all information establishing that the protester is an interested party for the purpose of filing a protest,

(6) Set forth all information establishing the timeliness of the protest,

(7) Specifically request a ruling by the Comptroller General of the United States, and

(8) State the form of relief requested.

(d) In addition, a protest filed with GAO may:

(1) Request a protective order,

(2) Request specific documents, explaining the relevancy of the documents to the protest grounds, and

(3) Request a hearing, explaining the reasons that a hearing is needed to resolve the protest.

(e) The protester shall furnish a complete copy of the protest, including all attachments, to the individual or location designated by the contracting agency in the solicitation for receipt of protests, or if there is no designation, to the contracting officer. The designated individual or location (or, if applicable, the contracting officer) must receive a complete copy of the protest and all attachments not later than 1 day after the protest is filed with GAO. The protest document must indicate that a complete copy of the protest and all attachments are being furnished within 1 day to the appropriate individual or location.

(f) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise and logically arranged, and should clearly state legally sufficient grounds of protest. Protests of different procurements should be separately filed.

(g) Unless precluded by law, GAO will not withhold material submitted by a protester from any party outside the government. If the protester believes that the protest contains information which should be withheld, a statement advising of this fact must be on the front page of the submission. This information must be identified wherever it appears, and the protester must file a redacted copy of the protest which omits the information with GAO and the agency within 1 day after the filing of its protest with GAO.

(h) Parties who intend to file documents containing classified information should notify GAO in advance to obtain advice regarding procedures for filing and handling the information.

(i) A protest may be dismissed for failure to comply with any of the requirements of this section, except for the items in paragraph (d) of this section. In addition, a protest shall not be dismissed for failure to comply with paragraph (e) of this section where the contracting officer has actual knowledge of the basis of protest, or the agency, in the preparation of its report, was not prejudiced by the protester's noncompliance.

§21.2 Time for filing.

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) Protests other than those covered by paragraph (a)(1) of this section shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing

date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

(3) If a timely agency-level protest was previously filed, any subsequent protest to GAO filed within 10 days of actual or constructive knowledge of initial adverse agency action will be considered, provided the agency-level protest was filed in accordance with paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to GAO will be considered timely if filed within the 10-day period provided by this paragraph, even if filed after bid opening or the closing time for receipt of proposals.

(b) Protests untimely on their face may be dismissed. A protester shall include in its protest all information establishing the timeliness of the protest; a protester will not be permitted to introduce for the first time in a request for reconsideration information necessary to establish that the protest was timely.

(c) GAO, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider an untimely protest.

§ 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.

(a) GAO shall notify the contracting agency by telephone within 1 day after the filing of a protest, and, unless the protest is dismissed under this part, shall promptly send a written confirmation to the contracting agency and an acknowledgment to the protester. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a reasonable prospect of receiving an award. The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with GAO. All parties shall furnish copies of all protest communications to the contracting agency and to other participating parties. All protest communications shall be sent by means reasonably calculated to effect expeditious delivery.

(b) A contracting agency or intervenor which believes that the protest or specific protest allegations should be dismissed before submission of an agency report should file a request for dismissal as soon as practicable.

(c) The contracting agency shall file a report on the protest with GAO within 30 days after the telephone notice of the protest from GAO. The report provided to the parties need not contain documents which the agency has previously furnished or otherwise made available to the parties in response to the protest. At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and GAO a list of those documents, or portions of documents, which the agency has released to the protester or intends to produce in its report, and of the documents which the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of documents must be filed with GAO and the other parties within 2 days of receipt of this list.

(d) The report shall include the contracting officer's statement of the relevant facts, including a best estimate of the contract value, a memorandum of law, and a list and a copy of all relevant documents, or portions of documents, not previously produced, including, as appropriate: the protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications; the abstract of bids or offers; and any other relevant documents. In appropriate

cases, the contracting agency may request that the protester produce relevant documents, or portions of documents, that are not in the agency's possession.

(e) Subject to any protective order issued in the protest pursuant to §21.4, the contracting agency shall simultaneously furnish a copy of the report to the protester and any intervenors. The copy of the report filed with GAO shall list the parties who have been furnished copies of the report. Where a protester does not have counsel admitted to a protective order and documents are withheld from the protester in accordance with this part, the agency shall provide documents adequate to inform the protester of the basis of the agency's position.

(f) The contracting agency may request an extension of time for the submission of the list of documents to be provided by the agency pursuant to §21.3(c) or for the submission of the agency report. Extensions will be granted on a case-by-case basis.

(g) The protester may request additional documents after receipt of the agency report when their existence or relevance first becomes evident. Except when authorized by GAO, any request for additional documents must be filed with GAO and the contracting agency not later than 2 days after their existence or relevance is known or should have been known, whichever is earlier. The contracting agency shall provide the requested documents, or portions of documents, and a list to GAO and the other parties within 2 days or explain why it is not required to produce the documents.

(h) Upon the request of a party, GAO will decide whether the contracting agency must provide any withheld documents, or portions of documents, and whether this should be done under a protective order. When withheld documents are provided, the protester's comments on the agency report shall be filed within the original comment filing period unless GAO determines that an extension is appropriate.

(i) Comments on the agency report shall be filed with GAO within 10 days after receipt of the report, with a copy provided to the contracting agency and other participating parties. The protest shall be dismissed unless the protester files comments or a written statement requesting that the case be decided on the existing record, or requests an extension of time within the 10-day period. Unless otherwise advised by the protester, GAO will assume the protester received the agency report by the due date specified in the acknowledgment of protest furnished by GAO. Upon a showing that the specific circumstances of a protest require a period longer than 10 days for the submission of comments, GAO will set a new date for the submission of comments. Extensions will be granted on a case-by-case basis.

(j) GAO may request or permit the submission of additional statements by the parties and by other parties not participating in the protest as may be necessary for the fair resolution of the protest. The agency and other parties shall not submit any additional statements unless the statements are specifically requested by GAO or submitted after permission has been granted by GAO.

§21.4 Protective orders.

(a) At the request of a party or on its own initiative, GAO may issue a protective order controlling the treatment of protected information. Such information may include proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. The protective order shall establish procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information. Because a protective order serves to facilitate the pursuit of a protest by a protester through counsel, it is the responsibility of protester's counsel to request that a protective order be issued and to submit timely applications for admission under that order.

(b) If no protective order has been issued, the agency may withhold from the parties those portions of its report which would ordinarily be subject to a protective order. GAO will review in

camera all information not released to the parties.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for admission under the order by submitting an application to GAO, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. Objections to an applicant's admission shall be raised within 2 days after receipt of the application, although GAO may consider objections raised after that time.

(d) Any violation of the terms of a protective order may result in the imposition of such sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the individual's practice before GAO.

§ 21.5 Protest issues not for consideration.

GAO shall summarily dismiss a protest or specific protest allegations that do not state a valid basis for protest, are untimely (unless considered pursuant to § 21.2(c)), or are not properly before GAO. A protest or specific protest allegations may be dismissed any time sufficient information is obtained by GAO warranting dismissal. Where an entire protest is dismissed, no agency report shall be filed; where specific protest allegations are dismissed, an agency report shall be filed on the remaining allegations. Among the protest bases which shall be dismissed are the following:

(a) *Contract administration.* The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–613.

(b) *Small Business Administration issues.* (1) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

(2) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to sec. 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be reviewed by GAO absent a showing of possible bad faith on the part of government officials or a failure to consider vital information bearing on the firm's responsibility. 15 U.S.C. 637(b)(7).

(3) *Procurements under sec.* 8(a) of the Small Business Act. Under that section, since contracts are entered into with the Small Business Administration at the contracting officer's discretion and on such terms as are agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) program is not subject to review absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(c) *Affirmative determination of responsibility by the contracting officer.* Because the determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were not met.

(d) *Procurement integrity.* For any Federal procurement, GAO will not review an alleged violation of subsections (a), (b), (c), or (d) of sec. 27 of the Office of Federal Procurement Policy Act, 41 U.S.C. 423, as amended by sec. 4304 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, 110 Stat. 186, February 10, 1996, where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible

for the procurement within 14 days after the protester first discovered the possible violation. The provision in paragraph (d) of §21.5 will apply not later than January 1, 1997.

(e) Protests not filed either in GAO or the contracting agency within the time limits set forth in §21.2.

(f) Protests which lack a detailed statement of the legal and factual grounds of protest as required by §21.1(c)(4), or which fail to clearly state legally sufficient grounds of protest as required by §21.1(f).

(g) *Procurements by agencies other than Federal agencies as defined by sec. 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472.* Protests of procurements or proposed procurements by agencies such as the U.S. Postal Service, the Federal Deposit Insurance Corporation, and nonappropriated fund activities are beyond GAO's bid protest jurisdiction as established in 31 U.S.C. 3551–3556.

(h) *Subcontract protests.* GAO will not consider a protest of the award or proposed award of a subcontract except where the agency awarding the prime contract has requested in writing that subcontract protests be decided pursuant to §21.13.

§21.6 Withholding of award and suspension of contract performance.

Where a protest is filed with GAO, the contracting agency may be required to withhold award and to suspend contract performance. The requirements for the withholding of award and the suspension of contract performance are set forth in 31 U.S.C. 3553 (c) and (d).

§21.7 Hearings.

(a) At the request of a party or on its own initiative, GAO may conduct a hearing in connection with a protest. The request shall set forth the reasons why a hearing is needed to resolve the protest.

(b) Prior to the hearing, GAO may hold a pre-hearing conference to discuss and resolve matters such as the procedures to be followed, the issues to be considered, and the witnesses who will testify.

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations, or by telephone.

(d) All parties participating in the protest shall be invited to attend the hearing. Others may be permitted to attend as observers and may participate as allowed by GAO's hearing official. In order to prevent the improper disclosure of protected information at the hearing, GAO's hearing official may restrict attendance during all or part of the proceeding.

(e) Hearings shall normally be recorded and/or transcribed. If a recording and/or transcript is made, any party may obtain copies at its own expense.

(f) If a witness whose attendance has been requested by GAO fails to attend the hearing or fails to answer a relevant question, GAO may draw an inference unfavorable to the party for whom the witness would have testified.

(g) If a hearing is held, no separate comments on the agency report should be submitted unless specifically requested by GAO. Each party shall file with GAO, within 5 days after the hearing was held or as specified by GAO, a single document expressing any comments on both the hearing and agency report, with copies furnished to the other parties. By the due date, if the protester has not filed comments or a written statement requesting that the case be decided on the existing record, GAO shall dismiss the protest.

(h) In post-hearing comments, the parties should reference all testimony and admissions in the hearing record that they consider relevant, providing specific citations to the testimony and admissions referenced.

§21.8 Remedies.

(a) If GAO determines that a solicitation, cancellation of a solicitation, termination of a contract, proposed award, or award does not comply with statute or regulation, it shall recommend that the contracting agency implement any combination of the following remedies:

(1) Refrain from exercising options under the contract;

(2) Terminate the contract;

(3) Recompete the contract;

(4) Issue a new solicitation;

(5) Award a contract consistent with statute and regulation; or

(6) Such other recommendation(s) as GAO determines necessary to promote compliance.

(b) In determining the appropriate recommendation(s), GAO shall, except as specified in paragraph (c) of this section, consider all circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement, and the impact of the recommendation(s) on the contracting agency's mission.

(c) If the head of the procuring activity determines that performance of the contract notwithstanding a pending protest is in the government's best interest, GAO shall make its recommendation(s) under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(d) If GAO determines that a solicitation, proposed award, or award does not comply with statute or regulation, it may recommend that the contracting agency pay the protester the costs of:

(1) Filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees; and

(2) Bid and proposal preparation.

(e) If the contracting agency decides to take corrective action in response to a protest, GAO may recommend that the agency pay the protester the costs of filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees. The protester shall file any request that GAO recommend that costs be paid within 15 days after being advised that the contracting agency has decided to take corrective action. The protester shall furnish a copy of its request to the contracting agency, which may file a response within 15 days after receipt of the request, with a copy furnished to the protester.

(f)(1) If GAO recommends that the contracting agency pay the protester the costs of filing and pursuing the protest and/or of bid or proposal preparation, the protester and the agency shall attempt to reach agreement on the amount of costs. The protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, GAO may, upon request of the protester, recommend the amount of costs the agency should pay in accordance with 31 U.S.C. 3554(c). In such cases, GAO may also recommend that the contracting agency pay the protester the costs of pursuing the claim for costs before GAO.

(3) The contracting agency shall notify GAO within 60 days after GAO recommends the amount of costs the agency should pay the protester of the action taken by the agency in response to the recommendation.

§ 21.9 Time for decision by GAO.

(a) GAO shall issue a decision on a protest within 100 days after it is filed.

(b) In protests where GAO uses the express option procedures in § 21.10, GAO shall issue a decision on a protest within 65 days after it is filed.

(c) GAO, to the maximum extent practicable, shall resolve a timely supplemental protest adding one or more new grounds to an existing protest, or a timely amended protest, within the time limit established in paragraph (a) of this section for decision on the initial protest. If a supplemental or an amended protest cannot be resolved within that time limit, GAO may resolve the supplemental or amended protest using the express option procedures in § 21.10.

§21.10 Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status and other conferences.

(a) At the request of a party or on its own initiative, GAO may decide a protest using an express option.

(b) The express option will be adopted at the discretion of GAO and only in those cases suitable for resolution within 65 days.

(c) Requests for the express option shall be in writing and received in GAO not later than 5 days after the protest or supplemental/amended protest is filed. GAO will promptly notify the parties whether the case will be handled using the express option.

(d) When the express option is used, the following schedule applies instead of those deadlines in §21.3 and §21.7:

(1) The contracting agency shall file a complete report with GAO and the parties within 20 days after it receives notice from GAO that the express option will be used.

(2) Comments on the agency report shall be filed with GAO and the other parties within 5 days after receipt of the report.

(3) If a hearing is held, no separate comments on the agency report under paragraph (d)(2) of this section should be submitted unless specifically requested by GAO. Consolidated comments on the agency report and hearing shall be filed within 5 days after the hearing was held or as specified by GAO.

(4) Where circumstances demonstrate that a case is no longer suitable for resolution using the express option, GAO shall establish a new schedule for submissions by the parties.

(e) GAO may use flexible alternative procedures to promptly and fairly resolve a protest, including establishing an accelerated schedule and/or issuing a summary decision.

(f) GAO may conduct status and other conferences by telephone or in person with all parties participating in a protest to promote the expeditious development and resolution of the protest.

§21.11 Effect of judicial proceedings.

(a) A protester must immediately advise GAO of any court proceeding which involves the subject matter of a pending protest and must file with GAO copies of all relevant court documents.

(b) GAO will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or where the matter involved has been decided on the merits by a court of competent jurisdiction. GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court. In these cases, unless a different schedule is established, the times provided in this part for filing the agency report (§21.3(c)), filing comments on the report (§21.3(i)), holding a hearing and filing comments (§21.7), and issuing a decision (§21.9) shall apply.

§21.12 Distribution of decisions.

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, the head of the contracting activity responsible for the protested procurement, and the senior procurement executive of each Federal agency involved; a copy shall also be made available to the public. A copy of a decision containing protected information shall be provided only to the contracting agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

(b) Decisions are available from GAO by electronic means.

§21.13 Nonstatutory protests.

(a) GAO will consider protests concerning awards of subcontracts by or for a Federal agency, sales by a Federal agency, or procurements by agencies of the government other than Federal agencies as defined in §21.0(c) if the agency involved has agreed in writing to have protests decided by GAO.

(b) The provisions of this part shall apply to nonstatutory protests except for the provision of §21.8(d) pertaining to recommendations for the payment of costs. The provision for the withholding of award and the suspension of contract performance, 31 U.S.C. 3553(c) and (d), also does not apply to nonstatutory protests.

§ 21.14 Request for reconsideration.

(a) The protester, any intervenor, and any Federal agency involved in the protest may request reconsideration of a bid protest decision. GAO will not consider a request for reconsideration that does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) A request for reconsideration of a bid protest decision shall be filed, with copies to the parties who participated in the protest, not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier.

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. The filing of a request for reconsideration does not require the withholding of award and the suspension of contract performance under 31 U.S.C. 3553 (c) and (d).

PART 22—[Reserved]

PART 25—CONDUCT IN THE GENERAL ACCOUNTING OFFICE BUILDING AND ON ITS GROUNDS

Sec.

25.1 Applicability and governing laws.
25.2 Inspection.
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25.16 Penalties.

AUTHORITY: 31 U.S.C. 783.

SOURCE: 55 FR 2359, Jan. 24, 1990, unless otherwise noted.

§ 25.1 Applicability and governing laws.

These rules and regulations, and the laws of the United States and the District of Columbia, apply to the General Accounting Office (GAO) Building and its grounds, 441 G Street NW., in the District of Columbia, and to all persons while in the building or while entering or leaving it.

§ 25.2 Inspection.

Packages, briefcases, and other containers as well as vehicles and their contents are subject to inspection while in or when being brought into, or when being removed from the GAO Building. A full search of a person may accompany an arrest or apprehension.

§ 25.3 Admission to the GAO building.

A person may be admitted to the GAO Building after presentation of personal identification to conduct lawful business with GAO, its employees, or other tenants of the GAO Building and for any other purposes authorized by the Comptroller General or his designee. During normal working hours, the GAO Building shall be open to the public unless specific circumstances require it to be closed to the public to ensure the orderly conduct of government business. Outside of normal working hours, the GAO Building shall be closed to the public unless the Comptroller General or his designee has approved the after-normal-working-hours use of the Building or portions thereof. When the Building, or a portion thereof, is closed to the public, admission will be restricted to authorized persons who shall register upon entry and exit, and shall, when requested, display government or other identifying credentials to the guards, security staff, or other authorized individuals. Failure to comply with such a request is a violation of these regulations.

§ 25.4 Preservation of property.

The improper disposal of rubbish in the GAO Building or on its grounds, the willful destruction of or damage to the GAO Building or to its grounds or fixtures, the theft of property, the creation of any hazard to persons or things in the GAO Building or on its grounds, the throwing of articles of

any kind from or at the GAO Building, or the climbing on any part of the GAO Building, is prohibited.

§25.5 Conformity with signs and directions.

Persons in the GAO Building or on its grounds shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of the guards, security staff, or other authorized individuals.

§25.6 Disturbances.

Loitering, disorderly conduct, or other conduct in the GAO Building or on its grounds which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, escalators, stairways, or parking areas; which otherwise impedes or disrupts the performance of official duties by government employees; or which prevents the general public from obtaining the administrative services provided in the GAO Building in a timely manner, is prohibited.

§25.7 Gambling.

Participating in games for money or other personal property or operating gambling devices, conducting a lottery or pool, or selling or purchasing numbers tickets in the GAO Building or on its grounds is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a law of the District of Columbia and conducted by the District of Columbia and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

§25.8 Alcoholic beverages and narcotics.

Operating a motor vehicle while in the GAO Building, its grounds or on its entry ramps by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. It is prohibited for anyone to enter or be in the GAO Building or to be on its grounds while under the influence of, or using, possessing, selling or distributing any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine. This prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. It is prohibited for anyone to enter the GAO Building or its grounds, or be on the premises while under the influence of alcoholic beverages. The use of alcoholic beverages in the GAO Building is prohibited except when specifically authorized by the Comptroller General or his designee for a particular event. The Comptroller General or his designee shall be advised of such events and shall inform the guards and other security staff of the time and precise locations of these events.

§25.9 Soliciting, vending, and debt collection.

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in the GAO Building is prohibited. This rule does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by the ''Manual on Fund Raising Within the Federal Service,'' issued by the U.S. Office of Personnel Management;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454) or the General Accounting Office Personnel Act of 1980, Public Law 96–191 (31 U.S.C. sec. 732(e));

(d) Occupants of space leased for commercial purposes, or made available for cultural, educational, or recreational use under section 1 of Public Law 100–545, October 28, 1988, 102 Stat. 2727, 2728 (31 U.S.C. 782).

§25.10 Posting and distributing materials.

Posting or affixing materials, such as pamphlets, handbills or flyers, on bulletin boards or elsewhere in the GAO Building or on its grounds is prohibited, except as authorized by these

rules and regulations or when such displays are conducted as part of authorized government activities. Distribution of materials, such as pamphlets, handbills or flyers is prohibited, unless conducted as part of authorized government activities. Any person or organization proposing to post or distribute materials in any part of the GAO Building or on its grounds shall first obtain a permit from the Comptroller General or his designee and shall conduct the posting or distribution in accordance with the guidelines provided by the Comptroller General or his designee. Failure to comply with those guidelines is a violation of these regulations.

§ 25.11 Photographs for news, advertising, or commercial purposes.

Photographs may be taken in the GAO Building only with the approval or authorization of the Comptroller General or his designee.

§ 25.12 Dogs and other animals.

Dogs and other animals, except seeing eye dogs or other guide dogs, shall not be brought into the GAO Building or on its grounds for other than official purposes.

§ 25.13 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering, leaving or while on GAO property or in the GAO Building shall drive in a careful and safe manner at all times and shall comply with all posted traffic signs and with the signals and directions of the guards, security staff, or other authorized individuals;

(b) The blocking of entrances, driveways, walks, loading platforms or fire hydrants on GAO property is prohibited; and

(c) Except in emergencies, parking on GAO property or in the GAO Building is not allowed without a permit. Parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs or instructions of guards is prohibited. Vehicles parked in violation of posted restrictions or warning signs shall be subject to removal at the owners' risk and expense.

(d) The Comptroller General or his designee may supplement this paragraph from time to time by issuing and posting such specific traffic directives as may be required. When issued and posted, such directives shall have the same force and effect as if made a part hereof. Proof that a motor vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 25.14 Weapons and explosives.

No person while entering or in the GAO Building or on its grounds shall carry or possess firearms, other dangerous or deadly weapons, explosives or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

§ 25.15 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish the use of any facility of a public nature, including all services, privileges, accommodations and activities provided in the GAO Building.

§ 25.16 Penalties.

Whoever shall be found guilty of violating any rule or regulation governing the GAO Building is subject to a fine of not more than $500, or imprisonment for not more than 6 months, or both. Nothing in these rules and regulations shall be construed to abrogate any other Federal laws applicable to the GAO Building.

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; ORGANIZATION

Sec.
27.1 The Board.
27.2 The Chair, Vice Chair.
27.3 The General Counsel.

AUTHORITY: 31 U.S.C. 753.

SOURCE: 58 FR 61992, Nov. 23, 1993, unless otherwise noted.

§ 27.1 The Board.

The General Accounting Office Personnel Appeals Board, hereinafter the Board, is composed of five members appointed by the Comptroller General, in accordance with the provisions of 31 U.S.C. 751. The Board may designate a panel of its members or an individual Board member to take any action within the scope of the Board's authority, subject to later reconsideration by the Board.

§ 27.2 The Chair, Vice Chair.

The members of the Board shall select from among its membership a Chairperson, hereinafter the Chair, who shall serve as the chief executive and administrative officer of the Board. The Members of the Board may select from among its membership a Vice Chairperson, hereinafter the Vice Chair, who shall serve in the absence of the Chair and in other matters delegated by the Chair.

§ 27.3 The General Counsel.

The Chair shall select an individual and the Comptroller General shall appoint the individual selected by the Chair to serve as the General Counsel of the Board. The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions, unless to do so would create a conflict of interest for the General Counsel.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

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28.2 Jurisdiction.
28.3 General definitions.
28.4 Computation of time.

Subpart B—Procedures

28.8 Informal procedural advice.
28.9 Procedures; general.
28.10 Notice of appeal rights.
28.11 Filing a charge with the General Counsel.
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AUTHORITY: 31 U.S.C. 753.

SOURCE: 58 FR 61992, Nov. 23, 1993, unless otherwise noted.

Subpart A—Purpose, General Definitions, and Jurisdiction

§ 28.1 Purpose and scope.

(a) The regulations in this part implement the Board's authority with respect to employment practices within the General Accounting Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980, 31 U.S.C. 751–755. Regulations implementing the Board's authority with respect to employment practices within the Architect of the Capitol, pursuant to the Architect of the Capitol Human Resources Act, Public Law 103–283, sec. 312, 108 Stat. 1443 (July 22, 1994), appear in 4 CFR part 29.

(b) The purpose of the rules in this part is to establish the procedures to be followed:

(1) By the GAO, in its dealings with the Board;

(2) By employees of the GAO or applicants for employment with the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) By employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.; and

(4) By the Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

(c) The scope of the Board's operations encompasses the investigation

and, where necessary, adjudication of cases arising under 31 U.S.C. 753. In addition, the Board has authority for oversight of the equal employment opportunity program at GAO. This includes the review of policies and evaluation of operations as they relate to EEO objectives and, where necessary, the ordering of corrective action for violation of or inconsistencies with equal employment opportunity laws.

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

[59 FR 59105, Nov. 16, 1994]

§28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following actions brought by the General Counsel:

(1) Proceedings in which the General Counsel seeks to stay a personnel action based upon an alleged prohibited personnel practice that has occurred or is about to occur;

(2) Proceedings in which the General Counsel seeks corrective action for an alleged prohibited personnel practice; and

(3) Proceedings in which the General Counsel seeks discipline for a GAO employee who has allegedly committed a prohibited personnel practice or who has engaged in prohibited political activity.

(b) The Board has jurisdiction to hear any action brought by any person or group of persons in the following subject areas:

(1) An officer or employee appeal involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) A prohibited personnel practice under 31 U.S.C. 732(b)(2);

(3) A decision of an appropriate unit of employees for collective bargaining;

(4) An election or certification of a collective bargaining representative;

(5) A matter appealable to the Board under the labor-management relations program under 31 U.S.C. 732(e), including an unfair labor practice under 31 U.S.C. 732(e)(1);

(6) An action involving discrimination prohibited under 31 U.S.C. 732(f)(1); and

(7) An issue about GAO personnel which the Comptroller General by regulation decides the Board shall resolve.

(c) *Special jurisdictional rules where matters are covered by a negotiated grievance procedure.* If a GAO employee is covered by a collective bargaining agreement containing a negotiated grievance procedure that permits the employee to grieve matters that would otherwise be appealable to the Board, the following special rules apply:

(1) Matters involving discrimination, performance-based reduction in grade or removal, or adverse action. If the negotiated grievance procedure permits the employee to grieve matters involving prohibited discrimination (as defined in §28.95), performance-based reduction in grade or removal (as described in 5 U.S.C. 4303) or an adverse action (as described in 5 U.S.C. 7512), then the employee may elect to raise the matter either under the negotiated grievance procedure or under the Board's procedures, but not both. The employee will be deemed to have elected the Board's procedures if the employee files a timely charge with the Board's General Counsel or files a timely written EEO complaint with GAO before filing a timely written grievance.

(2) Other matters. If the negotiated grievance procedure permits the employee to grieve any matters which would otherwise be appealable to the Board, other than those listed in paragraph (c)(1) of this section, then those matters may only be raised under the negotiated grievance procedure and not before the Board.

(3) Board review of final decisions from the negotiated grievance procedure involving discrimination. If an employee elects to pursue a matter involving prohibited discrimination (as defined in §28.95) through the negotiated grievance procedure, the employee may ask the Board to review the final decision of the negotiated grievance procedure as it relates to the issue of discrimination. A petition seeking such review shall be filed with the Clerk of the Board within 20 days of receipt of the final decision of the negotiated grievance procedure. The

Board will not review any final decisions of the negotiated grievance procedure other than those where prohibited discrimination was raised as an issue in the grievance.

§ 28.3 General definitions.

In this part—

Administrative judge means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. An administrative judge may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing who is appointed to do so by the Board. When a panel of members or the full Board is hearing a case, the Chair shall designate one of the members to exercise the responsibilities of the administrative judge in the proceedings.

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

Charge means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Charging Party means any person filing a charge with the General Counsel for investigation.

Comptroller General means the Comptroller General of the United States.

Days means calendar days.

Exceptions to the Recommended Decision means a request filed by a party with the Board that objects to the findings and/or conclusions of a recommended decision.

GAO means the General Accounting Office.

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

Initial Decision means the adjudicatory statement of a case that is issued by an administrative judge who is a member of the Board.

Person means an employee, an applicant for employment, a former employee, a labor organization or the GAO.

Petition for Review means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Petitioner means any person filing a petition for review for Board consideration.

Pleading means a document that initiates a cause of action before the Board, responds to a cause of action, amends a cause of action, responds to an amended cause of action, requests reconsideration of a decision, responds to a request for reconsideration of a recommended decision or responds to such a request.

Recommended Decision means the adjudicatory statement of a case that is issued by an administrative judge who is not a member of the Board at the time of the decision.

Request for Reconsideration means a request, filed with the administrative judge who rendered the initial decision, to reconsider that decision in whole or part.

Request for Review means a request filed with the full Board for review of an initial decision.

Solicitor means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

§ 28.4 Computation of time.

(a) To compute the number of days for filing under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served by mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added when a document is served by express mail or other form of expedited delivery.

(c) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified period of time, the time fixed or

the period of time prescribed may for good cause be extended or shortened by the Board or administrative judge.

Subpart B—Procedures

§28.8 Informal procedural advice.

(a) Persons may seek informal 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.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§28.9 Procedures; general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) No pleading, motion or supporting memorandum filed with the Board shall exceed 60 pages, exclusive of attachments. The Board or the administrative judge may waive this limitation for good cause shown. Pleadings, motions and supporting memoranda, and attachments thereto, shall be on standard letter-size paper (8½x11).

§28.10 Notice of appeal rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their appeal rights to the Board and that employees who are the object of an adverse or performance-based action are, at the time of the action, adequately advised of their appeal rights to the Board. The notice in adverse or performance-based actions must be accompanied by proof of service.

(b) The notice in adverse or performance-based actions shall include:

(1) Time limits for appealing to the Board and the address of the Board;

(2) A copy of the Board's regulations; and

(3) Notice of the right to representation, and the availability of a hearing before the Board where factual issues are in dispute.

§28.11 Filing a charge with the General Counsel.

(a) *Who may file.* (1) Any person claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a charge with the General Counsel.

(2) Non-EEO class actions. One or more persons may file a charge as representative of a class in any matter within the Board's jurisdiction. See §28.97 for EEO class actions.

(3) Unfair labor practice proceedings. Any person may file a charge alleging that the GAO or a labor organization has engaged or is engaging in an unfair labor practice. (The types of allegations which may be included in an unfair labor practice charge are discussed at §28.121(a)).

(b) *When to file.* (1) Charges relating to adverse and performance-based actions must be filed within 30 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 30 days after the effective date of the action or 30 days after the charging party knew or should have known of the action.

(3) Charges which include an allegation of prohibited discrimination shall be filed in accordance with the special rules set forth in §28.98.

(4) Charges relating to continuing violations may be filed at any time.

(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 Street, 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 the date of filing for all submissions to the General Counsel.

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

(1) Name of the charging party or a clear description of the group or class of persons on whose behalf the charge is being filed;

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

(3) The actions complained about, including dates, reasons given, and internal appeals taken;

(4) The charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

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

(e) The General Counsel shall not represent a petitioner when the only issue 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 under §§ 28.18 through 28.88 as a petition for review.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36810, July 15, 1996]

§ 28.12 General Counsel procedures.

(a) The General Counsel shall serve on the GAO or other charged party a copy of the charge, investigate the matters raised in a 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 GAO or other charged party, and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in any investigation under these Rules shall be on official time.

(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 subject 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's rights under Subchapters III and IV of Chapter 7 of Title 31, United States Code, have been violated, 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's rights under Subchapters III and IV of Chapter 7 of Title 31, United States Code, have been violated, 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 a 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 regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

§ 28.13 Special procedure for Reduction in Force.

In the event of a Reduction in Force resulting in an individual's separation from employment, an aggrieved employee may choose to file an appeal directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. This option is available to individuals raising discrimination issues in connection with a RIF action. Pursuant to § 28.98, such individuals need not file a complaint with GAO's Civil Rights Office before pursuing a RIF challenge alleging discrimination, either by filing directly

with the PAB or by filing a charge with the PAB's Office of General Counsel.

[61 FR 36810, July 15, 1996]

HEARING PROCEDURES FOR CASES BEFORE THE BOARD—GENERAL

§28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in §28.17 (concerning internal appeals of Board employees). These rules also apply to actions brought by the General Counsel, except as otherwise provided in subpart G (concerning corrective action, disciplinary and stay proceedings). It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the FEDERAL REGISTER. Notice of publication in the FEDERAL REGISTER must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

§28.17 Internal appeals of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel serves at the pleasure of the Chair. The General Counsel may not bring any complaint or charge concerning his or her own employment except to allege that he or she has been the victim of prohibited discrimination or a prohibited personnel practice as defined in 31 U.S.C. 732 (b)(2) or (f)(1).

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Special Counsel of the Merit Systems Protection Board (MSPB) (or the EEOC, as appropriate), that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the MSPB Special Counsel (or the EEOC) does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) In any event, whoever is so appointed shall possess all of the powers

and authority possessed by the General Counsel in employee appeal cases.

(c) The adjudication responsibilities and functions of the Board will be assumed by a person who is not a current or former employee of the Board or the GAO. The services of that person, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The person will be selected by an impartial body as described below.

(1) If agreed to by the MSPB (or the EEOC, as appropriate), that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If the MSPB (or the EEOC) does not agree to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee appeals cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board, in the same manner as if rendered by the Board under § 28.86(e). The procedure for judicial review of the decision shall be the same as that described in § 28.90.

(d) Any employee of the Board (other than the General Counsel) who believes that he or she is aggrieved by any personnel matter that is not reviewable by the Board under 31 U.S.C. 753(a) may file a grievance as follows:

(1) *Informal Step.* The employee must discuss the complained of incident with his or her supervisor as soon as possible after the complained of incident.

(2) *Step 1.* If the supervisor is unable to resolve the matter informally to the satisfaction of the employee, then the employee may file a formal grievance with the supervisor. The formal grievance must be filed by the employee with the supervisor within 20 days after the complained of incident. The supervisor must respond to the employee in writing within 10 days.

(3) *Step 2.* (i) If the employee is not satisfied with the supervisor's response, the employee has 10 days in which to appeal to the Chair. In this appeal, the employee must forward to the Chair the formal grievance, the supervisor's response and a brief statement from the employee explaining why the supervisor's response is not satisfactory.

(ii) The Chair or another member designated by the Chair, shall meet with the employee and discuss the matter of concern within 10 days after service of the step 2 appeal. The Chair or designee shall issue a written resolution of the grievance.

(4) *Step 3.* Within 10 days after service of the Chair's resolution or within 60 days after initiating step 2, whichever occurs first, the employee may request that the full Board review the grievance. The decision of the full Board is the final decision in the matter.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36810, July 15, 1996]

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any person who has received a Right to Appeal Letter from the Office of General Counsel and who is claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a petition for review. A petition for review may also be filed by any person who has received a Right to Appeal Letter from the Office of General Counsel and who is alleging that the GAO or a labor organization engaged or is engaging in an unfair labor practice. A person whose employment was terminated as a result of a Reduction in Force may choose to file an appeal of that action directly with the Personnel Appeals Board, without first filing with the Board's Office of General Counsel.

(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 Office of General Counsel. In the case of a person whose action involves a challenge to a separation based upon a Reduction in Force, and who chooses to bypass the Office of General Counsel of the Board, the appeal must be filed with the Clerk of the Board within 30 days after the effective date of the RIF action.

(c) *How to file.* Petitions may be filed 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 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) Name of the petitioner or a clear description of the group or class of persons on whose behalf the petition is being filed;

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

(3) The actions being complained about, including dates, reasons given and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter; and

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

(e) Failure to raise a claim or defense 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) *Non-EEO class actions.* One or more persons may file a petition for review as representatives of a class in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See §28.97 for EEO class actions.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 9090, Mar. 7, 1996; 61 FR 36810, July 15, 1996]

§28.19 Content of response by charged party.

(a) Within 20 days after service of a copy of a petition for review, the GAO or other charged party shall file a response containing at least the following:

(1) A statement of the position of the charged party on each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition and any other defenses to the petition.

(2) Designation of, and signature by, the representative authorized to act for the charged party in the matter.

(b) Failure to raise a claim or defense in the response shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

§28.20 Number of Pleadings, service and response.

(a) *Number.* One original and seven copies of all pleadings (see definition in §28.3) must be filed with the Board. However, when before a single administrative judge, one original and three copies will be adequate unless informed otherwise.

(b) *Service.* (1) *Service by the Board.* The Board will serve copies of a petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives. The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition for review.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings other than the initial petition for review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in writing of any changes in the names or addresses on the service list.

(c) *Time limitations for response to pleadings.* Unless otherwise specified by

the administrative judge or this subpart, a party shall file a response to a pleading within 20 days of the service of that pleading upon the party.

(d) Size limitations are set forth at § 28.9(b).

§ 28.21 Prehearing procedures and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition for review as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties or unduly delay the proceedings.

(b) *Motions practice.* When an action is before an administrative judge, motions of the parties shall be filed with the administrative judge and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the administrative judge. When an action is before the full Board, an original and 7 copies of any motion shall be filed with the Board. Copies shall be served simultaneously upon the other parties to the proceeding. An original and 3 copies of responses in opposition to written motions must be filed with the administrative judge, or if the action is before the full Board an original and 7 copies must be filed with the Board, and served simultaneously upon the other parties to the proceeding. Responses shall be filed within 20 days of service of the motion, unless the administrative judge requires a shorter response time. All written motions and responses thereto shall include a proposed order, where applicable. A certificate of service will be filed with all motions and responses thereto showing service by mail or personal delivery of the motion to the other parties. Additional responses to the motion or to the response to the motion by either party may be filed only with the approval of the administrative judge. Motions for extension of time will be granted only for good cause shown.

(c) *Oral argument.* The administrative judge may allow oral argument on the motion at his or her discretion.

(d) *General Counsel Settlement.* Where the General Counsel under § 28.12(a) transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

§ 28.22 Administrative judges.

(a) *Exercise of authority.* Administrative judges may exercise authority as provided in paragraph (b) of this section upon their own initiative or upon the motion of a party, as appropriate.

(b) *Authority.* Administrative judges shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas in accordance with § 28.46;

(3) Rule upon offers of proof and receive relevant evidence;

(4) Rule upon discovery issues as appropriate under §§ 28.42 through 28.45;

(5) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness, except the petitioner(s), whose later testimony might be colored by testimony of other witnesses, or any persons whose presence might have a chilling effect on a testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and not repetitious;

(10) Impose sanctions as provided under § 28.24 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File recommended or initial decisions, as appropriate.

§28.23 Disqualification of administrative judges.

(a) In the event that an administrative judge considers himself or herself disqualified, he or she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the administrative judge to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The administrative judge shall rule on the withdrawal motion. If the motion is denied, the party requesting withdrawal may take an appeal to the full Board. The notice of appeal, together with a supporting brief, shall be filed within 15 days of service of the denial of the motion. Upon receipt of the appeal, the Board will determine whether a response from the other party or parties is required, and if so, will fix by order the time for the filing of the response.

§28.24 Sanctions.

The administrative judge may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, for an admission, or for production of witnesses), the administrative judge may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought.

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought.

(3) Permit the requesting party to introduce secondary evidence concerning the information sought.

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the administrative judge may dismiss the action with prejudice or rule for the petitioner.

(c) *Failure to make timely filing.* The administrative judge may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.

PARTIES, PRACTITIONERS AND WITNESSES

§28.25 Representation.

(a) All parties to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representatives, if any, in the petition for review or responsive pleading. Any subsequent changes in representation shall also be in writing, and submitted to the administrative judge and served upon the other parties. Once a party has designated a representative, all documents required by the Board's regulations to be served upon the party shall instead be served upon the representative.

(b) A party may choose any representative so long as the person is willing and available to serve. However, the other party or parties may challenge the representative on the grounds of conflict of interest or conflict of position. This challenge must be made by motion to the administrative judge within 10 days of service of the notice of designation, and shall be ruled upon by the administrative judge prior to any further proceeding in the case. These procedures apply equally to original and subsequent designations of representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The administrative judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§28.26 Witness fees.

The costs involved in the appearance of witnesses in any Board proceeding shall be allocated as follows:

(a) Persons employed by the GAO shall, upon request by the administrative judge to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations.

(b) Employees of other federal agencies called to testify at a Board hearing shall, at the request of the administrative judge and with the approval of the employing agency, be in official duty status during any period of absence from their normal duties caused by their testimony, and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations. A party planning to call an employee of another federal agency as a witness shall promptly notify the administrative judge of the need to submit to the federal agency a request that the employee be granted official duty status. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraph (c) of this section.

(c) Witnesses who are not covered by paragraphs (a) or (b) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821. The fees shall be paid, in the first instance, by the party requesting the appearance of the witness, subject to a subsequent decision otherwise in accordance with § 28.89, concerning the award of attorneys fees and costs. Such fees shall be tendered to the witness at the time the subpoena is served, or, when the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to tender witness fees in advance. Payment of travel and per diem expenses shall be governed by applicable law and regulation.

(d) When the General Counsel is the petitioner or is representing the petitioner, the General Counsel shall pay the witness fees and arrange for the travel and per diem expenses that are required by paragraph (c) of this section.

§ 28.27 Intervenors.

(a) Intervenors are persons who are allowed to participate in a proceeding because the proceeding, or its outcome, may affect their rights or duties.

(b) Any person may, by motion to the administrative judge, request permission to intervene. The motion shall state the reasons why the person should be permitted to intervene. A person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene under this section.

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or the Board that the requestor will be affected directly by the outcome of the proceeding. Denial of a motion for intervention may be appealed to the Board. Such an appeal shall be filed within 10 days of service of the denial of the motion to intervene.

(d) Intervenors who are granted permission to intervene will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing.

(2) Intervenors may participate in Board proceedings only on the issues affecting them, as determined by the administrative judge or Board.

§ 28.28 Substitution.

(a) If a petitioner dies or is otherwise unable to pursue the appeal, the action may be completed upon substitution of a proper party.

(b) A motion for substitution shall be filed by the proper party within 90 days after the death of the petitioner or other disabling event.

§ 28.29 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases which should be united because they contain identical or similar issues or in such other circumstances as justice requires.

(2) Joinder may occur where one person has two or more appeals pending and they are united for consideration. For example, a single appellant who has one appeal pending challenging a

30-day suspension and another appeal pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by administrative judge.* An administrative judge may consolidate or join cases on his or her own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

DISCOVERY

§28.40 Statement of purpose.

Proceedings before the Board shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. The parties are expected to initiate and complete needed discovery with a minimum of Board intervention.

§28.41 Explanation, scope and methods.

(a) *Explanation.* Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in developing, preparing, and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board, except as to matters specifically covered by these regulations. The Federal Rules of Civil Procedure shall be interpreted as instructive rather than controlling.

(b) *Scope.* Any person may be examined pursuant to paragraph (c) of this section regarding any nonprivileged matter which is relevant to the issue under appeal, including the existence, description, nature, custody, condition and location of documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. The information sought must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including written interrogatories, depositions, production of documents or things for inspection or copying, and requests for admission addressed to parties.

§28.42 Discovery procedures and protective orders.

(a) *Discovery from a party.* A party seeking discovery from another party shall initiate the process by serving a request for discovery on the other party. For purposes of discovery under these regulations, a party includes an intervenor.

(1) Each request for discovery shall state the time limit for responding, as prescribed in paragraph (d) of this section.

(2) In the case of a request for deposition of a party, reasonable notice in writing shall be given to every party to the action. The notice shall:

(i) Specify the time and place of the taking of the deposition; and

(ii) Be served on the person to be deposed.

(3) When a request for discovery is directed to an officer or employee of GAO, the agency shall make the officer or employee available on official time for the purpose of responding to the request and shall assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Discovery from a nonparty.* Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty may initiate the process by serving a request for discovery on that nonparty and on all other parties to the proceeding. When a party is unable to obtain voluntary cooperation, the party may request that the administrative judge issue a subpoena by following the procedures set forth in §28.46.

(c) *Responses to discovery requests.* (1) A party shall answer a discovery request within the time provided by paragraph (d)(2) of this section either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for objection, or by requesting a protective order.

(2) Upon failure or refusal of a party to respond in full to a discovery request, the requesting party may file with the administrative judge a motion to compel discovery. The time limits applicable to a motion to compel are set forth in paragraph (d)(4) of this section. A copy of the motion shall be served on the other parties. The motion shall be accompanied by:

(i) A copy of the original request served on the party from whom discovery was sought and a statement showing the relevancy and materiality of the information sought; and

(ii) A copy of the objections to discovery or, where appropriate, a verified statement that no response has been received.

(3) The party from whom discovery was sought shall respond to the motion to compel within the time limits set forth in paragraph (d)(4) of this section.

(d) *Time limits.* (1) Requests for discovery shall be served within 30 days after the service list is served by the Board on all parties.

(2) A party or nonparty shall respond to a discovery request within 20 days after service of the request on the party or nonparty. Any discovery requests following the initial request shall be served within 10 days of the date of service of the prior response, unless otherwise directed. Deposition witnesses shall give their testimony at the time and place stated in the notice of deposition-taking or in the subpoena, unless the parties agree otherwise.

(3) In responding to a discovery request, a party or nonparty shall respond as fully as possible, except to the extent that the party or nonparty objects to the discovery or requests a protective order. Any objection or request for a protective order shall be filed within the time limits set forth in paragraph (d)(2) of this section. Any objection shall be addressed to the party requesting discovery and shall state the particular grounds for the objection. Any request for a protective order shall state the grounds for the protective order and shall be served on the administrative judge and any other parties to the action. The administrative judge shall rule on the request for a protective order.

(4) Motions for an order compelling discovery shall be filed with the administrative judge within 10 days of the service of objections or within 10 days of the expiration of the time limits for response when no response or an alleged inadequate response is received. Opposition to a motion to compel must be filed with the administrative judge within 10 days of the date of service of the motion.

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the filing of the appeal. A later date may be set by the administrative judge after due consideration of the particular situation including the dates set for hearing and closing of the case record.

§ 28.43 Compelling discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery shall be submitted to the administrative judge as set forth at § 28.42(c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued may include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition.

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect any party or deponent from undue expense, embarrassment or oppression.

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence.

(4) Other restrictions upon the discovery process as determined by the administrative judge.

(c) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under §28.24.

§28.44 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

§28.45 Admission of facts and genuineness of documents.

(a) Any party may be served with requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by §28.42(d)(2), the party on whom the request is served must submit to the requesting party:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge after making reasonable inquiry regarding the specific matters on which an admission is requested; and/or

(2) An objection to the request for an admission, in whole or in part, on the grounds that the matters contained therein are privileged, irrelevant, or otherwise improper.

(c) Upon a failure or refusal of a party to respond to a request for admissions within the prescribed time period, the request shall be deemed admitted.

SUBPOENAS

§28.46 Motion for subpoena.

(a) *Authority to issue subpoenas.* Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may order the taking of depositions or order responses to written interrogatories.

(b) *Motion.* A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under §28.46(a) shall be submitted to the administrative judge at least 15 days in advance of the date scheduled for the commencement of the hearing. If the subpoena is sought as part of the discovery process, the motion shall be submitted to the administrative judge at least 15 days in advance of the date set for the attendance of the witness at a deposition or the production of documents.

(c) *Forms and showing.* Motions for subpoenas shall be submitted in writing to the administrative judge and shall specify with particularity the books, papers, or testimony desired and shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven thereby.

(d) *Rulings.* Where the administrative judge is not a Board member, the motion shall be referred with a recommendation for decision to a Board member. The Board member shall promptly rule on the request. Where the administrative judge is a Board member, he or she shall rule directly on the request.

§28.47 Motion to quash.

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the administrative judge within 20 days after service of the subpoena.

§28.48 Service.

Service of a subpoena may be made by a United States Marshal or Deputy Marshal or by any person who is over 18 years of age and not a party to the proceeding.

§28.49 Return of service.

When service of a subpoena is effected by a person other than a United States Marshal or Deputy Marshal, that person shall certify on the return of service that service was made either:

(a) In person,

(b) By registered or certified mail, or

(c) By delivery to a responsible person (named) at the residence or place of

business (as appropriate) of the person to be served.

§ 28.50 Enforcement.

If a person has been served with a Board subpoena but fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the administrative judge or make an oral motion for enforcement while on record at a hearing. The party shall present the return of service and, except where the witness was required to appear before the administrative judge, shall submit affidavit evidence of the failure or refusal to obey the subpoena. The Board may then request the appropriate United States district court to enforce the subpoena.

HEARINGS

§ 28.55 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. GAO, upon request of the administrative judge, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing, shall set forth the reasons for the request and shall be granted only upon a showing of good cause. When the parties agree on postponement, motions may be made orally and shall be granted only upon a showing of good cause.

§ 28.56 Hearing procedures, conduct and copies of exhibits.

(a) The Board may designate one or more administrative judges to conduct hearings on appropriate matters.

(b) The hearing will be conducted as an administrative proceeding and, ordinarily, the rules of evidence will not be strictly followed.

(c) Parties will be expected to present their cases in a concise manner limiting the testimony of witnesses and submission of documents to relevant matters.

(d) Any party to a hearing offering exhibits into the record shall submit the original of each such exhibit to the court reporter, two copies to the administrative judge, plus one copy for each opposing party that is separately represented.

(e) Each party to a proceeding shall be responsible for bringing the proper number of copies of an exhibit to the hearing.

(f) Multipage exhibits shall be paginated in the lower right hand corner and the first page shall indicate the total number of pages in the exhibit.

(g) No later than the commencement of the hearing, each party shall submit to the administrative judge, to the court reporter, and to the opposing party: (1) A typed list of the witnesses expected to be called to testify; and (2) a typed list of the acronyms (with definitions) expected to be used by the witnesses.

§ 28.57 Public hearings.

(a) Hearings shall be open to the public. However, the administrative judge at his or her discretion, may order a hearing or any part thereof closed, where to do so would be in the best interests of the petitioner, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the administrative judge's decision. Any objections thereto shall be made a part of the record.

(b) Regardless of whether a hearing is open or closed, the GAO technical representative, who is not expected to testify, the GAO representative, the petitioner and the petitioner's representative each has a right to be present at the hearing.

§ 28.58 Transcript.

(a) *Preparation*. A verbatim record made under supervision of the administrative judge shall be kept of every hearing and shall be the sole official record of the proceeding. Upon request, a copy of a transcript of the hearing shall be made available to each party. Additional copies of the transcript shall be made available to a party upon payment of costs. Exceptions to the payment requirement may be granted for good cause shown. A motion for an exception shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted upon a showing of good cause. Requests for copies of transcripts shall be directed to the Clerk of the Board. The Clerk of the Board may,

by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) *Corrections.* Corrections to the official transcript will be permitted. Motions for correction must be submitted within 30 days of service of the transcript upon the party. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the administrative judge. The administrative judge may make changes at any time with notice to the parties.

§28.59 Official record.

The transcript of testimony and the exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§28.60 Briefs.

(a) *Length.* Principal briefs shall not exceed 60 pages and reply briefs 30 pages, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown. Briefs in excess of 10 pages shall include an index and a table of authorities.

(b) *Format.* Every brief must be easily readable. Pages must be 8½ x 11 inches with margins at least one inch on all sides. Typewritten briefs must have double spacing between each line of text, except for quoted texts which may be single spaced.

(c) *Number of copies.* An original and 3 copies of each brief shall be filed with the administrative judge and one copy served on each party separately represented. When an action is before the full Board, an original and seven copies of each brief must be filed with the Board and one copy served on each party separately represented.

§28.61 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule, or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.

(c) In any other action within the Board's jurisdiction, the petitioner shall have the responsibility of presenting the evidence in support of the action and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

(d) Definitions. For purposes of this section, the following definitions shall apply:

Harmful error means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the petitioner to show that, based upon the record as a whole, the error was harmful, i.e., caused substantial harm or prejudice to his or her rights.

Preponderance of the evidence means that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

Substantial evidence means that degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

§28.62 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the administrative judge allows the parties to submit argument, briefs or documents previously identified for introduction into evidence, the record shall

be left open for such time as the administrative judge grants for that purpose.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence has become available which was not available despite due diligence prior to the closing of the record. However, the administrative judge shall make part of the record any motions for attorney fees, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

EVIDENCE

§ 28.65 Service of documents.

Any document submitted with regard to any pleading, motion, or brief shall be served upon all parties to the proceeding.

§ 28.66 Admissibility.

Evidence or testimony may be excluded from consideration by the administrative judge if it is irrelevant, immaterial, or unduly repetitious.

§ 28.67 Production of statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual which is relevant to the evidence given. If the party refuses to furnish the statement, the administrative judge may draw an adverse inference from the failure to produce or may exclude the relevant evidence given by the individual from consideration.

§ 28.68 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 28.69 Judicial notice.

The administrative judge on his or her own motion or on motion of a party, may take judicial notice of a fact which is not subject to reasonable dispute because it is either: (a) A matter of common knowledge; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Judicial notice taken of any fact satisfies a party's burden of proving the fact noticed.

INTERLOCUTORY APPEALS

§ 28.80 Explanation.

An interlocutory appeal is an appeal to the Board of a ruling made by an administrative judge during the course of a proceeding. This appeal may be permitted by the administrative judge if he or she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. The Board makes a decision on the issue and the administrative judge acts in accordance with that decision.

§ 28.81 Procedures and criteria for certification.

(a) Interlocutory review by the Board of a ruling by the administrative judge during the course of the proceeding is disfavored and will be permitted only in circumstances where:

(1) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(2) An immediate review of the ruling by the Board will materially advance the completion of the proceeding, or denial will cause undue harm to a party or the public.

(b) The administrative judge may, on motion of a party or on his or her own motion, certify an interlocutory ruling to the Board for its immediate consideration. Any such certification shall explain the basis on which the administrative judge concluded that the standards for interlocutory review have been met. If the Board nevertheless determines that the certification does not meet those standards it may decline to accept the certification.

(c) A motion for certification to the Board of an interlocutory ruling by the administrative judge shall be filed within 10 days after service of the ruling upon the parties. The motion shall include arguments in support of both the certification and the determination to be made by the Board. Responses, if any, shall be filed within 10 days after service of the motion.

(d) The grant or denial of a motion for certification of an interlocutory ruling shall not be appealable. The administrative judge shall promptly bring a denial of such a motion, and the reasons therefor, to the attention of the Board. If, upon its consideration of the motion and the underlying record, the Board believes that interlocutory review is warranted, it may grant the motion sua sponte.

(e) Upon its acceptance of a ruling of the administrative judge for interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

(f) Unless otherwise directed by the Board, the stay of any proceedings during the pendency of either a motion for certification or an interlocutory review itself shall be within the discretion of the administrative judge.

(g) The denial of a motion for certification does not affect the right of the parties to challenge interlocutory rulings in the course of the review by the Board of initial or recommended decisions.

BOARD DECISIONS, ATTORNEY'S FEES AND JUDICIAL REVIEW

§28.86 Board procedures; recommended decisions.

(a) *Non-member recommended decisions.* Where an administrative judge who is not a Board member issues a decision, the administrative judge shall transmit to the parties and to the Board a recommended decision.

(b) Exceptions to the recommended decision shall be filed within 30 days from service of the decision. Exceptions may be filed by hand delivery or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing by hand delivery:* Exceptions may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* Exceptions 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 exclusive date of filing.

The party filing the exceptions shall serve the Board with an original and 7 copies and shall serve one copy of the exceptions on each of the other parties. The exceptions shall include all supporting material and shall set forth objections to the recommended decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from service of the exceptions to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

(c) Regardless of whether exceptions to a recommended decision are filed with the Board, the Board shall review the recommended decision. In reviewing the recommended decision, the Board shall review the record as though it were making the initial decision. The Board may adopt, reverse, remand, modify or vacate the recommended decision, in whole or in part. Where no party files exceptions to a recommended decision and the Board is considering any action other than adopting the recommended decision in whole as the final decision, the Board shall provide the parties an opportunity to address the issues it is considering. Where appropriate, the Board shall issue a final decision and order a date for compliance. In reviewing any recommended decision, the Board may:

(1) Issue a single decision which decides the case;

(2) Hear oral arguments;

(3) Require the filing of briefs;

(4) Remand the proceedings to the administrative judge to take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(d) The Board shall reject a recommended decision, in whole or in part, on the basis of its own motion or on the basis of exceptions filed by the parties, when the Board finds that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The recommended decision is based on an erroneous interpretation of statute or regulation;

(3) The recommended decision is arbitrary, capricious or an abuse of discretion, or otherwise not consistent with law;

(4) The recommended decision is not made consistent with required procedures and results in harmful error; or

(5) The recommended decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61.

(e) The decision of the Board shall be final and subject to judicial review pursuant to § 28.90.

[58 FR 61992, Nov. 23, 1993, as amended at 61 FR 36810, July 15, 1996]

§ 28.87 Board procedures; initial decisions.

(a) When a case is heard in the first instance by a single Board member, or a panel of members, an initial decision shall be issued by that member or panel and served upon the parties.

(b) An aggrieved party may seek review or reconsideration of the initial decision in the following manner:

(1) Within 15 days of the service of the initial decision, such a party may seek review by the full Board by filing and serving a notice of appeal to the Board.

(2) Within 10 days of the service of the initial decision, such a party may file and serve a request for reconsideration with the administrative judge or panel rendering that decision. Filing of the request for reconsideration shall toll the commencement of the 15 day period for filing a notice of appeal with the full Board, pending disposition of the request for reconsideration by the administrative judge or panel. The administrative judge or panel shall determine if a response is required, and if so, will fix by order the time for the filing of the response. A motion for reconsideration will not be granted without providing an opportunity for response.

(c) Within 25 days following the filing of a notice of appeal to the full Board, the appellant shall file and serve a supporting brief. That brief shall identify with particularity those findings or conclusions in the initial decision that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or regulations that assertedly support each assignment of error. Within 25 days following the service of the appellant's brief, the appellee may file and serve a responsive brief. Within 10 days following the service of the appellee's responsive brief, the appellant may file and serve a reply brief.

(d) In the absence of a timely appeal, the initial decision shall become the final decision of the Board 30 days following its issuance or the date of the administrative judge's or panel's disposition of a request for reconsideration (whichever comes later) unless, prior to the expiration of the 30 day period, the parties are notified in writing that the full Board intends to review the initial decision in whole or in part on its own motion. Such review sua sponte will normally be conducted only if a majority of the Board concludes that one or more issues of law addressed in the initial decision are of such importance as to warrant consideration by the full Board notwithstanding the absence of appeal. Issues so qualifying shall be identified in the Board's notice and the parties shall be provided an opportunity to brief them prior to the Board's decision.

(e) Oral argument on an appeal or in connection with a sua sponte review shall be held in the discretion of the Board. Any party may request that the Board exercise its discretion in that regard.

(f) Upon appeal or following its review sua sponte, the Board may affirm, reverse, modify or vacate the initial decision in whole or in part. If deemed warranted, the Board may remand the proceeding to the single member or panel for further action, including the reopening of the record for the taking of additional evidence. Unless the full Board expressly retains jurisdiction, the single member or panel shall render, on completion of the remand, a supplemental initial decision which shall be subject to appellate review in the same manner and to the same extent as provided for initial decisions in paragraphs (b), (d) and (g) of this section. If the Board does expressly retain jurisdiction at the time of remand, the single member or panel shall instead render a report to the Board on the remanded matters. Upon receipt of the report, the Board shall determine

whether the views of the parties on the content of the report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views. A decision of the full Board disposing of the proceeding without a remand or, where the Board has expressly retained jurisdiction, following completion of the remand shall be the final decision of the Board and subject to judicial review.

(g) In conducting its examination of the initial decision, the Board may review the record as though it were making the initial decision itself. As a general matter, however, the Board will not overturn a finding of fact contained in the initial decision unless that finding is unsupported by substantial evidence in the record viewed as a whole. In determining whether some action other than affirmance of the initial decision is required, the Board will also consider whether:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The initial decision is based on an erroneous interpretation of statute or regulation;

(3) The initial decision is arbitrary, capricious or an abuse of discretion, or otherwise not consistent with law;

(4) The initial decision is not made consistent with required procedures and results in harmful error.

(h) Initial decisions that become final without review by the full Board shall not be binding precedent in any other case.

§28.88 Board procedures; enforcement.

(a) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes final, provide the Board and all parties to the proceeding with a compliance report specifying:

(1) The manner in which compliance with the provisions of the decision or order has been accomplished;

(2) The reasons why compliance with any provisions of the Board's order has not been fully accomplished; and

(3) The steps being taken to ensure full compliance.

(b) When the Board does not receive a notice of compliance in accordance with paragraph (a) of this section, the Solicitor shall make inquiries to determine the status of the compliance report. When the Solicitor establishes that a complete compliance report is not forthcoming, the Solicitor shall report the failure to file a complete compliance report to the Board.

(c) Any person and/or the General Counsel may petition the Board for enforcement of a final decision of the Board. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(d) Upon receipt of a non-compliance report from its Solicitor or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§28.89 Attorney's fees and costs.

Within 20 days after service of a final decision by the Board, or within 20 days after the date on which an initial decision becomes final pursuant to §28.87(d), the petitioner, if he or she is the prevailing party, may submit to the administrative judge who heard the case initially a request for the award of reasonable attorney fees and costs. GAO may file a response within 20 days after service of the request. Motions for attorney fees shall be filed in accordance with §28.21 of these regulations. Rulings on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The decision of the administrative judge concerning attorney's fees and costs shall be subject to review and shall become final according to the provisions of §§28.86–28.87.

§28.90 Board procedures; judicial review.

(a) A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), (7) or (9) may be appealed to the United States Court of Appeals for the Federal

Circuit within 30 days after the petitioner receives notice of the Board's decision.

(b) The Board may designate the Solicitor, the General Counsel or any other qualified individual to represent it in any judicial proceeding involving a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994]

Subpart C—Oversight Procedures

§ 28.91 General.

Pursuant to section 732(f) of Title 31, U.S.C., the Board is authorized to conduct oversight of GAO employment regulations, procedures and practices as they relate to laws prohibiting discrimination in employment on the basis of race, color, religion, national origin, political affiliation, age, sex, marital status, or disability.

§ 28.92 Oversight of GAO EEO program.

(a) When requested by the Board in the exercise of its oversight responsibility, GAO shall provide:

(1) Such plans, procedures and regulations as GAO may develop in order to eliminate and prevent employment discrimination on the bases enumerated in § 28.95;

(2) Reports regarding its efforts to publicize to its employees the procedures to be followed for receiving advice and for filing complaints regarding the enforcement of laws prohibiting discrimination in employment;

(3) Quarterly statistical reports of pre-complaint counseling and of pending complaints, in a manner prescribed by the Board;

(4) An annual report on its equal employment opportunity affirmative action program and its Federal Equal Employment Opportunity Recruitment Program; and

(5) Any other information regarding equal employment opportunity within the GAO that may be required by the Board, in the time frame and format established by the Board after consultation with the Comptroller General or his or her designee.

(b) The Board shall review and evaluate the regulations, procedures and practices of the GAO, including the information filed with it in accordance with paragraph (a) above, and shall:

(1) Require the GAO to make any changes the Board determines are needed due to violations of or inconsistencies with Subchapters III and IV of Chapter 7 of Title 31, U.S.C. or equal employment opportunity laws, and

(2) Report to the Congress on the overall progress being made in effectuating the purposes of Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

Subpart D—Special Procedures; Equal Employment Opportunity (EEO) Cases

§ 28.95 Purpose and scope.

The procedures in this subpart relate to charges filed against any GAO policies or specific actions which are alleged to involve prohibited discrimination. Prohibited discrimination is defined as any action in violation of:

(a) Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination based on race, color, religion, sex or national origin;

(b) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a) prohibiting discrimination on account of age;

(c) Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d), prohibiting discrimination in wages on the basis of sex;

(d) Sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a) prohibiting discrimination on the basis of disability; or

(e) Any other law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin or disability. 31 U.S.C. 732(f)(2).

§ 28.96 Applicability of general procedures.

Except where a different procedure is provided for in this subpart, the procedures to be followed by all parties in cases arising under this subpart shall be the general procedures as prescribed in subpart B of this part.

§28.97 Class actions in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination on behalf of a class of GAO employees or applicants for employment, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) A petition for review of GAO's disposition of any EEO class complaint may be submitted to the Board at the following times:

(1) Within 20 days of receipt of a GAO determination rejecting or canceling the class complaint;

(2) Within 20 days of receipt of a GAO determination accepting the class action, but with modifications that are not satisfactory to the agent of the class;

(3) When a period of more than 180 days has elapsed since the formal class complaint was filed and the GAO has not issued a final decision; or

(4) Within 20 days of receipt of a final GAO decision resolving the complaint if that decision, in whole or in part, has not satisfied the agent for the class.

(c) In class actions in EEO cases, no charge shall be filed or investigated by the General Counsel prior to filing a petition for review with the Board. However, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(d) The parties shall not have a right to a hearing on a petition for review in class actions under this section. Upon a showing of good cause as to why an evidentiary hearing is necessary, the Board may order such a hearing. Alternatively, the Board may, after a review of the administrative record and on its own motion, order a hearing for the purpose of gathering additional evidence. If no hearing is ordered, the Board's decision shall be based upon a review of the administrative record developed in the GAO class complaint process.

(e) Standards. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

§28.98 Individual charges in EEO cases.

(a) Except as provided in paragraph (c) of this section, a charge alleging prohibited discrimination (as defined in §28.95) shall not be filed with the Board's General Counsel unless the charging party has first filed a complaint of discrimination with GAO in accordance with GAO Order 2713.2.

(b) A charge relating to GAO's disposition of any individual EEO complaint may be filed with the Board's General Counsel at the following times:

(1) Within 30 days from the receipt by the charging party of a GAO decision rejecting the complaint in whole or part;

(2) Whenever a period of more than 120 days has elapsed since the complaint was filed, and the GAO has not issued a final decision; or

(3) Within 30 days from the receipt by the charging party of a final GAO decision concerning the complaint of discrimination.

(c) *Special rules for adverse and performance based actions.* Where an employee is affected by a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days (whether due to disciplinary, performance-based or other reasons), and the employee wishes to allege that such action was due in whole or part to prohibited discrimination (as defined in §28.95), the employee may elect to do either (but not both) of the following:

(1) File a charge directly with the Board's General Counsel within 30 days of the effective date of the personnel action and raise the issue of discrimination in the course of the proceedings before the Board; or

(2) File a complaint of discrimination with the GAO pursuant to GAO Order 2713.2. If the employee elects to file a complaint of discrimination with GAO, he or she may still seek Board review of the matter by filing a charge with the Board's General Counsel at the times authorized in paragraph (b) of this section. Where a complaint of discrimination filed with GAO relates to non-EEO issues that are within the

Board's jurisdiction in addition to EEO-related allegations, the subsequent charge filed with the Board's General Counsel under paragraph (b) of this section shall be considered a timely appeal of the non-EEO issues. An employee will be deemed to have elected the EEO complaint process if the employee files a timely written complaint of discrimination with GAO before filing a charge with the Board's General Counsel. Consultation with an EEO counselor, without filing a written complaint of discrimination, does not constitute an election of the EEO complaint process.

(d) *Special rules for RIF based actions.* An individual alleging discrimination issues in connection with a RIF-based separation may follow the procedures outlined above in paragraph (c) of this section for adverse and performance based actions, or may choose instead a third option. In accordance with the provisions of § 28.13, such an individual may appeal that action by filing directly with the PAB, thus bypassing both the Civil Rights Office and the PAB's Office of General Counsel.

(e)(1) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.12.

(2) A charging party challenging a RIF action by filing directly with the PAB shall follow the procedures prescribed in § 28.13 and § 28.18.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36811, July 15, 1996]

§ 28.99 Petitions for review to the Board in EEO cases.

(a) The provisions of §§ 28.18 through 28.90, inclusive, shall govern the Board's procedures in processing petitions filed under this subpart.

(b) Remedial action provided in Board orders in these cases may include:

(1) Provision for offers of employment, re-employment or promotion, with or without back pay, when the Board decides such action is required to make whole the individual found to have been discriminated against.

(2) Notification to all GAO employees of the action ordered to be taken to expunge the effect of the discrimination;

(3) Correction of GAO personnel records, as necessary, to reflect the purpose of the Board order; and,

(4) Any other action the Board believes proper to correct the effect of the discrimination found to have occurred.

§ 28.100 [Reserved]

§ 28.101 Termination of Board proceedings when suit is filed in Federal District Court.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, the Rehabilitation Act, 29 U.S.C. 791, or the Age Discrimination in Employment Act, 29 U.S.C. 633a, files suit in Federal District Court.

[59 FR 59106, Nov. 16, 1994]

Subpart E—Special Procedures; Representation Proceedings

§ 28.110 Purpose.

The procedures in this subpart relate to the Board's duty under 31 U.S.C. 753(a) (4) and (5) to determine appropriate units of GAO employees for collective bargaining, to conduct elections in order to determine whether the employees in any such units wish to select a labor organization to represent them in collective bargaining, and, thereafter, to certify labor organizations so selected as the designated exclusive bargaining representative. They are referred to in these regulations as ''representation proceedings''.

§ 28.111 Scope.

The Board shall consider, decide and order corrective action (as appropriate) in cases arising from the determination of appropriate units of employment for collective bargaining and cases arising from elections and certifications of collective bargaining representatives. Board decisions in these matters will be made with due regard for relevant provisions of GAO Orders and with the objective of insuring that the GAO labor relations program is consistent

with Chapter 71 of Title 5, United States Code, which prescribes the standards for the labor relations program in the executive branch.

§28.112 Who may file petitions.

(a) Representation petitions may be filed by:

(1) A labor organization which wishes to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization which desires to replace another currently having that status;

(2) An employee or a group of employees (or an individual on his, her or their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit;

(3) The GAO if it has a good faith reason to doubt the continued desire of a group of its employees to be represented by a labor organization which is currently the exclusive representative of the employees in an appropriate unit;

(4) The GAO or a labor organization currently recognized as an exclusive representative desiring the Board to clarify an earlier unit determination or certification;

(5) Any person seeking clarification of, or an amendment to, a certification then in effect or any other matter relating to representation.

(b) Notwithstanding the provisions of paragraph (a) of this section, no petition may be filed which seeks representation rights for employees in a unit—

(1) Where an election has been held within the previous 12 calendar months and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative, or

(2) Where an existing collective bargaining agreement having a term of three years or less is in effect, unless the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration of the collective bargaining agreement, or

(3) Where an existing collective bargaining agreement having a term of more than three years is in effect, unless the petition for recognition is filed not more than 105 days and not less than 60 days before the third anniversary or any subsequent anniversary of the collective bargaining agreement.

§28.113 Contents of representation petitions.

(a) The contents of representation petitions filed under §28.112(a)(1) (by a labor organization seeking to be designated as or replace an exclusive bargaining representative) shall consist of:

(1) A detailed identification of the unit of employees to which the petition applies, and their geographical location within the GAO, the classifications of employees to be included and excluded, and the number of employees involved;

(2) Names, addresses and officers of any other labor organizations known by the petitioner to be interested in representing employees covered by the petition, including a labor organization which is party to a current collective bargaining agreement covering any employees in the unit;

(3) Name, address, affiliation, if any, and telephone number of the petitioning organization;

(4) A copy of the constitution and bylaws of the organization, a roster of the organization's officers and representatives, and a statement of the organization's objectives, together with a statement that these documents have also been supplied to the GAO;

(5) A declaration by the signer of the petition, under penalties of the Criminal Code (18 U.S.C. 1101), that the petition's contents are true and correct, to the best of his or her knowledge and belief;

(6) The signature of the representative of the petitioner, including title and telephone number; and

(7) Membership cards, dues records, or signed statements by employees indicating their desire to be represented by the labor organization, or similar evidence acceptable to the Board, showing that at least 30 percent of the employees in the proposed unit wish to be represented by the petitioner.

(b) The contents of petitions filed under §28.112(a)(2) (by an employee or group of employees seeking an election to determine if a labor organization

still represents a majority of employees in a unit) shall conform to those provided for in paragraph (a) of this section, except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied. Additionally, a petition under § 28.112(a)(2) shall include evidence satisfactory to the Board that at least 30 percent of the employees in the unit no longer wish to be represented by the labor organization currently having bargaining rights.

(c) The contents of petitions filed under § 28.112(a)(3) (by GAO raising good faith doubts about the continued desire of a group of its employees to be represented by a labor organization) shall conform to those provided in petitions under paragraph (a) of this section except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied. Additionally, such a petition shall include a detailed statement giving the objective considerations which support the GAO's good faith reason for doubting the labor organization's continued status as the exclusive representative.

(d) The contents of petitions filed under § 28.112(a)(4) (by GAO or a labor organization seeking clarification of a certification) shall include the information required under paragraph (a) of this section, with the exception of the information required by paragraphs (a)(4) and (a)(7) of this section. Also, instead of the information required in paragraph (a)(1) of this section, the petition shall identify the existing unit and the date the organization was recognized by the GAO or certified as the exclusive representative, and shall explain the changes desired in the unit and the reasons therefor.

(e) Petitions under § 28.112(a)(5) (by any person seeking clarification or amendment of a certification, or raising any other representation matter) shall be filed on forms to be supplied by the Board upon request.

§ 28.114 Pre-investigation proceedings.

(a) Upon the filing of a valid petition, the General Counsel may request GAO to notify employees as to the existence of the petition by posting a notice for at least 10 days in locations appropriately selected to reach all employees in the unit covered by the petition. The notice shall include a request that the Board's General Counsel be notified of the existence of any other interested parties.

(b) GAO shall supply the General Counsel with any information in its possession concerning other potentially interested labor organizations, copies of relevant correspondence, and copies of existing or recently expired agreements covering any employees in the unit. The GAO shall also provide a list of employees it believes should be included in the unit together with their classifications and the names and classifications of those employees it proposes to exclude from the unit.

(c) All interested parties shall meet as soon as possible after the expiration of the 10-day posting period and shall attempt to resolve any issues in controversy.

(d) A labor organization may become an intervenor in any representation proceeding by submitting to the General Counsel, within the 10-day period, evidence that it represents at least 10 percent of the employees in the proposed unit or that it is the exclusive representative of the employees involved. Denial of a request to intervene may be appealed to the Board. Such an appeal must be filed within 10 days of service of the General Counsel's determination.

§ 28.115 Processing petitions.

(a) Upon the expiration of the 10-day posting period, and after the General Counsel considers an appropriate period has elapsed for consultation among the parties to resolve or identify issues, the General Counsel shall prepare a report to the Board which may recommend:

(1) Approval of any agreement entered into by the parties during their consultations including an agreement on the appropriate units, on the withdrawal of the petition, or on a joint request to conduct an election to determine which labor organization, if any, the employees select to be their exclusive bargaining representative;

(2) Dismissal of the petition as being without merit; or

(3) Issuance of a notice of hearing for the purpose of disposing of the remaining issues raised in the petition.

(b) The General Counsel's report shall be supplied to all interested parties, and, unless all parties agree to a shorter period, they shall have 15 days during which to file any response with the Board.

(c) The Board, as expeditiously as feasible after the expiration of the period specified in paragraph (b) of this section, but no later than 30 days thereafter, shall either approve the report and order appropriate steps to carry out its recommendations, or remand it to the General Counsel with further instructions.

(d) Where a hearing is ordered, an administrative judge shall be designated by the Board. The report of the administrative judge shall include Findings of Fact and Recommendations.

(e) After receiving the report from the administrative judge, and after providing the parties with an opportunity for comment, the Board shall issue a Decision and Order determining the appropriate unit, directing an election, dismissing the petition or making some other appropriate disposition of the matter.

(f) Final Decisions and Orders issued by the Board based on hearings held in accordance with paragraphs (d) and (e) of this section shall not be considered final decisions subject to appeal before the Circuit Courts of Appeal.

§28.116 Conduct of elections.

(a) The Board shall supervise any election it orders to be conducted, but may delegate ministerial functions relating to an election to any qualified independent organization; to members of the Board's full-time staff; or to temporary employees hired for this purpose.

(b) Appropriate notices setting forth details of the election shall be posted by GAO as directed by the Board.

(c) The Board shall, through its agents chosen to conduct the election:

(1) Provide the opportunity for all qualified voters to indicate their choices in secrecy;

(2) Offer qualified voters the opportunity to vote for any labor organization on the ballot, or to reject all labor organizations;

(3) Permit all parties to observe all aspects of the election procedure other than any which would interfere with the secrecy of the ballot;

(4) Provide for all parties to challenge the eligibility of any voters, and to impound the ballots of such voters, subject to later determination of eligibility should the number of challenges potentially affect the results;

(5) Certify to all parties the results of the election.

(d) Upon receiving a report of the results of the election, the Board shall:

(1) If necessary rule on the challenges and adjust the results accordingly;

(2) Formally announce the results and, where appropriate, designate a labor organization as the exclusive collective bargaining agent, or withdraw such a designation;

(3) Order a runoff or an additional election, if the Board deems it appropriate, where the results of the original election are inconclusive because no choice on the ballot has secured a majority of the valid votes cast. Not more than one additional and one runoff election may be held.

(i) *Runoff election*. The Board may order a runoff election where one or more of the labor organizations on the ballot has received the vote of at least 30 percent of the employees eligible to vote, but none has gained a majority of the votes cast. The runoff election will be between the two choices receiving the largest and the second largest number of votes in the original election.

(ii) *Additional election*. The Board may order an additional election where there is a tie vote between all of the choices on the ballot or where a runoff election is not feasible because there is a tie between the choices receiving the second most votes in the original election. The additional election will include all the choices that appeared on the original ballot.

Subpart F—Special Procedures; Unfair Labor Practices

§28.120 Authority of the Board.

(a) The procedures in this subpart relate in part to the Board's function, under 31 U.S.C. 753(a)(6), to ''consider

and order corrective or disciplinary action in a case arising from * * * a matter appealable to the Board under the labor-management relations program under (31 U.S.C. 732(e)(2)) including a labor practice prohibited under (31 U.S.C. 732(e)(1)).''

(b) The system so established by the Comptroller General is required to provide that each employee of the GAO has the right to form, join or assist, or not form, join or assist an employee organization, freely and without penalty or reprisal, and for a labor-management relations program consistent with Chapter 71 of Title 5, U.S.C. (31 U.S.C. 732(e)).

§ 28.121 Unfair labor practices; Board procedures.

(a) Unfair labor practices are defined at GAO Order 2711.1. An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies to an employee or labor organization rights comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

(b) An allegation that unfair labor practices have been committed shall be subject to the procedures appearing in subpart B of this part for the filing of charges, investigation by the General Counsel, and the Board's disposition, except as set forth in paragraphs (c) and (d) of this section.

(c) Except as provided in paragraph (d) of this section, no petition for review may be filed based on any alleged unfair labor practice which occurred more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 14b of GAO Order 2711.1, or more than 9 months before the filing of a charge with the General Counsel.

(d) If the Board determines that the charging party was prevented from filing the charge during the 6-month period referred to in paragraph (c) of this section by reason of:

(1) Any failure of the charged party to perform a duty owed to the charging party; or

(2) Any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period; the charge will be considered timely filed, provided it was filed with the charged party during the 6-month period beginning on the day of the discovery of the alleged unfair labor practice by the charging party.

§ 28.122 Negotiability issues; compelling need.

Where the GAO and an exclusive bargaining representative disagree on whether a matter is subject to negotiation as part of the requirement to bargain in good faith, the matter shall be appealable to the Board under the following procedures:

(a) When, in connection with negotiations, a proposal is declared nonnegotiable, the party submitting the proposal shall, prior to the close of negotiations, submit to the other party a Request for Formal Negotiability Determination reciting the proposal in question. The party declaring the proposal nonnegotiable shall, within ten (10) days, deliver to the other party a Formal Negotiability Determination stating the basis for the Determination.

(b) A Formal Negotiability Determination may be appealed to the Board within 20 days of its service by filing a Petition for Review with the Board. A complete statement of argument from the petitioner should accompany the Petition for Review.

(c) The Board shall serve the Respondent with a copy of the Petition for Review and accompanying argument. Respondent shall reply to the Petition for Review within 20 days of its service upon respondent.

(d) One or more members of the Board shall review the arguments, hold a hearing if the administrative judge deems it necessary, and issue a decision.

(e) The decision shall become final in accordance with §§ 28.86–28.87.

§ 28.123 Standards of conduct for labor organizations.

(a) The GAO shall only accord recognition to labor organizations that are free from corrupt influences and from influences opposed to basic democratic principles. An organization is not required to prove it is free from

such influence if it is subject to governing requirements calling for the maintenance of:

(1) Democratic procedures;

(2) Freedom from totalitarian influence;

(3) Independence on the part of its agents and officers from any business or financial interests which represent conflicts of interest or potential conflicts of interest; and

(4) Fiscal integrity, including provision for the dissemination of regular financial reports to its members.

(b) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Board and comply with trusteeship and election standards.

(c) A labor organization which has or seeks recognition under these Rules shall adhere to principles enunciated in the Regulations issued by the Assistant Secretary of Labor for Labor/Management Relations regarding standards of conduct for labor organizations in the public sector. Complaints of violations of this section shall be filed with the Board. In any matter arising under this section, the Board may require a labor organization to cease and desist from violations of this section and require it to take such actions as it considers appropriate to carry out the policies of this section.

(d) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, or by any employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(e) In the case of any labor organization which by omission or commission has willfully and intentionally called or participated in a strike, work stoppage or slowdown, or picketed in a manner which interfered with the operations of a government agency, or has condoned such activity, the Board shall, upon an appropriate finding it has made of such a violation—

(1) Revoke the recognition status of the labor organization; or

(2) Take any other appropriate disciplinary action.

(f) The General Counsel may charge a labor organization with violations of this section. The Board shall conduct proceedings with regard to such charge and may require a labor organization to take such actions as it deems necessary to carry out the policies of this section.

§28.124 Review of arbitration awards.

(a) *Filing an exception.* (1) Either party to arbitration, conducted pursuant to a grievance procedure under a collective bargaining agreement, may file with the Board an exception to the arbitrator's award rendered pursuant to the arbitration.

(2) The time limit for filing an exception to an arbitration award is 30 days from the service of the award on the filing party.

(3) An opposition to the exception may be filed by a party within 30 days after the service of the exception.

(4) A copy of the exception and any opposition shall be served on the other party.

(b) *Content of exception.* An exception must be a dated, self-contained document which sets forth in full:

(1) A statement of the grounds on which review is requested;

(2) Evidence or rulings bearing on the issues before the Board;

(3) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities;

(4) A legible copy of the award of the arbitrator and legible copies of other pertinent documents; and

(5) The name and address of the arbitrator.

(c) *Grounds for review.* (1) The Board will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(i) Because it is contrary to any law, rule or regulation; or

(ii) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(2) The Board will not consider an exception where:

(i) The award relates to an action based on unacceptable performance covered under 5 U.S.C. 4303;

(ii) The award relates to a removal, suspension for more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less covered under 5 U.S.C. 7512; or

(iii) the exception is based on a GAO rule which was not introduced into the record submitted to the arbitrator.

(d) *Board decision*. The Board shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

§ 28.130 General authority.

The procedures in this subpart relate to the Board's functions ''to consider, decide and order corrective or disciplinary action (as appropriate) in cases arising'' from any area within the Board's jurisdiction.

§ 28.131 Corrective action proceedings.

(a) When information comes to the attention of the General Counsel suggesting that a prohibited personnel practice may have occurred, exists or is to be taken, the General Counsel shall investigate the matter to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken.

(b) If the General Counsel terminates any investigation under this section which is not also the subject of a charge, the General Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated, a written statement notifying the person of the termination of the investigation and the reasons therefore.

(c) If the General Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken which requires corrective action and which is not also the subject of a charge, the General Counsel shall report the determination together with any findings or recommendations to the GAO.

(d) If, after a reasonable period, GAO has not taken the corrective action recommended, the General Counsel may file a petition for review with the Board. Such petition for review shall be processed in accordance with §§ 28.19 through 28.25.

§ 28.132 Disciplinary proceedings.

(a) If the General Counsel determines after any investigation under 31 U.S.C. 752(b) that disciplinary action should be initiated against an employee, the General Counsel shall prepare a written complaint against the employee containing his or her determination, together with a statement of the supporting facts, and present the complaint and the statement to the employee and the Board in accordance with paragraphs (b) and (c) of this section.

(b) In the case of an employee in a confidential, policy making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate, the complaint and statement referred to in paragraph (a) of this section, with any response by the employee, shall be presented to the Congress for appropriate action in lieu of being presented under paragraph (d) of this section.

(c) Any employee against whom a complaint has been presented to the Board under paragraph (a) of this section is entitled to:

(1) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) Be represented by an attorney or other representative;

(3) A hearing before the Board or a member designated by the Board;

(4) Have a transcript kept of any hearing under paragraph (c)(3) of this section; and

(5) A written decision and reasons therefor at the earliest practicable date, including a copy of a final decision ordering disciplinary action.

(d) A final order of the Board may order disciplinary action consisting of removal, reduction in grade, debarment from GAO employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of civil penalty not to exceed $1,000.

(e) There may be no administrative appeal from an order of the Board under paragraph (d) of this section. An employee subject to a final decision ordering disciplinary action under this section may obtain judicial review of the order in the U.S. Court of Appeals for the Federal Circuit in accordance with 31 U.S.C. 755.

§28.133 Stay proceedings.

(a) The General counsel may request the issuance of an ex parte stay, not to exceed 30 days in duration, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. Any such request shall be in writing and shall specify, among other things, the nature of the action to be stayed and the basis for the General Counsel's belief that a prohibited personnel practice may be involved. The General Counsel shall serve a copy of the request on the GAO. Within three business days of its filing, the request shall be granted by the Board member designated by the Board Chair to entertain it unless, in the opinion of that member, the request either fails to satisfy the requirements of this paragraph or, on its face, conclusively establishes the absence of a prohibited personnel practice.

(b) The General Counsel may request either a further temporary stay or a permanent stay of the proposed personnel action. Such a request shall be filed and served so as to be received by the Board and the agency no less than 10 days before the expiration of any ex parte stay issued under paragraph (a) of this section. The agency's response to the request shall be filed and served so as to be received by the Board and the General Counsel no less than three days before the expiration of the ex parte stay issued under paragraph (a) of this section.

(c) A stay request under paragraph (b) of this section will be considered and decided by the Board member who issued the ex parte stay under paragraph (a) of this section, unless the Board Chair determines that it should be considered and decided by the Board en banc.

(d) Upon initial consideration of a stay request under paragraph (b) of this section, the Board or the designated member thereof may:

(1) grant or deny the requested stay, in whole or in part, on the basis of the written submissions of the respective parties without additional briefing, oral argument, or the receipt of any documentary evidence or testimony;

(2) require further briefing of the issues presented by the request and/or call for oral argument; or

(3) conduct a hearing at which documentary evidence and testimony is received. If necessary, the ex parte stay issued under paragraph (a) of this section may be extended sua sponte for a period not to exceed 30 days to enable the Board or the designated member thereof a reasonable opportunity to decide the matter.

(e) In acting upon a stay request under paragraph (b) of this section, the Board or the designated member thereof shall consider and balance such established equitable factors as:

(1) The likelihood that the personnel action sought to be stayed involves a prohibited personnel practice; and

(2) The nature and extent of the injury that the employee and the agency likely will suffer if the requested stay is or is not issued. If a further temporary stay is granted based on a claim that the General Counsel requires additional time to conclude an investigation of the employee's complaint, the duration of that further stay shall not exceed the amount of time necessary to complete the investigation in the exercise of a high degree of diligence.

(f) Any order issued by a member of the Board granting or denying, in whole or in part, a stay request under paragraph (b) shall be subject to review by the Board en banc on the filing and service of a notice of appeal, accompanied by a supporting brief, within 10 days of the service of that order. Responsive briefs shall be filed and served within 10 days of service of the appeal.

(g) A motion to vacate a stay order may be filed at any time. A stay order issued by the Board en banc may not be vacated by a single Board member.

Subpart H—Appeals by Members of the Senior Executive Service

§ 28.140 Personnel actions involving SES members.

Members of the GAO Senior Executive Service (SES) may appeal adverse actions relating to misconduct, malfeasance or similar action to the Board in accordance with Subpart B of this part. Members of the GAO SES who allege that they have been subjected to a personnel action that constitutes a prohibited personnel practice or prohibited discrimination may appeal to the Board in accordance with subpart B or subpart D of this part respectively.

§ 28.141 Performance based actions.

A career appointee removed from SES to a GAO position outside the SES for less than fully successful executive performance shall, upon notice of such removal, be entitled, upon request, to an informal hearing before a member of the Board designated by the Chair of the Board.

(a) At the informal hearing, the career appointee and/or a representative and the agency may appear and present documentary evidence and argument.

(b) The Board member will determine which, if any, witnesses will be allowed to testify. As a general rule, no cross-examination of witnesses will be allowed. The Board member will have discretion to allow cross-examination of witnesses in exceptional circumstances.

(c) The informal hearing shall not give the career appointee the right to initiate an action with the Board under another provision of these rules, nor need the removal action be delayed as a result of the granting of such hearing.

Subpart I—Ex Parte Communications

§ 28.145 Policy.

It is the policy of the Board to regulate strictly ex parte communications between members of the Board and their decision-making personnel and any interested party to a proceeding before the Board.

§ 28.146 Explanation and definitions.

(a) Ex parte communications are oral or written communications between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties to the proceeding a chance to participate. Not all ex parte communications are prohibited, however, only those which involve the merits of the case or those which violate other rules requiring submissions to be in writing. Accordingly, interested parties may make inquiries about such matters as the status of a case, when it will be heard, and the method for transmitting evidence to the Board. Such communications should be directed to the Clerk of the Board. Parties may not inquire about such matters as what defense they should use or whether their evidence is adequate, make a submission orally which is required to be in writing, or otherwise inquire as to the merits of a pending case.

(b) In this subpart—

(1) ''Interested party'' includes:

(i) Any party, including the General Counsel of the Board, or representative of a party involved in a proceeding before the Board;

(ii) Any person desiring to intervene in any proceeding before the Board; or

(iii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) ''Decision-making personnel'' means the Board, a panel of Board members, a Board member, an administrative judge, and/or an employee of the Board, who reasonably can be expected to participate in the decision-making process of the Board.

§ 28.147 Prohibited communications.

Ex parte communications concerning the merits of any matter before the Board for adjudication, or which would otherwise violate rules requiring written submissions, are prohibited from the time the interested party involved has knowledge that the matter may be considered by the Board until the Board has rendered a final decision on the case.

§ 28.148 Reporting of communications.

Any communication made in violation of this section shall be made part

of the record in the proceeding and an opportunity for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

§28.149 Sanctions.

The following sanctions shall be available for violations of this Subpart:

(a) The Board, a panel of Board members, a Board member or an administrative judge, as necessary, may, in the interest of justice, require the offending party to show cause why his or her claim, interest, motion or petition should not be dismissed, denied or otherwise adversely affected.

(b) The Board, a panel of Board members, a Board member or an administrative judge, as necessary, may invoke such sanctions against any offending party as may be appropriate under the circumstances.

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.
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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 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

(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 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;

(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 subject 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.

(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 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]

SUBCHAPTER C—CLAIMS; GENERAL

PART 30—SCOPE OF SUBCHAPTER

AUTHORITY: 31 U.S.C. 711 and 3702.

§30.1 Coverage of regulations in Subchapter C.

The regulations in Subchapter C relate to all classes of claims by and against the United States except:

(a) Those claims which are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority;

(b) Claims concerning matters which are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7121(a);

(c) Claims for charges for transportation services furnished for the account of the United States, which now are to be filed with the General Services Administration or the agencies out of whose activities they arise. However, claims by carriers and forwarders against the United States for amounts administratively deducted from transportation payment vouchers in connection with loss or damage to property are covered by this subchapter and are to be filed in the General Accounting Office.

[27 FR 12044, Dec. 6, 1962, as amended at 40 FR 60036, Dec. 31, 1975; 47 FR 56980, Dec. 22, 1982; 57 FR 31272, July 14, 1992; 57 FR 33392, July 28, 1992]

PART 31—CLAIMS AGAINST THE UNITED STATES; GENERAL PROCEDURE

Sec.
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INFORMATION RELATING TO CLAIMS

31.6 Information relating to claims presented to the Claims Group, General Government Division of the General Accounting Office.
31.7 Basis of claim settlements.
31.8 Form of claim settlements.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3702.

§31.1 Scope of part.

This part prescribes general procedures applicable to claims against the United States which must be adjudicated in the General Accounting Office or in the agency out of whose activities the claim arose before payment is made or denied exclusive of transportation claims. Special procedures applicable to specified types or classes of claims against the United States are contained in the subsequent parts of this subchapter.

[22 FR 10890, Dec. 28, 1957, as amended at 54 FR 25437, June 15, 1989]

FILING REQUIREMENTS FOR CLAIMANTS

§31.2 Form of claim.

Unless otherwise specifically provided, claims will be considered only when presented in writing over the signature and address of the claimant or over the signature of the claimant's authorized agent or attorney. Generally, no particular form is required for filing a claim; however, claim forms are prescribed in succeeding parts of this subchapter for specific classes of claims.

[22 FR 10890, Dec. 28, 1957]

§31.3 Claim filed by attorney or agent.

A claim filed by an agent or attorney must be supported by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant. See part 11 of this chapter.

[22 FR 10890, Dec. 28, 1957, as amended at 45 FR 84955, Dec. 24, 1980; 54 FR 51867, Dec. 19, 1989]

§31.4 Where claims should be filed, appeals.

A claimant should file his or her claim with the administrative department or agency out of whose activities the claim arose. The agency shall initially adjudicate the claim. If the

claimant is not satisfied with the agency's determination, he or she may appeal that determination to the Claims Group, General Accounting Office. Claims which cannot be resolved by the department or agency shall be transmitted to the Claims Group, General Accounting Office, for resolution. Claims referred by agencies or by claimants to the General Accounting Office, or any correspondence regarding a claim, should be addressed to: Claims Group, U.S. General Accounting Office, Washington, DC 20548.

[54 FR 51868, Dec. 19, 1989]

§ 31.5 Statutory limitations on claims.

(a) *Statutory limitations relating to claims generally*. All claims against the United States Government, except as otherwise provided by law, are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the General Accounting Office, or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued. The burden of establishing compliance with the statute of limitations rests with the claimant.

(b) *Statutory limitation on check claims.* The statutory limitation on claims on account of checks appearing to have been paid are contained in 31 U.S.C. 3702(c). To protect their own interests, it is the responsibility of claimants to present their claims for the proceeds of checks to the Treasurer of the United States or the General Accounting Office if the statutory period of limitation is about to expire.

(c) *Other statutory limitations.* It is not intended to imply that statutes of limitation imposed by Congress are necessarily limited to those cited in paragraphs (a) and (b) of this section. It is incumbent on claimants to inform themselves regarding other possible statutory limitations.

[23 FR 7478, Sept. 26, 1958, as amended at 40 FR 60036, Dec. 31, 1975; 47 FR 56980, Dec. 22, 1982; 54 FR 51868, Dec. 19, 1989]

INFORMATION RELATING TO CLAIMS

§ 31.6 Information relating to claims presented to the Claims Group, General Government Division of the General Accounting Office.

Claimants or their authorized representatives may obtain information relating to claims which have been presented to the Claims Group, General Government Division of the General Accounting Office by addressing correspondence to

Claims Group, General Government Division,
U.S. General Accounting Office,
Washington, DC 20548.

or by calling in person at that Office at 441 G Street NW.

[23 FR 7478, Sept. 26, 1958, as amended at 40 FR 60036, Dec. 31, 1975; 54 FR 25437, June 15, 1989]

§ 31.7 Basis of claim settlements.

Claims are settled on the basis of the facts as established by the Government agency concerned and by evidence submitted by the claimant. Settlements are founded on a determination of the legal liability of the United States under the factual situation involved as established by the written record. The burden is on claimants to establish the liability of the United States, and the claimants' right to payment. The settlement of claims is based upon the written record only.

[22 FR 10890, Dec. 28, 1957]

§ 31.8 Form of claim settlements.

(a) *Allowed claims.* The Claims Group, General Government Division of the General Accounting Office will certify claims for payment either by use of a Certificate of Settlement, GAO Form 39, or by certificate of allowance placed on the voucher when voucher procedures are in effect.

(b) *Disallowed claims.* When part of a claim is allowed and part disallowed, a statement relating to the disallowed portion will be included on the certificate of settlement or the voucher. When the full amount of a claim is disallowed, the claimant will be advised

by issuance of Settlement Certificate, GAO Form 44.

[23 FR 7478, Sept. 26, 1958, as amended at 40 FR 60036, Dec. 31, 1975; 54 FR 25438, June 15, 1989]

PART 32—REVIEW AND RECONSIDERATION OF GENERAL ACCOUNTING OFFICE CLAIMS SETTLEMENTS

Sec.
32.1 Who may obtain review.
32.2 Basis for request for review.
32.3 Return of check or warrant with request for review.

AUTHORITY: 31 U.S.C. 711.

§ 32.1 Who may obtain review.

Settlements made pursuant to 31 U.S.C. 3702 will be reviewed: (a) In the discretion of the Comptroller General upon the written application of: (1) A claimant whose claim has been settled or (2) the head of the department or Government established to which the claim or account relates, or (b) upon motion of the Comptroller General at any time.

[22 FR 10890, Dec. 28, 1957, as amended at 47 FR 56980, Dec. 22, 1982]

§ 32.2 Basis for request for review.

Applications for review of claim settlements should state the errors which the applicant believes have been made in the settlement and which form the basis of his request for reconsideration.

[22 FR 10890, Dec. 28, 1957]

§ 32.3 Return of check or warrant with request for review.

Unless otherwise directed by the Comptroller General on the presentation of proper facts in the particular case, the check issued upon a settlement must not be cashed when its amount includes any item as to which review is applied for, but should accompany the application for review.

[22 FR 10890, Dec. 28, 1957]

PART 33—DECEASED CIVILIAN OFFICERS AND EMPLOYEES; PROCEDURES FOR SETTLEMENT OF ACCOUNTS

Sec.
33.1 Scope of part.
33.2 Definitions.
33.3 Forms prescribed for procedures in this part.
33.4 Notifying employees; agency responsibility.
33.5 Designation of beneficiary.
33.6 Claims settlement jurisdiction.
33.7 Securing claim on employee's death.
33.8 Claims involving minors or incompetents.
33.9 Return of unnegotiated Government checks.
33.10 Applicability of general procedures.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5582 and 5583.

§ 33.1 Scope of part.

(a) *Accounts covered by this part.* This part prescribes forms and procedures for the prompt settlement of accounts of deceased civilian officers and employees of the Federal Government and of the government of the District of Columbia (including wholly owned and mixed-ownership Government corporations), as contemplated by 5 U.S.C. 5581, 5582, 5583. The term ''deceased employees'' as used in this part includes former civilian officers and employees who die subsequent to separation from the employing agency.

(b) *Exceptions.* The procedures prescribed by this part do not apply to:

(1) Accounts of deceased officers and employees of the Federal land banks, Federal intermediate credit banks, or regional banks for cooperatives (see 5 U.S.C. 5581(1)).

(2) Payment of unpaid balance of salary or other sums due deceased Senators or officers or employees of the Senate (see 2 U.S.C. 36a; 5 U.S.C. 5581(1)).

(3) Payment of unpaid balance of salary or other sums due deceased Members of the House of Representatives (see 2 U.S.C. 38a). See § 33.6 for settlement of accounts of deceased officers and employees of the House of Representatives.

[33 FR 685, Jan. 19, 1968]

§ 33.2 Definitions.

The term ''unpaid compensation,'' as defined in the act and when used in this part, means the pay, salary, or allowances, or other compensation due on account of the services of the decedent for the Federal Government or the government of the District of Columbia. It shall include, but not be limited to,

(a) All per diem in lieu of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses which are incurred in connection with the travel and for which reimbursement is due;

(b) All allowances upon change of official station;

(c) All quarters and cost-of-living allowances and overtime or premium pay;

(d) Amounts due for payment of cash awards for employees' suggestions;

(e) Amounts due as refund of salary deductions for U.S. Savings bonds;

(f) Payment for all accumulated and current accrued annual or vacation leave equal to the compensation the decedent would have received had he lived and remained in the service until the expiration of the period of such annual or vacation leave;

(g) The amounts of all checks drawn in payment of such compensation which were not delivered by the Government to the officer or employee during his lifetime or of any unnegotiated checks returned to the Government because of the death of the officer or employee.

[26 FR 12275, Dec. 23, 1961]

§ 33.3 Forms prescribed for procedures in this part.

Forms prescribed for procedures in this part are:

Standard Forms

SF 1152 Designation of Beneficiary, Unpaid Compensation for Deceased Civilian Employee.

SF 1153 Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee.

SF 1155 Claim for Unpaid Compensation of Deceased Civilian Employee (No Designated Beneficiary or Surviving Spouse).

[23 FR 7479, Sept. 26, 1958]

§ 33.4 Notifying employees; agency responsibility.

Each agency of the Government affected will bring to the attention of its civilian employees the provisions of the act relative to their right to designate a beneficiary or beneficiaries to receive the amounts due and the disposition to be made of unpaid amounts where no beneficiary or beneficiaries have been designated.

[22 FR 10891, Dec. 28, 1957]

§ 33.5 Designation of beneficiary.

(a) *Designation Form.* SF 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, is prescribed for use by employees in designating a beneficiary and in changing or revoking a previous designation. However, in the absence of the prescribed form, any designation, change, or cancellation of beneficiary witnessed and filed in accordance with the general requirements of this part shall be acceptable. Each agency subject to the provisions of the act will furnish the employee SF 1152 upon request therefor.

(b) *Who may be designated.* An employee may designate any person or persons as beneficiary. The term ''person or persons'' as used in this part includes a legal entity or the estate of the deceased employee.

(c) *Executing and filing a designation of beneficiary form.* The SF 1152 must be executed in duplicate by the employee and filed with the employing agency where the proper officer will sign it and insert the date of receipt in the space provided on each part, file the original, and return the duplicate to the employee. The designation will be filed in the particular office which authorizes payment of the employee's compensation, or such other place as the head of the agency may direct.

(d) *Effective period of a designation.* A designation of beneficiary, properly executed and filed in the agency of employment, unless earlier changed or revoked in writing, will be effective as long as employment by the same agency continues and thereafter until the employee is transferred or reemployed by the same or another department or agency of the Government. Should an

employee resign and be reemployed, or be transferred to another agency, and desire the unpaid compensation to be paid to a designated beneficiary, another designation of beneficiary form must be executed, as directed in paragraph (c) of this section. If an amount should become due from the agency from which the employee was separated, it will be the responsibility of such agency to ascertain, prior to payment, if the employee was reemployed and executed a designation of beneficiary in connection with such employment, and to pay the compensation to any person or persons so designated. A new designation of beneficiary is not required as to an employee whose agency or site function, records, equipment, and personnel are absorbed by another agency.

(e) *Change or revocation of a designation.* A designation of beneficiary previously made may be changed or revoked as of a later date by the execution and filing of another SF 1152 by the employee, as directed in paragraph (c) of this section. When a designation of beneficiary is changed or revoked, the employing agency should return the earlier designation to the employee.

[22 FR 10891, Dec. 28, 1957, as amended at 28 FR 12923, Dec. 5, 1963]

§ 33.6 Claims settlement jurisdiction.

(a) District of Columbia, Canal Zone Government and Government corporations. Claims for unpaid compensation due deceased employees of the government of the District of Columbia and the Canal Zone Government on the Isthmus of Panama shall be paid by these entities and those of wholly owned and mixed ownership Government corporations may be paid by the corporations. 5 U.S.C. 5583(b).

(b) Other agencies. Except as otherwise provided in paragraph (c) of this section, claims for unpaid compensation due deceased employees of other agencies of the Federal Government, including officers and employees of the House of Representatives, may be paid by those agencies.

(c) General Accounting Office. Except as provided in paragraph (a) of this section, claims for unpaid compensation due deceased employees of the Federal Government will be paid only upon settlement by the Claims Group, Accounting and Financial Management Division of the General Accounting Office in the following cases:

(1) When doubt exists as to the amount or validity of the claim.

(2) When doubt exists as to the person(s) properly entitled to payment.

(3) When the claim involves uncurrent checks. Unnegotiated and/or undelivered checks for unpaid compensation due the decedent which are drawn on designated depositaries and have not been paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued are uncurrent. Claims for the proceeds of such checks must be submitted to the Claims Group, Accounting and Financial Management Division of the General Accounting Office for settlement pursuant to the provisions of 31 U.S.C. 3328(b). The checks, if available, should accompany the claims.

(d) Payment as provided in paragraphs (a), (b), and (c) of this section shall be made to the person or persons surviving at date of death in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency prior to his death;

(2) If there is no designated beneficiary, to the surviving spouse of the employee;

(3) If none of the above, to the child or children of the employee and decendents of deceased children by representation;

(4) If none of the above, to the parents of the deceased employee or the survivor of them;

(5) If none of the above, to the duly appointed legal representative of the estate of the deceased employee; and

(6) If none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his death. 5 U.S.C. 5582(b).

When the person(s) otherwise entitled to payment has not submitted a claim and cannot be located within 3 years after the death of the employee, payment shall be made to the person(s) in the same class of entitlement, or in the absence of anyone in the same class then the person(s) next in order of

precedence as described in this paragraph.

[37 FR 26291, Dec. 9, 1972, as amended at 40 FR 60036, Dec. 31, 1975; 47 FR 56980, Dec. 22, 1982]

§ 33.7 Securing claim on employee's death.

As soon as practicable after the death of a civilian employee included within the provisions of the act, the agency in which he or she was last employed, upon determining that unpaid compensation is due the decedent, will request each designated beneficiary or, if no beneficiary was designated, the surviving spouse, to execute SF 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee. When there is no designated beneficiary or surviving spouse, the employing agency will furnish the person or persons next in order of precedence, in accordance with the first section of the act, 5 U.S.C. 61f, SF 1155, Claim for Unpaid Compensation of Deceased Civilian Employee (No Designated Beneficiary or Surviving Spouse). When the designated beneficiary is the estate of the decedent, the employing agency will furnish the legal representative, heir, or heirs of the decedent SF 1055, Claim Against the United States for Amounts Due in the Case of a Deceased Creditor, prescribed in part 35 of this chapter, since this form will elicit the information required for settlement of such claims. Any assistance deemed necessary for the proper execution of the forms will be furnished to all claimants by the employing agency.

[22 FR 10891, Dec. 28, 1957]

§ 33.8 Claims involving minors or incompetents.

(a) If a guardian or committee has been appointed for a minor or incompetent appearing entitled to unpaid compensation, the claim should be supported by a short certificate of the court showing the appointment and qualification of the claimant in such capacity.

(b) If no guardian or committee has been or will be appointed, the initial claim should be supported by a statement showing:

(1) Claimant's relationship to the minor or incompetent, if any;

(2) The name and address of the person having care and custody of the minor or incompetent;

(3) That any moneys received will be applied to the use and benefit of the minor or incompetent; and

(4) That the appointment of a guardian or committee is not contemplated.

[26 FR 12275, Dec. 23, 1961]

§ 33.9 Return of unnegotiated Government checks.

All unnegotiated U.S. Government checks drawn to the order of a decedent representing unpaid compensation as defined in § 33.2, and in the possession of the claimant, should be returned to the employing agency concerned. Claimants should be instructed to return any other U.S. Government checks, drawn to the order of a decedent for purposes other than unpaid compensation, such as veterans benefits, social security benefits, or Federal tax refunds, to the agency from which received with request for further instructions from that agency.

[23 FR 7479, Sept. 26, 1958]

§ 33.10 Applicability of general procedures.

When not in conflict with this part, the provisions of part 31 of this subchapter relating to procedures applicable to claims generally, are also applicable to the settlement of accounts of deceased civilian officers and employees.

[22 FR 10891, Dec. 28, 1957]

PART 34—DECEASED MEMBERS OF THE ARMED FORCES AND NATIONAL GUARD; PROCEDURES FOR SETTLEMENT OF ACCOUNTS

Sec.

34.1 Scope of part.
34.2 Forms for filing claims.
34.3 Jurisdiction.
34.4 Furnishing forms and assistance to claimants.
34.5 Claims involving minors or incompetents.
34.6 Claims for unnegotiated Government checks.
34.7 Applicability of general claim procedures.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 10 U.S.C. 2771; 32 U.S.C. 714; sec. 3, 70A Stat. 619, as amended, 33 U.S.C. 857a; and sec. 4, 70A Stat. 619, as amended, 42 U.S.C. 213a.

SOURCE: 26 FR 12275, Dec. 23, 1961, unless otherwise noted.

§ 34.1 Scope of part.

(a) This part prescribes forms and procedures for the prompt settlement of the accounts of:

(1) Deceased members of the Armed Forces (including deceased commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration) pursuant to 10 U.S.C. 2771.

(2) Deceased members of the National Guard pursuant to 32 U.S.C. 714.

(b) A designation of beneficiary under 10 U.S.C. 2771 or 32 U.S.C. 714, properly executed and filed in the place designated for such purpose in the regulations of the department concerned, will be effective thereafter until:

(1) Expressly changed or revoked in writing or (2) the serviceman transfers to a different branch of the military service or (3) returns to the same or a different branch after a break in service.

(c) The term *deceased members* as used in the part includes former members who die subsequent to discharge or separation from the service.

(d) The payment provisions of 10 U.S.C. 2771 and 32 U.S.C. 714 are effective only when the member's death occurs on or after January 1, 1956. Claims relating to the accounts of members dying before such date are for consideration by the Claims Group, Accounting and Financial Management Division of the General Accounting Office.

(e) The term *pay and allowances* when used in this part includes any amount due a decedent from the service of which he was a member, exclusive of amounts payable administratively pursuant to other specific authority.

[33 FR 685, Jan. 19, 1968, as amended at 37 FR 26291, Dec. 9, 1972; 37 FR 26707, Dec. 15, 1972; 40 FR 60036, Dec. 31, 1975]

§ 34.2 Forms for filing claims.

The following standard forms are prescribed for use in the settlement of accounts to which this part relates:

SF 1174—Claim of Designated Beneficiary for Unpaid Pay and Allowances of Deceased Member of the Armed Forces.

SF 1175—Claim for Unpaid Pay and Allowances of Deceased Member of the Armed Forces (No Designated Beneficiary).

§ 34.3 Jurisdiction.

(a) *Administrative agencies.* Except as otherwise provided in paragraph (b) of this section, pay and allowances due deceased members of the Armed Forces and deceased members of the National Guard shall be paid by the military service or department concerned.

(b) *General Accounting Office.* Payments shall be made only upon settlement by the Claims Group, Accounting and Financial Management Division of the General Accounting Office in the following cases:

(1) When doubt exists as to the amount or validity of the claim.

(2) When doubt exists as to the person(s) properly entitled to payment.

(3) When the claim involves uncurrent checks. Unnegotiated and/or undelivered checks for pay and allowances due the decedent which are drawn on designated depositaries and have not paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued are uncurrent. Claims for the proceeds of such checks must be submitted to the Claims Group, Accounting and Financial Management Division of the General Accounting Office for settlement pursuant to the provisions of 31 U.S.C. 3328(b). The checks, if available, should accompany the claims.

(c) Payment as provided in paragraphs (a) and (b) of this section shall be made to the person or persons surviving at date of death in the following order of precedence:

(1) Beneficiary designated by the member in writing to receive an amount, if the designation is received, before the deceased member's death, at the place named in the regulations prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

When the person(s) otherwise entitled to payment has not submitted a claim and cannot be located within 3 years after the death of the member, payment shall be made to the person(s) in the same class of entitlement, or in the absence of anyone in the same class then the person(s) next in order of precedence as described in this paragraph.

[37 FR 26291, Dec. 9, 1972, as amended at 40 FR 60036, Dec. 31, 1975; 47 FR 56980, Dec. 22, 1982]

§ 34.4 Furnishing forms and assistance to claimants.

As soon as practicable after death of a member, the department under which the member was serving at date of death will furnish the designated beneficiary or beneficiaries Standard Form 1174, Claim of Designated Beneficiary for Unpaid Pay and Allowances of Deceased Member of the Armed Forces, for use in filing claim for any unpaid pay or allowances that may be due the decedent. If there is no designated beneficiary, the department will furnish the person or persons next in order of precedence, in accordance with 10 U.S.C. 2771(a) or 32 U.S.C. 714(a), SF 1175, Claim for Unpaid Pay and Allowances of Deceased Member of the Armed Forces (No Designated Beneficiary). Any assistance deemed necessary for the proper execution of the forms will be furnished to all claimants by the departments concerned.

§ 34.5 Claims involving minors or incompetents.

(a) If a guardian or committee has been appointed for a minor or incompetent appearing entitled to unpaid amounts, the claims should be supported by a short certificate of the court showing the appointment and qualification of the claimant in such capacity.

(b) If no guardian or committee has been or will be appointed, the initial claim should be supported by a statement showing

(1) Claimant's relationship to the minor or incompetent, if any;

(2) The name and address of the person having care and custody of the minor or incompetent;

(3) That any moneys received will be applied to the use and benefit of the minor or incompetent; and

(4) That the appointment of a guardian or committee is not contemplated.

§ 34.6 Claims for unnegotiated Government checks.

Unnegotiated U.S. Government checks drawn to the order of the decedent by the service of which he was a member should be returned to the department concerned for consideration in connection with the settlement of the member's account. Claimants should be advised that all other unnegotiated U.S. Government checks drawn to the order of the decedent should be returned to the agency from which received with request for further instructions from that agency.

§ 34.7 Applicability of general claim procedures.

When not in conflict with this part, the provisions of part 31 of this title, relating to procedures applicable to claims generally, are also applicable to the settlement of accounts of deceased members.

[33 FR 685, Jan. 19, 1968]

PART 35—DECEASED PUBLIC CREDITORS GENERALLY, CLAIM SETTLEMENT PROCEDURES

Sec.

35.1 Scope of part.
35.2 Form prescribed for procedures in this part.
35.3 Claim filing requirements.
35.4 Return of unnegotiated Government checks.
35.5 Claims involving minors.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3702.

SOURCE: 25 FR 6234, July 2, 1960, unless otherwise noted.

§ 35.1 Scope of part.

This part relates to the settlement of claims for amounts alleged to be due the estates of deceased individual public creditors, except when such claims are within the jurisdiction of administrative agencies pursuant to specific authority. The claims coming within the scope of this part include, among

others, claims for amounts due deceased contractors (whether under terminated or continuing contracts) and other deceased public creditors for supplies furnished and services rendered.

[26 FR 12276, Dec. 23, 1961]

§35.2 Form prescribed for procedures in this part.

The following standard form is prescribed for use in filing claims on behalf of deceased public creditors: SF 1055—Claim Against the United States for Amounts Due in the Case of a Deceased Creditor.

§35.3 Claim filing requirements.

(a) *Use of prescribed form.* Claims to which this chapter relates, including claims for the proceeds of U.S. Government checks, will be filed on SF 1055.

(b) *Assisting claimants in filing claims.* Such assistance as is deemed necessary may be given to claimants by the administrative agencies to insure proper execution and submission of the claim forms, SF 1055.

(c) *Where claims should be filed.* Claims for amounts due deceased public creditors will be filed initially in the administrative office out of whose activities they arise.

§35.4 Return of unnegotiated Government checks.

All unnegotiated U.S. Government Checks in possession of a claimant which are drawn to the order of a deceased public creditor should be returned to the agency from which received.

§35.5 Claims involving minors.

(a) If a guardian has been appointed for a minor appearing entitled to unpaid amounts the claim should be supported by a short certificate of the court showing the appointment and qualification of the claimant in such capacity.

(b) If no guardian has been or will be appointed, the initial claim should be supported by a statement showing:

(1) Claimant's relationship to the minor, if any;

(2) The name and address of the person having care and custody of the minor;

(3) That any moneys received will be applied to the use and benefit of the minor; and

(4) That the appointment of a guardian is not contemplated.

[26 FR 12276, Dec. 23, 1961]

PART 36—INCOMPETENT PUBLIC CREDITORS; PROCEDURES FOR SETTLEMENT OF ACCOUNTS

Sec.

36.1 Scope of part.
36.2 Where claims should be filed.
36.3 Claim filing requirements.
36.4 Disposition of unnegotiated and undelivered Government checks.
36.5 Applicability of general claim procedures.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3702.

SOURCE: 23 FR 7480, Sept. 26, 1958, unless otherwise noted.

§36.1 Scope of part.

This part prescribed the procedures applicable to the settlement of claims for amounts due incompetent public creditors of the United States, including claims for the proceeds of Government checks drawn on the Treasurer of the United States or other authorized Government depository to the order of such creditors, except those claims which are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority.

§36.2 Where claims should be filed.

Claims for amounts due incompetent public creditors will be filed initially with the Government agency out of whose activities they arise.

[33 FR 685, Jan. 19, 1968]

§36.3 Claim filing requirements.

(a) *Form of claim.* No form is prescribed for use in making claim for sums due incompetent creditors of the United States. Such claims must be filed in writing over the signature and full address of the person claiming on behalf of the incompetent creditor and must set forth the connection of the incompetent creditor with the U.S. Government, giving the name of the department, bureau, establishment or agency involved.

(b) *Claim filed by guardian or committee*—(1) *Initial claim.* The initial claim filed by the guardian or committee of the estate of an incompetent must be accompanied by a short certificate of the court showing the appointment and qualification of the claimant as guardian or committee.

(2) *Claims for recurring payments.* Subsequent claims from guardians or committees for recurring payments need not be accompanied by an additional certificate of the court, but they must be supported by a statement that the appointment is still in full force and effect.

(c) *Claims filed by other than guardian or committee.* When the amount due the incompetent is small and no guardian or committee of the estate has been or will be appointed, payment may be made, in the discretion of the Comptroller General, to the person or persons having care or custody of the incompetent, or to close relatives who will hold the amount for the use and benefit of the incompetent. The claim must be supported by a statement showing:

(1) That no guardian or committee has been or will be appointed;

(2) The claimant's relationship to the incompetent, if any;

(3) The name and address of the person having care and custody of the incompetent; and

(4) That any amount paid to the claimant will be applied to the use and benefit of the incompetent.

§ 36.4 Disposition of unnegotiated and undelivered Government checks.

All unnegotiated U.S. Government checks in possession of the claimant, drawn to the order of the incompetent public creditor and involved in the claim, should be returned to the agency from which received.

§ 36.5 Applicability of general claim procedures.

The provisions of part 31 of this subchapter relating to the procedures applicable to claims generally are applicable also to the settlement of accounts of incompetent public creditors to which this chapter relates.

SUBCHAPTER D—TRANSPORTATION

PART 51—DETERMINATIONS

AUTHORITY: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3511 and 3512.

§51.1 Scope of part.

This part contains basic determinations by the Comptroller General as to the extent he deems it necessary to continue or discontinue to exercise the authority to prescribe forms and uniform procedures provided in 31 U.S.C. 3511.

[40 FR 47511, Oct. 9, 1975, as amended at 47 FR 56989, Dec. 22, 1982]

§51.2 Standard forms and procedures.

In connection with the audit of payments for transportation services furnished for the account of the United States and the adjustment of claims pertaining thereto, the Administrator, General Services Administration, may prescribe standard forms and procedures without consultation with the General Accounting Office, except that the prescription thereof is subject to the uniform standards and procedures necessary to permit performance of the discretionary function vested by statute in the Comptroller General and other uniform fiscal requirements deemed necessary, as prescribed in 4 CFR part 52.

[47 FR 50843, Nov. 10, 1982]

PART 52—UNIFORM STANDARDS AND PROCEDURES FOR TRANSPORTATION TRANSACTIONS

AUTHORITY: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3511, 3512, 3513, 3526 and 3529; sec. 901(a), 49 Stat. 2015, 46 U.S.C. 1241(a); sec. 5, 88 Stat. 2104, 49 U.S.C. 1517.

§52.1 Scope of part.

This part contains uniform standards and procedures relating to discretionary functions vested by statute in the Comptroller General and to matters requiring uniformity of fiscal practices relating to transportation transactions entered into for the account of the U.S. Government.

[40 FR 47512, Oct. 9, 1975]

§52.2 Use of American flag vessels and certificated air carriers.

(a) *Transportation of passengers.* Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. 1241, requires the use of American flag vessels for travel on official business; and section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, requires the use of air carriers certificated under section 401 of the Federal Aviation Act of 1958 (American flag) for Government-financed passenger transportation (including but not limited to Government dependents, consultants, grantees, contractors and subcontractors), when such carriers are available. Compliance with section 901 and section 5 is required whether the transportation expenses are paid by the United States or reimbursed to the traveler.

(b) *Transportation of personal effects and freight.* Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. 1241, requires the use of American flag vessels by officers and employees of the United States for the transportation of their personal effects, when such vessels are available, and section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, requires the use of air carriers certificated under section 401 of the Federal Aviation Act of 1958 (American flag) for any Government-financed movement of freight by air when such air carriers are available.

(c) *Disallowance of expenditures.* The Comptroller General will disallow any expenditures for commercial non-American-flag air or foreign-flag ocean passenger transportation, or for foreign-flag ocean transportation of personal effects or non-American-flag air transportation of freight, unless there is attached to the payment voucher a certificate or memorandum adequately explaining why American-flag service was unavailable signed by the traveler or other responsible official of the

agency authorizing the travel or transportation who has knowledge of the facts concerning such usage.

(d) *Required documentation.* Each voucher for reimbursement of expenses for travel in whole or in part via a non-American-flag air or foreign flag ocean carrier, and each bill for payment of transportation services furnished in whole or in part by a non-American-flag air or foreign flag ocean carrier will be supported by the following documentation:

(1) *Required certificate.* The certificate or memorandum required under this part should be substantially as follows:

I certify that it (is) (was) necessary for _____ (name of traveler or agency) to use _____ (foreign-flag vessel(s)) _____ or noncertificated[1] air carrier(s) _____ flight identification No(s). or to transport (personal effects) (freight) between _____ and _____ en route from _____ to _____ on _____ (date) for the following reasons:

_____

_____

_____

Date _____

Signature of traveler or authorizing officer _____

Title or position _____

Organization _____

(2) *Documentation for passenger and freight transportation by American-flag direct air carriers.* All bills submitted by American-flag direct air carriers for payment for commercial foreign air passenger or freight transportation must contain either: (i) A certification by the carrier that no non-American-flag air carriers were used in the carriage of the passenger or freight or (ii) copies of documents required to be retained by the carrier under 14 CFR part 249 that would indicate which portion of the through movement was performed by American-flag and non-American-flag air carriers, together with the certificate required in paragraph (d)(1) of this section covering such usage.

(3) *Documentation by indirect air carriers.* All bills submitted by indirect air carriers as defined in 14 CFR 296.1 and 297.1 for the payment of transportation charges for the movement of freight by air must be supported by a copy of the air waybill and manifest required to be executed by 14 CFR 296.70 and 297.51.

(e) *Responsibility of carrier to secure certificate.* The certificate or memorandum required under paragraph (d)(1) of this section must be obtained by the ocean or air carrier or freight forwarder and submitted as support in billing charges for transportation services.

(f) *Responsibility of accountable officers.* Certifying officers and military disbursing officers have the responsibility in the first instance of determining the accuracy and acceptability of the certification or memorandum and other documentation required in paragraph (d) of this section which must be attached to bills involving transportation by non-American-flag air carriers and foreign-flag vessels prior to the certification of such bills. When there is doubt as to the acceptability of the certification, accountable officers or the head of the agency involved may request an advance decision by addressing a submission to the Comptroller General of the United States, U.S. General Accounting Office, Washington, DC 20548.

(g) *Responsibility of General Services Administration.* In auditing vouchers for payment of transportation charges to carriers and forwarders, the General Services Administration will ascertain that payments involving the use of a non-American-flag vessel or air carrier are supported by the required certificate or memorandum and documentation required in paragraph (d) of this section justifying such use. When there is doubt as to the accuracy or acceptability of any justification, the matter will be referred to the Comptroller General for decision.

[40 FR 47512, Oct. 9, 1975, as amended at 47 FR 56980, Dec. 22, 1982]

PART 53—REVIEW OF GENERAL SERVICES ADMINISTRATION TRANSPORTATION SETTLEMENT ACTIONS

Sec.

53.1 Definitions.

[1] Section 401 of Federal Aviation Act of 1958 (49 U.S.C. 1501).

53.2 Actions reviewable by Comptroller General.
53.3 Requests for review.
53.4 Copies to General Services Administration.

AUTHORITY: 31 U.S.C. 711. Interpret or apply sec. 322, 54 Stat. 955, as amended, 49 U.S.C. 66(b).

SOURCE: 40 FR 47513, Oct. 9, 1975, unless otherwise noted.

§53.1 Definitions.

(a) *Claim* means any bill or demand, including submission of voucher or supplemental bill, for payment of charges for transportation and related services by a carrier or forwarder entitled under 49 U.S.C. 66 to payment for such services prior to audit by the General Services Administration.

(b) *Settlement* means any action taken by the General Services Administration in connection with the audit of payments for transportation and related services furnished for the account of the United States that has a dispositive effect, including:

(1) Deduction action (or refund by carrier) in adjustment of asserted transportation overcharges;

(2) Disallowance of a claim, or supplemental bill, for charges for transportation and related services, either in whole or in part;

(3) Any other action that entails finality of administrative consideration.

§53.2 Actions reviewable by Comptroller General.

Actions taken by the General Services Administration on a claim by a carrier or freight forwarder entitled under 49 U.S.C. 66 to be paid for transportation services prior to audit that have dispositive effect and constitute a settlement action as defined in §53.1 will be reviewed by the Comptroller General, provided request for review of such action is made within six months (not including time of war) from the date such action is taken or within the periods of limitation specified in 49 U.S.C. 66(a), whichever is later.

§53.3 Requests for review.

Requests for review of settlement actions by the General Services Administration should be addressed to the Comptroller General of the United States, U.S. General Accounting Office, Washington, D.C. 20548. Each request for review must identify the transaction as to which review is requested by the date the action was taken, the Government bill of lading or Government transportation request number, the carrier's bill number, Government voucher number and date of payment, General Services Administration claim number, or other identifying information, to enable speedy location of the pertinent records. Each request for review should state why the action taken is believed erroneous and specify any factual, technical, or legal basis relied on.

§53.4 Copies to General Services Administration.

Review of settlement actions will be expedited if a copy of the document requesting review by the Comptroller General is sent to the General Services Administration to facilitate assembly of the pertinent records.

PART 56—JOINT REGULATIONS FOR ADVANCE PAYMENT OF CHARGES FOR TRANSPORTATION SERVICES FURNISHED THE UNITED STATES

Sec.
56.1 Prescription of standards.
56.2 Payment prior to Government confirmation of satisfactory performance.
56.3 Bonding requirements.

AUTHORITY: Sec. 1(b), 86 Stat. 1163, 1164, as amended by sec. 201, 88 Stat. 1959 (49 U.S.C. 66(c)).

§56.1 Prescription of standards.

The regulations in this part are issued jointly by the Comptroller General of the United States and the Secretary of the Treasury under the provisions of 49 U.S.C. 66(c) which authorizes payment of charges for transportation services to carriers or forwarders in advance of the completion of services without regard to 31 U.S.C. 3324: *Provided*, The carrier or forwarder has issued the usual ticket, receipt, bill of lading or equivalent document covering the service involved. Regulations, prescribed by the head of an agency in

implementation of this part will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

[41 FR 53769, Dec. 9, 1976, as amended at 48 FR 4647, Feb. 2, 1983]

§ 56.2 Payment prior to Government confirmation of satisfactory performance.

Where a carrier or forwarder has issued the usual ticket, receipt, bill of lading or equivalent document, and subject to limitations prescribed by the Administrator, General Services Administration, or his designee, administrative procedures may provide for payment of bills for charges for transportation services furnished for the account of the United States prior to Government confirmation of the satisfactory completion of such services except those bills presented by:

(a) An assignee bank or financial institution under the authority of 31 U.S.C. 3727 and 41 U.S.C. 15;

(b) Payees who are in bankruptcy proceedings or are subject to the control of a receiver, trustee, or other similar representative;

(c) Payees who consistently fail to refund overcharges without assertion of substantial defenses or other valid reasons when notified by the General Services Administration or any other interested Government agency;

(d) Payees who without good cause fail to make timely disposition or settlement of loss or damage or other claims asserted by agencies of the United States;

(e) Payees owing substantial sums of money to the United States concerning which no adequate arrangements for settlement have been made;

(f) Payees in such bad financial condition as to justify a determination that the Government's best interests require consideration of special payment rules for their account;

(g) Payees who do business with the United States infrequently and who previously have not been administratively approved for payment upon presentation of bills;

(h) Any other person or business organization determined administratively for valid reasons to be ineligible for payment unless after review of the facts and in the absence of objection by the U.S. General Accounting Office it is determined administratively that the best interests of the United States will not be jeopardized by such payment.

[41 FR 53769, Dec. 9, 1976, as amended at 48 FR 4647, Feb. 2, 1983]

§ 56.3 Bonding requirements.

Whenever the head of an agency of the United States or his designee determines in any particular case that a bond (or other form of guarantee or assurance) of an acceptable surety is essential for the account of any particular carrier or forwarder in order to protect the interests of the United States where payments are to be made prior to Government confirmation of the satisfactory completion of transportation services a bond may be required and held by the agency making such requirement. The bond shall be for such amount as in the discretion of the responsible Government officers is necessary for the protection of the Government's best interests but shall not exceed $10,000 unless the head of the agency or his designee certifies that a bond for a higher amount is justified in the circumstances.

[41 FR 53769, Dec. 9, 1976]

SUBCHAPTER E—STANDARDIZED FISCAL PROCEDURES

PART 75—CERTIFICATES AND APPROVALS OF BASIC VOUCHERS AND INVOICES

AUTHORITY: 31 U.S.C. 711 and 3511.

§75.1 Contractors' and vendors' certificates.

(a) The General Accounting Office no longer requires that a certificate as to correctness and nonpayment be executed on the bills and invoices of contractors and vendors, with the exception that carriers, or other corporations, agencies, or persons furnishing transportation and accessorial services to the Government must continue to execute the certificates as provided in chapter 101 of 41 CFR part 41. Pending the eventual elimination of the contractors' and vendors' certificates from all other standard voucher forms, the certificates on such other forms need no longer be executed. However, the elimination of this requirement does not dispense with the necessity for the specific certification of facts required by certain contracts.

(b) The omission of the certificate from bills or invoices submitted for payment to Government agencies does not in any manner lessen the responsibility of contractors and vendors in complying with all statutory requirements applicable to transactions with the Government, nor will it be construed as mitigating their liability for asserting false, fictitious, or fraudulent claims against the United States, penalties for which are set forth in 18 U.S.C. 287.

[22 FR 10906, Dec. 28, 1957, as amended at 47 FR 50843, Nov. 10, 1982; 47 FR 56980, Dec. 22, 1982]

SUBCHAPTER F—RECORDS

PART 81—PUBLIC AVAILABILITY OF GENERAL ACCOUNTING OFFICE RECORDS

Sec.
81.1 Purpose and scope of part.
81.2 Administration.
81.3 Definitions.
81.4 Requests for identifiable records.
81.5 Records originating outside GAO, or records involving work in progress.
81.6 Records which may be exempt from disclosure.
81.7 Fees and charges.
81.8 Public reading facility.

AUTHORITY: 31 U.S.C. 711.

SOURCE: 49 FR 38527, Oct. 1, 1984, unless otherwise noted.

§ 81.1 Purpose and scope of part.

This part implements the policy of the U.S. General Accounting Office (GAO) with respect to the public availability of GAO records. While GAO is not subject to the Freedom of Information Act (5 U.S.C. 552), GAO's disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress. Application of this act to GAO is not to be inferred from the provisions of these regulations.

§ 81.2 Administration.

The administration of this part is the duty and responsibility of the Director, Office of Policy (OP), U.S. General Accounting Office, 441 G Street, NW., Washington, D.C. 20548, and to that end the Director shall promulgate such supplemental rules or regulations as may be necessary.

§ 81.3 Definitions.

As used in this part:

(a) *Identifiable* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, etc., which will permit location or retrieval of the record.

(b) *Records* includes all books, papers, manuals, maps, photographs, reports, and other documentary materials, regardless of physical form or characteristics under the control of GAO in pursuance of law or in connection with the transaction of public business. In the context of a request for a record or records, the term ''records'' refers only to a record in being and under the control of GAO. It does not include the compiling or procuring of a record. Nor does it include library or museum material made or acquired and preserved solely for reference or exhibition purposes, or extra copies of documents preserved only for convenience of reference. It is intended that GAO publications are not within the purview of this order. GAO published reports and decisions or listing of reports should be obtained from the U.S. General Accounting Office, Information Handling and Support Facility (IHSF), P.O. Box 6015, Gaithersburg, Md. 20877, phone (202) 275–6241.

(c) *Records available to the public* means records which may be examined or copied or of which copies may be obtained, in accordance with this part, by the public or representatives of the press regardless of interest and without specific justification.

(d) *Disclose or disclosure* means making available for examination or copying, or furnishing a copy.

(e) *Person* includes an individual, partnership, corporation, association, or public or private organization other than a Federal agency.

§ 81.4 Requests for identifiable records.

(a) A request to inspect or obtain a copy of an identifiable record of GAO must be submitted in writing to the Director, OP (see § 81.2), who will promptly acknowledge and record the request.

(b) The Director, OP, or other GAO organizational unit will promptly honor the request if no valid objection exists to the propriety of such action and the requester is willing and able to pay the prescribed fees for making the record available for inspection or copying or being provided with a copy.

(c) In the event of an objection or doubt as to the propriety of providing the requester with a copy of the record

sought, every effort will be made to resolve such problems as quickly as possible, including consultation with appropriate GAO elements. If it is determined that the record should be withheld, the Director, OP, shall inform the requester in writing that the request has been denied; shall identify the material withheld; and shall explain the basis for the denial.

(d) A person whose request is denied shall be informed that further consideration of his/her request may be obtained by a letter to the Comptroller General of the United States setting forth the basis for the belief that the denial of the request was unwarranted.

§81.5 Records originating outside GAO, or records involving work in progress.

(a) It is the policy of GAO not to provide records from its files that originate in another agency or nonfederal organization to persons who may not be entitled to obtain the records from the originator. In such instances, requesters will be referred to the person or organization that originated the records.

(b) In order to avoid disruption of work in progress, and in the interests of fairness to those who might be adversely affected by the release of information which has not been fully reviewed to assure its accuracy and completeness, it is the policy of GAO not to provide records which are part of ongoing reviews or other current projects. In response to such requests, GAO will inform the requester of the estimated completion date of the review or project so that the requester may then ask for the records. At that time, the records may be released unless exempt from disclosure under §81.6.

§81.6 Records which may be exempt from disclosure.

The public disclosure of GAO records contemplated by this part does not apply to records, or parts thereof, within any of the categories listed below. Unless precluded by law, the Director, OP, may nevertheless release records within these categories.

(a) Congressional correspondence and other papers relating to work performed in response to a congressional request (unless authorized by the congressional requester), and congressional contact memoranda.

(b) Records specifically required by an Executive Order to be kept secret in the interest of national defense or foreign policy. An example of this category is a record classified under Executive Order 12356, National Security Information.

(c) Records related solely to the internal personnel rules and practices of an agency. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of an agency function. Examples within the purview of this exemption are guidelines, and procedures for auditors, investigators, or examiners.

(d) Records specifically exempted from disclosure by statute provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(e) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(f) Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy. This exemption excludes from disclosure all personnel and medical files, and all private or personal information contained in other files, which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person. An example of such other files within the exemption would be files compiled to evaluate candidates for security clearance.

(g) Records and information compiled for law enforcement purposes.

(h) Records having information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an

agency responsible for the regulation or supervision of financial institutions.

(i) Records containing geological and geophysical information and data (including maps) concerning wells.

(j) Inter-agency or intra-agency memoranda, letters or other materials that are part of the deliberative process. For example, this exemption includes internal communications such as GAO or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice or evaluative remarks of GAO employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency function.

(k) Records in addition to those described in paragraph (j) of this section containing information customarily subject to protection as privileged in a court or other proceedings, such as information protected by the doctor-patient, attorney-work product, or lawyer-client privilege.

(l) Unsolicited records containing information submitted by any person to GAO in confidence and records which GAO has obligated itself not to disclose. An example of records covered by this exemption would be information obtained by the GAO Fraud Referral and Investigations Group (GAO Hotline).

[49 FR 38527, Oct. 1, 1984, as amended at 53 FR 50913, Dec. 19, 1988]

§ 81.7 Fees and charges.

(a) No fee or charge will be made for:

(1) Records provided under provisions of this part when the direct search and reproduction costs are less than $25.

(2) Records requested which are not found or which are determined to be exempt under provisions of this part.

(3) Staff-hours spent in resolving any legal or policy questions pertaining to the request.

(4) Copies of records including those certified as true copies, that are furnished for official use to any officer or employee of the federal government.

(5) When necessary or desirable to the performance of a function of GAO, copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending before the Office.

(b) When costs are $25 or more, the fees and charges described below, will be assessed for the direct costs of search and reproduction of records available to the public under this part.

(1) The reproduction charge per page shall be 20 cents.

(2) Certification of authenticity shall be $10 for each certificate.

(3) Search for records by office personnel.

(i) Clerical personnel—$10 an hour.

(ii) Professional personnel—$20 an hour.

(4) Other direct costs related to the request may be charged for such items as computer searches.

(c) GAO shall notify the requester and may require an advance deposit where the anticipated fees will exceed $50.

(d) Fees and charges shall be paid by check or money order payable to the U.S. General Accounting Office.

(e) Fees established by this section may be waived or reduced upon a determination by the Director, OP, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commerical interest of the requester. Persons seeking such waiver or reduction of fees may be required to submit a statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this paragraph are solely within the discretion of GAO.

[49 FR 38527, Oct. 1, 1984, as amended at 53 FR 50913, Dec. 19, 1988]

§ 81.8 Public reading facility.

A public reading facility shall be maintained by the General Accounting Office at 441 G Street NW., Washington, DC. The facility, under the control of the Office of the General Counsel, shall be open to the public from 8:30 a.m. to

5:00 p.m. except Saturdays, Sundays, and holidays.

[53 FR 50913, Dec. 19, 1988]

PART 82—FURNISHING RECORDS OF THE GENERAL ACCOUNTING OFFICE IN JUDICIAL PROCEEDINGS

Sec.
82.1 Court subpoenas or requests.
82.2 Fees and charges.

AUTHORITY: 31 U.S.C. 711, 713, 714, 718, 3523, 2524, 2526, and 3529.

§82.1 Court subpoenas or requests.

(a) A subpoena or request from a court for records of the General Accounting Office should be directed to the Comptroller General of the United States and served upon the Records Management and Services Officer, Office of Information Systems and Services.

(b) In honoring a court subpoena or request original records may be presented for examination but must not be presented as evidence or otherwise used in any manner by reason of which they may lose their identity as official records of the General Accounting Office. They must not be marked or altered, or their value as evidence impaired, destroyed, or otherwise affected. In lieu of the original records, certified copies will be presented for evidentiary purposes since they are admitted in evidence equally with the originals (31 U.S.C. 704).

[33 FR 358, Jan. 10, 1968, as amended at 45 FR 84955, Dec. 24, 1980; 47 FR 56980, Dec. 22, 1982]

§82.2 Fees and charges.

The provisions of §81.7 of this chapter are applicable to this part; however, where the charging of fees is appropriate, they need not be collected in advance.

[33 FR 358, Jan. 10, 1968, as amended at 47 FR 56980, Dec. 22, 1982]

PART 83—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

Sec.
83.1 Purpose and scope of part.
83.2 Administration.
83.3 Definitions.
83.4 Conditions of disclosure.
83.5 Specific disclosure of information.
83.6 Accounting of certain disclosures.
83.7 GAO policy and requirements.
83.8 Standards of conduct.
83.9 Social Security number.
83.10 First Amendment rights.
83.11 Official Personnel Folder.
83.12 Procedures for individual access to records.
83.13 Inquiries.
83.14 Denial of access requests.
83.15 Request for amendment of record.
83.16 Administrative review of request for amendment of record.
83.17 Fees.
83.18 Rights of legal guardians.
83.19 Government contractors.
83.20 Mailing lists.
83.21 Exemptions.
APPENDIX I TO PART 83—MEMORANDUM OF UNDERSTANDING

AUTHORITY: 31 U.S.C. 711(1); Memorandum of Understanding between the U.S. Office of Personnel Management, the National Archives and Records Service of the General Services Administration and the U.S. General Accounting Office; 4 CFR part 81; 5 CFR parts 294–297; and 31 U.S.C. 731, *et seq.*

SOURCE: 50 FR 13162, Apr. 3, 1985, unless otherwise noted.

§83.1 Purpose and scope of part.

This part describes the policy and prescribes the procedures of the U.S. General Accounting Office (GAO) with respect to maintaining and protecting the privacy of GAO personnel records. While GAO is not subject to the Privacy Act (Act) (5 U.S.C. 552a), GAO's policy is to conduct its activities in a manner that is consistent with the spirit of the Act and its duties, functions, and responsibilities to the Congress. Application of the Privacy Act to GAO is not to be inferred from the provisions of these regulations. These regulations are designed to safeguard individuals against invasions of personal privacy by requiring GAO, except as otherwise provided by law, to—

(a) Protect privacy interests of individuals by imposing requirements of accuracy, relevance, and confidentiality for the maintenance and disclosure of personnel records;

(b) Inform individuals of the existence of systems of personnel records maintained by GAO containing personal information; and

(c) Inform individuals of the right to see and challenge the contents of personnel records containing information about them.

This part applies to all systems of personnel records (as defined in §83.3(g)) for which GAO is responsible.

§ 83.2 Administration.

The administration of this part is the duty and responsibility of the Director, Personnel, U.S. General Accounting Office, 441 G Street NW., Washington, D.C. 20548. To this end, the Director, Personnel, in consultation with the Office of the General Counsel, is authorized to issue such supplemental regulations or procedural directives as may be necessary and appropriate.

(a) The Director, Personnel, shall have general responsibility and authority for implementing this part, including—

(1) Approving all systems of personnel records to be maintained by GAO (whether physically located in GAO's Office of Personnel or elsewhere), including the contents and uses of such systems, accounting methods, and security methods; and

(2) Responding to an individual's request to gain access to or amend his or her own personnel records.

(b) The Director, Personnel, may delegate within GAO any of his functions under this part.

§ 83.3 Definitions.

As used in this part:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) *Information* means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials, regardless of physical form or characteristics, containing data about an individual and required by GAO in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

(c) *Maintain* includes to collect, to use, or to disseminate;

(d) *Personnel record* means any record concerning an individual which is maintained pursuant to GAO's personnel management process or personnel policy setting process;

(e) *Record* means any item, collection, or grouping of information about an individual that is maintained by GAO, including, but not limited to, education, financial transactions, medical history, criminal history, or employment history, that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voice print, or a photograph;

(f) *Routine use* means the disclosure of a record for a purpose which is compatible with the purpose for which it was collected;

(g) *System of personnel records* means a group of personnel records under the control of GAO from which information is retrieved by the name of the individual or by some identifying number, symbol, or other indentifying particular assigned to the individual; and,

(h) *System manager* means the Director of Personnel, his designee, or other GAO official designated by the Comptroller General, who has the authority to decide matters relative to systems of personnel records maintained by GAO.

§ 83.4 Conditions of disclosure.

GAO shall not disclose any record that is contained in a system of personnel records by an means of communication to any person or organization, including another agency, without the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of GAO who have a need for the record in the performance of their duties; or

(b) Required under regulations implementing the public availability of GAO records published at part 81 of this chapter, or authorized under §83.5; or

(c) For a routine use as defined in §83.3(f); or

(d) To a recipient who has provided GAO with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; or

(e) To another agency or an instrumentality of any governmental jurisdiction within or under the control of

the United States for a civil or criminal law enforcement activity if the activity is authorized by law, if the head of the agency or instrumentality has made a written request to GAO specifying the particular record desired and the law enforcement activity for which the record is sought; or

(f) To any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the data subject) if upon such disclosure notification is transmitted to the last known address of the subject of the personnel record; or

(g) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(h) Pursuant to the order of a court of competent jurisdiction or in connection with any judicial or quasi-judicial proceedings; or

(i) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, United States Code; or

(j) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value; or

(k) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§83.5 Specific disclosure of information.

(a) This section governs responses to a member of the public, prospective employers, and law enforcement officials, for access to information covered by this part. It does not limit in any way other disclosures of information pursuant to other provisions of this part.

(b) The following information about most present and former GAO employees is available to the public:

(1) Name;

(2) Present and past position titles;

(3) Present and past grades;

(4) Present and past salaries; and

(5) Present and past duty stations (which include room numbers, shop designations, or other identifying information regarding buildings or places of employment.

(c) Disclosure of the above information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations of Government employees which, as determined by the Director, Personnel, is:

(1) Selected in such a way as to constitute a clearly unwarranted invasion of personal privacy because the nature of the request calls for a response that would reveal more about the employees on whom information is sought than the five enumerated items; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of part 81 of this title concerning the public availability of GAO records.

(d) In addition to the information that may be made available under paragraph (a) of this section, GAO may make available the following information to a prospective employer of a GAO employee or former GAO employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in GAO and the Government; and

(4) When separated, the date and reason for separation shown on the required standard form.

(e) In addition to the information to be made available under paragraph (a) of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that complaint, information, accusation, or other writ involving nonsupport or a criminal offense has been filed against the employee and the employee's address is needed for service of a summons, warrant, subpoena, or other legal process.

(f) Except as provided in paragraphs (a) through (e) of this section, and except as provided in this part, information required to be included in an Official Personnel Folder is not available to the public and is protected from disclosure by §81.6(f) of this chapter.

(g) *Personnel Appeal Files.* (Those records maintained by the General Accounting Office Personnel Appeals Board of petitions or appeals filed with the Board by GAO employees, former employees, or applicants for employment. Such records do not include any of the investigative files or reports of the Personnel Appeals Board General Counsel. See 4 CFR 28.18(c)). GAO, upon receipt of a request which identifies the individual from whose file the information is sought, shall disclose the following information from a Personnel Appeal File to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the case;

(3) The decision on the case;

(4) The nature of the action appealed; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(h) *Leave records.* The annual and sick leave record of an employee, or information from these records, is not to be made available to the public by GAO or other Government agency.

(i) *Examinations and related subjects.* Information concerning the results of examinations will be released only to the individual concerned, and to those parties explicitly designated in writing by the individual. The names of applicants for GAO positions or eligibles on GAO or civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public.

(j) *Investigations.* (1) Upon written request, GAO will disclose to the parties concerned any report of personnel investigation under its control, or an extract of the report, to the extent the report is involved in a processed before GAO. For the purpose of this paragraph, the ''parties concerned'' means the Government employee involved in the proceeding, his or her representative designated in writing, and the representative of GAO involved in the proceeding. Where GAO obtains reports of personnel investigations or information from such reports from other government agencies on condition that it not release such data, GAO will refer parties requesting such information to the originating agency where their request will be processed.

(2) GAO will not make a report of investigation or information from a report under its control available to the public or to witnesses, except as otherwise required under GAO regulations implementing the public availability of records published at part 81 of this chapter.

§ 83.6 Accounting of certain disclosures.

(a) With respect to each system of personnel records, GAO shall, except for disclosures made under §§ 83.4(a) and 83.4(b), keep an accurate accounting of—

(1) The date, nature, and purpose of disclosure of a record to any person; and

(2) The name and address of the person, agency, or organization to whom the disclosure is made.

(b) Such accounting shall be retained for at least 3 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) Except for disclosures made under § 83.4(e), the accounting shall be available upon written request to the individual named in the record.

§ 83.7 GAO policy and requirements.

(a) GAO shall maintain in its personnel records only such information about an individual as is relevant and necessary to accomplish an authorized official purpose. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because a need for it may develop in the future. Both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish GAO's personnel management objectives as required by statute, GAO internal directive, or formal agreements between GAO and other Federal agencies.

(b) GAO shall make every reasonable effort to collect information about an individual directly from that individual when the information may result in adverse determinations about the individual's rights, benefits, and privileges under Federal programs. Factors to be considered in determining whether to collect the data from the individual concerned or a third party are:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) Provisions are made, to the greatest extent practical, to verify information collected from another party with the individual concerned.

(c) GAO shall inform each individual whom it asks to supply information for a personnel record, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of—

(1) The authority for the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and

(4) The effects, if any, of not providing all or any part of the requested information;

(d) Subject to the provisions of paragraph (i) of this section, GAO shall publish in the FEDERAL REGISTER, upon establishment or revision, a notice of the existence and character of its systems of personnel records. Such notice shall include—

(1) The name and location(s) of each system of personnel records;

(2) The categories of individuals about whom records are maintained in each such system;

(3) The categories of records maintained in each system of personnel records;

(4) Each routine use of the records contained in each system of personnel records, including the categories of users and the purpose(s) of such use;

(5) The policies and practices of GAO regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the GAO official who is responsible for maintaining each system of personnel records;

(7) GAO procedures whereby an individual can ascertain whether a system of personnel records contains a record pertaining to the individual;

(8) Procedures whereby an individual can request access to any record pertaining to him contained in any system of personnel records, and how the individual may contest its content; and

(9) The categories of sources of records in each system of personnel records.

(e) GAO shall maintain all records which it uses in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(f) GAO shall, prior to disseminating any record about an individual to any person other than a Federal agency, make all reasonable efforts to reassure that such records are accurate, complete, timely, and relevant for GAO's purposes;

(g) GAO shall make reasonable efforts to serve notice on an individual or his authorized representative when any personnel record on such individual is being made available to any person under compulsory legal process as soon as practicable after service of the subpoena or other legal process;

(h) GAO shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of personnel records or files or in maintaining any record, and to instruct each person

with respect to such rules and requirements of this part, including any other rules and procedures adopted pursuant to this part;

(i)(1) GAO shall establish and maintain appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of personnel records. At a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access;

(2) Except for access by the data subject, only employees whose official duties require and authorize access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned intact on a timely basis and properly controlled during such period of removal.

(3) In addition to following the above security requirements, managers of automated personnel records shall establish and maintain administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and online computer storage. As a minimum, the safeguards must be sufficient to:

(i) Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;

(ii) Minimize the risk of improper access, modification, or destruction of identifiable personnel data;

(iii) Prevent casual entry by persons who have no official reason for access to such data;

(iv) Minimize the risk of unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(v) Control the flow of data into, through, and from computer operations;

(vi) Adequately protect identifiable data from environmental hazards and unnecessary exposure; and

(vii) Assure adequate internal audit procedures to comply with these procedures.

(4) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media, such as magnetic tapes and disks, must be erased prior to release of the media for reuse.

(j) At least 30 days prior to publication of information under paragraph (d)(4) of this section, GAO shall publish in the FEDERAL REGISTER notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to GAO.

§ 83.8 Standards of conduct.

(a) GAO employees whose official duties involve the maintenance and handling of personnel records shall not disclose information from any personnel record unless disclosure is part of their official duties or required by statute, regulation, or internal procedure.

(b) Any GAO employee who makes an unauthorized disclosure of personnel records or a disclosure of information derived from such records, knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to appropriate disciplinary action. GAO employees are prohibited from using personnel information not available to the public, obtained through official duties, for commercial solicitation or sale, or for personal gain. Any employee who knowingly violates this prohibition shall be subject to appropriate disciplinary action.

§83.9 Social Security number.

(a) GAO may not require individuals to disclose their Social Security Number (SSN) unless disclosure would be required—

(1) Under Federal statute; or

(2) Under any statute, executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the SSN as a necessary means of verifying the identity of an individual.

(b) Individuals asked to voluntarily provide their SSN shall suffer no penalty or denial of benefits for refusing to provide it.

(c) When GAO requests an individual to disclose his or her SSN, it shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

§83.10 First Amendment rights.

Personnel records or entries thereon describing how individuals exercise rights guaranteed by the First Amendment to the United States Constitution are prohibited, unless expressly authorized by statute or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the Government.

§83.11 Official Personnel Folder.

(a) GAO shall establish and maintain an Official Personnel Folder for each of its employees, except as provided in the GAO/U.S. OPM/GSA Memorandum of Understanding (see subsection (b)). Except as provided for in Federal Personnel Manual (FPM) Supplement 293–31 there will be only one Official Personnel Folder maintained for each employee.

(b) *GAO/U.S. OPM/GSA Memorandum of Understanding.* The Memorandum of Understanding agreed to by the U.S. General Accounting Office, the U.S. Office of Personnel Management (U.S. OPM), and the National Archives and Records Service of the General Services Administration (GSA), Appendix I, constitutes the official and sole agreement concerning the continuity and coordination of the Official Personnel Folder.

(c) GAO policy is to assure continuity and coordination of the Official Personnel Folder when a person, for whom an Official Personnel Folder has been established, separates from GAO, or transfers to or from GAO from or to a Federal agency subject to regulations of the U.S. OPM relating to Official Personnel Folders. GAO will maximize the pooling of information between itself and those Federal agencies subject to U.S. OPM rules and regulations concerning the Official Personnel Folder so that a GAO employee may transfer to and from other Federal agencies with one complete and informative Official Personnel Folder.

(d) *Ownership of Official Personnel Folder.* (1) The Official Personnel Folders of individuals whose employment with GAO terminated prior to October 1, 1980, are the records of U.S. OPM and are under the jurisdiction and control of U.S. OPM.

(2) The Official Personnel Folders of current GAO employees whose GAO employment began on or after October 1, 1980, and who have had no previous employment by an executive branch agency of the Federal government shall be under the jurisdiction and control of, and are the records of GAO. GAO shall retain jurisdiction over such records even when they are transferred to an executive branch agency.

(3) The Official Personnel Folders of current GAO employees who were employed prior to October 1, 1980, by either GAO or an executive branch agency shall be under the control of GAO, but those records established prior to October 1, 1980, by GAO, and all records established as a result of employment by an executive branch agency shall remain under the jurisdiction of, and be part of the records of, U.S. OPM.

(4) GAO will maintain those Official Personnel Folders containing records of employment by an executive branch Federal agency, or by GAO prior to October 1, 1980, in compliance with regulations of the U.S. OPM in accordance with the procedures contained in the

Memorandum of Understanding and the provisions of regulations of U.S. OPM contained in 5 CFR parts 293, 294, and 297, as well as the provisions of FPM Chapters 293, 294, and 297.

(e) *Maintenance and content of Folder.* GAO shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The Folder shall also contain permanent records affecting the employee's status and service as required by U.S. OPM instructions and as designated in FPM Supplement 293–31.

(f) *Use of existing Folders upon transfer or reemployment.* In accordance with paragraph (a) of this section, GAO shall request the transfer of the Official Personnel Folder for a person who was previously employed with a Federal agency that maintains such a Folder. The Folder so obtained shall be used in lieu of establishing a new Official Personnel Folder.

(1) When a person for whom an Official Personnel Folder has been established transfers from GAO to another Federal agency that maintains the Folder, GAO shall, on request, transfer the Folder to the new employing agency.

(2) Before transferring the Official Personnel Folder, GAO shall—

(i) Remove those records of a temporary nature filed on the left side of the Folder; and

(ii) Ensure that all permanent documents of the Folder are complete, correct, and present in the Folder in accordance with FPM Supplement 293–31.

(g) *Disposition of Folders of former Federal employees.* (1) Folders containing the personnel records of individuals separated from employment with GAO will be retained by GAO for 30 days after separation, and may be retained for an additional 60 days. Thereafter, the Folder shall be transferred to the same location and in the same manner as Official Personnel Folders of persons separated from Federal agencies which are subject to U.S. OPM regulations in accordance with the Memorandum of Understanding.

(2) GAO shall remove temporary records from the Folder before it is transferred in accordance with guidelines applicable to Federal agencies which are subject to U.S. OMP regulations.

(3) If a former GAO employee is reappointed in the Federal service, the employee's Folder shall, upon request, be transferred to the new employing agency.

(h) *Access requests and amendments to the Official Personnel Folder.* Requests for access to, disclosure from, correction of, or amendments to documents contained in the Official Personnel Folder will be made in accordance with the Memorandum of Understanding.

§ 83.12 Procedures for individual access to records.

(a) Upon written request by any individual outside of GAO or upon written or oral request by any officer or employee of GAO to gain access to his or her record or to any information pertaining to the individual which is contained in a system of personnel records, and not otherwise exempted, GAO shall permit the individual and upon the individual's request a person of his or her own choosing to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her, except that GAO may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. When access to the records has been granted by a system manager or designee:

(1) Inspection in person may be made in the office designated in the system notice during the hours specified by GAO.

(2) Upon the determination of the designated GAO official, records may be transferred to a GAO office more convenient to the data subject to review.

(3) Generally, GAO will not furnish certified copies of records. Where certified copies of records are to be furnished, they may be mailed at the request of the data subject or, as determined by GAO, only after payment of any fee levied in accordance with § 83.17 is received.

(4) In no event shall original records be made available for review by the individual except in the presence of a system manager or designee.

(b) The general identifying information items that the designated GAO official may ask to be furnished before a specific inquiry is granted include:

(1) Full name, signature, and home address;

(2) Picture identification card;

(3) The current or last place and dates of Federal employment, if appropriate; and

(4) Social security number (for those systems of records retrieved by this identifier).

(c) A request or inquiry from someone other than the individual to whom the information pertains shall contain such documents or copies of documents that establish the relationship or authorize access as follows:

(1) When the requester is the parent or legal guardian of a data subject who is a minor, the requester shall identify the relationship with the data subject and furnish a certified or authenticated (e.g. notarized) copy of any document establishing parentage or appointment as legal guardian.

(2) Where the requester is the legal guardian of a data subject who has been declared incompetent by the courts, the requester shall identify the relationship with the data subject and furnish a certified or authenticated copy of the court's appointment of guardianship.

(3) Where the requester is a representative of the data subject, the requester shall identify the relationship with the data subject or the data subject's parent or legal guardian, and furnish documentation designating the representative as having the authority to act on behalf of the data subject.

(d) When the requester appears in person and cannot be identified by sight and signature, proof of identity is required as follows:

(1) When a request is from the data subject, the means of proof, in order of preference, are:

(i) A document bearing the individual's photograph and signature (for example, driver's license, passport, or military or civilian identification card); or

(ii) Two documents bearing the individual's signature (for example, Medicare card, unemployment insurance book, employer identification card, major credit card, professional, draft, or union membership card).

(2) When a request is made by the parent, legal guardian, or authorized representative of the data subject, the means of identifying the requester and his or her authority for acting on behalf of the data subject shall be as prescribed in paragraph (c) of this section. In addition, the requester shall establish the identity of the data subject by requiring the identifying information in paragraph (b) of this section.

(e) When a written inquiry or request is received from the data subject, or from the data subject's parent, legal guardian, or authorized representative, it should be signed and—

(1) For an inquiry, contain sufficient identifying information about the data subject to permit searching of the record system(s) and to permit response; and

(2) For an access request—

(i) From the data subject, contain sufficient information to locate the record and establish that the requester and the data subject are the same (e.g. matching signatures); or

(ii) From the data subject's parent, legal guardian, or authorized representative, contain sufficient information to locate the record, match identity with the data subject, and such documentation of association or authorization as is prescribed in paragraphs (c) and (d) of this section.

(f) The signed request from the data subject, or from the data subject's parent, legal guardian, or authorized representative specified in paragraph (c) of this section shall be sufficient proof of identity of the requester, unless for good cause, the system manager or designee determines that there is a need to require some notarized or certified evidence of the identity of the requester.

§83.13 Inquiries.

(a) General inquiries to request assistance in identifying which system of records may contain a record about an individual may be made in person or by mail to the Director, Personnel.

(b) An inquiry that requests GAO to determine if it has, in a given system of personnel records, a record about the

inquirer, should be addressed to the official identified in the FEDERAL REGISTER notice for that system. Inquirers should specify the name of the system of personnel records, if known, as published in the FEDERAL REGISTER. Such inquiries should contain the identifying data prescribed in § 83.12 before a search can be made of that particular system of records.

§ 83.14 Denial of access requests.

(a) If an access request is denied, the official denying the request shall give the requester the following information:

(1) The official's name, position title, and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate sections of this or any other applicable part; and

(4) The individual's opportunities for further administrative consideration, including the name, position title, and address of the GAO official (see paragraph (c) of this section) responsible for such further review.

(b) Denial of a request for access to records will be made only by the official GAO designee and only upon a determination that:

(1) The record is subject to an exemption under § 83.21 when the system manager has elected to invoke the exemption; or

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

(3) The data subject or authorized representative of the data subject refuses to abide by procedures for gaining access to records.

(c) A request for administrative review of a denial shall be made to the Assistant Comptroller General for Human Resources, U.S. General Accounting Office, 441 G Street, NW, Washington, D.C. 20548. The Assistant Comptroller General shall acknowledge receipt of a request for administrative review of a denial of access within 10 working days after receipt of the request. If it is not possible to reach a decision within an additional 10 working days, the requester shall be informed of the approximate date (within 30 working days) when such a decision may be expected.

(d) In reaching a decision, the Assistant Comptroller General will review the criteria prescribed in this section which were cited as the basis for denying access, and may seek additional information as deemed necessary.

§ 83.15 Request for amendment of record.

(a) Individuals may request the amendment of their records in writing or in person by contacting the system manager or designee indicated in the notice of systems of records published by GAO in the FEDERAL REGISTER. Time limits will be measured from receipt at the proper office.

(b) A request for amendment should include the following:

(1) The precise identification of the records sought to be amended, deleted, or added.

(2) A statement of the reasons for the request, with all available documents and material that substantiate the request.

(c) GAO shall permit an individual to request amendment of a record pertaining to the individual. Not later than 10 working days after the date of receipt of such request, the designated GAO official shall acknowledge in writing such request and, promptly, either—

(1) Make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the refusal to amend the record in accordance with his or her request, the reason for the refusal, and the name and business address of the GAO official responsible for the refusal.

(3) The GAO offical shall permit an individual who disagrees with the refusal by the designated GAO official to amend his or her record to request review of such refusal. A request for administrative review of a denial shall be made in accordance with § 83.16.

(4) In any disclosure containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under § 83.16(d), GAO shall clearly note any portion of the record which is disputed and provide copies of a concise statement of the reasons for not making the amendments requested, to

persons or other agencies to whom the disputed record has been disclosed.

(5) Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(d) If necessary, the official authorized to rule on a request for amendment may seek additional information pertinent to the request to assure that a fair, equitable, and accurate decision is reached.

(e) The following criteria will be considered by the system manager or designee in reviewing initial requests for amendment of records:

(1) The sufficiency of the evidence submitted by the data subject;

(2) The factual accuracy of the information submitted and the information in the record;

(3) The relevancy, necessity, timeliness, and completeness of the information in light of the purpose for which it was collected;

(4) The degree of possibility that denial of the request could result in unfair determinations adverse to the data subject;

(5) The character of record sought to be amended;

(6) The propriety and feasibility of complying with specific means of amendment requested by the data subject; and

(7) The possible involvement of the record in a judicial or quasi-judicial process.

§83.16 Administrative review of request for amendment of record.

(a) A request for administrative review of GAO's denial to amend a record in GAO's system of personnel records shall be addressed to the Assistant Comptroller General for Human Resources, U.S. General Accounting Office, 441 G Street, NW, Washington, D.C. 20548. The Assistant Comptroller General shall acknowledge receipt of a request for administrative review of a denial of amendment within 10 working days.

(b) If a decision cannot be made within an additional 10-day period, a letter will be sent within that time explaining the delay and furnishing an expected date for the decision. A decision on the request must be made within 30 working days after receipt of the request. Only for good cause shown, and at the discretion of the Assistant Comptroller General for Human Resources can this time limit be extended. Any extension requires written notification to the requester explaining the reason for the extension and furnishing a new expected date for the decision. Generally, such extension shall be for no more than an additional 30 working days.

(c) When a request for administrative review of an amendment denial is submitted, the individual must provide a copy of the original request for amendment, a copy of the initial denial, and a statement of the specific reasons why the initial denial is believed to be in error.

(d) An individual requesting an amendment of a record has the burden of supplying information in support of the propriety and necessity of the amendment request. The decision on the request will then be rendered based on a review of the data submitted. The GAO official is not required to gather supporting evidence for the individual and will have the right to verify the evidence which the individual submits.

(e) Amendment of a record will be denied upon a determination by the system manager or designee that:

(1) The record is subject to an exemption from the provisions of this part, allowing amendment of records;

(2) The information submitted by the data subject is not accurate, relevant, or of sufficient probative value;

(3) The amendment would violate a statute or regulation;

(4) The individual refuses to provide information which is necessary to process the request to amend the record; or

(5) The record for which amendment is requested is a record presented in a judicial or quasi-judicial proceeding, or maintained in anticipation of being used in a judicial or quasi-judicial proceeding, when such record is or will become available to the individual under that proceeding.

(f) If, after review, the Assistant Comptroller General for Human Resources also refuses to amend the record in accordance with the request, the individual will be permitted to file with the system manager or designee

of the system of records concerned a concise statement setting forth the reasons for his or her disagreement. Any such statement of disagreement will be treated in accordance with paragraph (c)(4) of § 83.15.

§ 83.17 Fees.

(a) Generally, GAO's policy is to provide the first copy of any record or portion thereof, furnished as a result of this part, at no cost to the data subject or authorized representative. However, in cases where GAO deems it appropriate (for example, where the record is voluminous), the system manager or designee in his or her discretion may charge a fee when the cost for copying the record (at a rate of 20 cents per page) would be in excess of ten dollars ($10).

(b) There shall be no fees charged or collected from a data subject for the following:

(1) Search for or retrieval of the data subject's records;

(2) Review of the records;

(3) Making a copy of a record when it is a necessary part of the process of making the record available for review;

(4) Copying at the initiative of GAO without a request from the individual;

(5) Transportation of the record; and

(6) Making a copy of an amended record to provide the individual with evidence of the amendment.

(c) Certification of authenticity shall be $10 for each certificate, which fee may be waived in the discretion of the system manager or designee.

§ 83.18 Rights of legal guardians.

For the purposes of this part, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

§ 83.19 Government contractors.

When GAO provides by a contract for the operation by or on behalf of GAO of a system of personnel records to accomplish a function of GAO, GAO shall, consistent with its authority, cause the requirements of this part to be applied to such system. Any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered, for the purposes of this part, to be an employee of GAO. Contractor employees will be required to observe the confidentiality requirements of this part. Violations of this part by contractor employees may be a sufficient ground for contract termination.

§ 83.20 Mailing lists.

An individual's name and address may not be sold or rented by GAO unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 83.21 Exemptions.

(a) All personnel records are exempted from §§ 83.6(c), 83.12, 83.13, 83.14, and 83.15, relating to making an accounting of disclosures available to the data subject or his authorized representative and access to and amendment of the records and other sections relating to procedural requirements of the above-cited sections if the record is:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact classified pursuant to such Executive order. *See* 31 U.S.C. 716(e)(1) and 718(b)(3) concerning the applicability of these requirements to GAO.

(2) Investigatory material compiled for law enforcement purposes: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protection services to the

President of the United States or other individuals pursuant to section 3056 of Title 18, United States Code;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purposes of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence (*see* §83.5(j)(1) for the procedure to be used to obtain investigative data originated by other Government agencies);

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence.

APPENDIX I TO PART 83—MEMORANDUM OF UNDERSTANDING

This memorandum of understanding constitutes an agreement between the U.S. Office of Personnel Management (OPM), the National Archives and Records Service of the General Services Administration (NARS), and the U.S. General Accounting Office (GAO) concerning:

(1) The maintenance of the Official Personnel Folder (OPF) of an individual who has been employed in a position subject to the provisions of Title 5, U.S.C. and to the regulations and procedures issued by OPM to govern the Federal civil service, and also in a position subject to the GAO Personnel Act of 1980 (Pub. L. 96–191) and its implementing regulations and procedures;

(2) The exchange of personnel documents and data between the Federal civil service administered by OPM and the personnel system administered by GAO;

(3) The establishment of procedures for processing requests for access to, disclosure from, and amendment of documents in the OPF of an individual who has service under both personnel systems;

(4) The establishment of procedures to be followed by the National Personnel Records Center (NPRC) when responding to requests pertaining to separated employees in any of the following circumstances:

(a) When the OPF contains documentation resulting from employment in both systems;

(b) When a request is received for transfer of an OPF between systems;

(c) When processing a request for an OPF, and that OPF contains only records of GAO employment since October 1, 1980;

(5) The agreement of the parties to consult and cooperate in matters relating to the establishment and revision of personnel procedures which may have mutual effect so as to insure the sharing of essential information while minimizing the recordkeeping burden of all three parties.

SUBCHAPTER G—STANDARDS FOR WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES, AND OF TRAVEL, TRANSPORTATION, AND RELOCATION EXPENSES AND ALLOWANCES

PART 91—STANDARDS FOR WAIVER

Sec.
91.1 Purpose and scope of subchapter.
91.2 Definitions.
91.3 Exclusions.
91.4 Authority to waive.
91.5 Conditions for waiver.
91.6 Effect of waiver.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988, and Title VI, sec. 657, Pub. L. 102–190, 105 Stat. 1290, December 5, 1991.

SOURCE: 56 FR 49583, Sept. 30, 1991, unless otherwise noted.

§ 91.1 Purpose and scope of subchapter.

This subchapter implements 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716. It prescribes the effect of and the standards and procedures for waiver of claims of the United States arising out of erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees of an agency or members of the uniformed services, including the National Guard, the collection of which would be against equity and good conscience and not in the best interests of the United States. These regulations do not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

§ 91.2 Definitions.

(a) *Agency* means—

(1) An executive agency as defined in 5 U.S.C. 105, including the General Accounting Office,

(2) The Government Printing Office,

(3) The Library of Congress,

(4) The Office of the Architect of the Capitol,

(5) The Botanic Garden, and

(6) The Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28, U.S. Code. Section 610 defines ''courts'' to include the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court and the Court of International Trade.

(b) *Secretary concerned* shall have the same meaning as it does in section 101(5) of title 37, U.S. Code.

(c) *Head of an agency* means the head of each agency listed in paragraphs (a)(1) through (5) of this section and the Director, Administrative Office of the United States Courts, for the agencies and courts listed in paragraph (a)(6) of this section.

(d) *Uniformed services* means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(e) *National Guard* means the Army National Guard, the Air National Guard, the Army National Guard of the United States, and Air National Guard of the United States.

(f) *Employee* means an officer or employee as defined in 5 U.S.C. 2104 and 2105 who is or was employed in a civilian capacity by an agency.

(g) As it relates to employees, the term—

(1) *Pay* means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes but is not limited to overtime pay; night, standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay.

(2) *Allowances* includes but is not limited to payments for quarters, uniforms, and overseas cost of living expenses.

(3) *Travel, transportation or relocation expenses and allowances* includes but is not limited to items referred to in 5 U.S.C. 5701–5709 and 5721–5734, 22 U.S.C. 4081, and other comparable provisions, payment of which is made on or after December 28, 1985.

(h) *Member* means a member or former member of the uniformed services, or member or former member of the National Guard.

(i) As it relates to members, the term—

(1) *Pay* includes but is not limited to base and longevity pay, basic pay, training duty pay, special and incentive pays, readjustment pay, severance pay, mustering-out pay, retainer pay, retired pay, retirement pay, lump-sum leave pay, and equivalent pay.

(2) *Allowances* includes but is not limited to payments in lieu of subsistence, quarters, uniforms, clothing, personal money allowance, family separation allowance, and overseas station allowance.

(3) *Travel and transportation allowances* includes but is not limited to items referred to in 37 U.S.C. 404–411 and other comparable provisions, payment of which is made on or after December 28, 1985.

(j) *Aggregate amount* means the gross amount of the claim against the employee, member, or other person from whom collection is sought.

§91.3 Exclusions.

This part does not apply to:

(a) Employees of the District of Columbia Government,

(b) Employees of the legislative branch of the Government, except employees of the Architect of the Capitol, the Government Printing Office, the Library of Congress, the Botanic Garden, and the General Accounting Office.

§91.4 Authority to waive.

(a) The Comptroller General of the United States, or his designee, may grant waiver in whole or in part of a claim of the United States in any amount arising out of an erroneous payment of pay or allowances made to employees on or after July 1, 1960, and to members on or after October 2, 1972, or an erroneous payment of travel, transportation or relocation expenses or allowances made on or after December 28, 1985, to an employee or member, when all of the requirements for waiver are met. Claims referred to the Attorney General for litigation will not be considered for waiver by the Comptroller General of the United States without first having obtained the agreement of the Attorney General.

(b) The Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $10,000 arising out of an erroneous payment of pay or allowances or an erroneous payment of travel, transportation or relocation expenses or allowances to an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts listed in §91.2(a)(6). This authority applies with respect to any claim arising before November 19, 1988, that was pending on that date and to any claim which arose on or after that date.

(c) The head of an agency or the Secretary concerned, or his designee—

(1) May grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $1500, when all the requirements for waiver are met, except that the Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim in an amount aggregating not more than $10,000;

(2) May deny waiver of a claim in any amount, provided that the employee, member, or other person from whom collection is sought must be advised of the right to appeal the denial to the General Accounting Office pursuant to the procedures set forth in part 92 of this subchapter; and

(3) May not grant waiver of any claim that is the subject of an exception made by the Comptroller General in the account of any accountable officer, or that has been referred to the General Accounting Office or to the Attorney General.

(d) The Government's claim against an employee or member for repayment

of an advance of funds for travel or relocation expenses may be considered for waiver if—

(1) The advance was made to cover expenses erroneously authorized;

(2) The employee or member actually spent the advance in reliance on the erroneous travel authorization; and

(3) The employee or member is indebted to the Government for repayment of all or part of the amounts advanced after the advance is applied against any legitimate expenses incurred by the employee or member.

[56 FR 49583, Sept. 30, 1991, as amended at 56 FR 67467, Dec. 31, 1991]

§ 91.5 Conditions for waiver.

(a) Three-year application period.

(1) An application for waiver must be received in the General Accounting Office or in the agency or department which made the erroneous payment within 3 years immediately following the date on which the erroneous payment was discovered, or in the case of certain applications received prior to July 25, 1977, as provided in 5 U.S.C. 5584(b).

(2) The employee, member, or other person from whom collection is sought shall be promptly notified of the discovery of an erroneous payment. In determining the date of discovery of an erroneous payment, all doubts are to be resolved in favor of the applicant.

(b) Waiver may be granted only when collection would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other person having an interest in obtaining a waiver of the claim. Generally, waiver is precluded when an employee, member, or other person having an interest in obtaining waiver receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard must necessarily depend upon the facts existing in the particular case. The facts upon which waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of part 92 of this subchapter.

§ 91.6 Effect of waiver.

(a) In the audit and settlement of the accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived.

(b) An erroneous payment, the collection of which is waived pursuant to this subchapter, is deemed a valid payment for all purposes.

PART 92—PROCEDURE

Sec.
92.1 Who may apply for waiver.
92.2 Where to apply.
92.3 Report of the agency or department.
92.4 Action by the agency or department.
92.5 Initial action by the General Accounting Office and appeals to the Comptroller General.
92.6 Refund of amounts repaid and waived.
92.7 Written record.
92.8 Register of waivers.
92.9 Referral of claims for collection or litigation.

AUTHORITY: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988, and Title VI, sec. 657, Pub. L. 102–190, 105 Stat. 1290, December 5, 1991.

SOURCE: 56 FR 49584, Sept. 30, 1991, unless otherwise noted.

§ 92.1 Who may apply for waiver.

An application for waiver may be initiated by an employee, member, or other person from whom collection is sought, or by an authorized official of the agency or department that made the erroneous payment, or by the Comptroller General of the United States.

§ 92.2 Where to apply.

(a) An application for waiver filed by an employee, member, or other person from whom collection is sought shall be submitted to the agency or department that made the erroneous payment.

(b) After the agency or department has taken the actions required by §§92.3 and 92.4, the employee, member, or other person from whom collection is sought may request the agency or department to submit the matter to the General Accounting Office.

(c) The agency or department shall submit all waiver applications aggregating more than $1500 for which the agency recommends approval and all appeals, regardless of the amount, for consideration by the General Accounting Office to: Director, Claims Group, General Government Division. U.S. General Accounting Office, Washington, DC 20548.

(d) The submission shall include all of the information required by §§92.3 and 92.4, and any written comments on the matter submitted by the employee, member, or other person from whom collection is sought.

[56 FR 49584, Sept. 30, 1991, as amended at 56 FR 67467, Dec. 31, 1991]

§92.3 Report of the agency or department.

(a) Except as provided in paragraph (b) of this section, upon initiation of an application for waiver, the agency or department shall prepare a written report containing a chronological summary of the facts and circumstances including:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the claim;

(3) The date the erroneous payment was discovered;

(4) The date the employee, member, or other person from whom collection is sought was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A statement as to the circumstances under which the erroneous payment was made, the applicant's knowledge of the erroneous payment and the steps the applicant took, if any, to bring the matter to the attention of the appropriate official and the agency's response;

(6) A determination as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other interested person and the factual basis for such a determination;

(7) A statement as to whether or not the erroneous payment is the subject of an exception made by the Comptroller General of the United States;

(8) Legible copies or the originals of supporting documents such as leave and earnings statements, travel authorizations and vouchers, and military orders;

(9) Statements of the employee, member, or other interested person;

(10) A statement as to the reason the agency or department believes the erroneous payment occurred and the corrective action taken to prevent the occurrence of similar erroneous payments.

(b) No written report is required where the amount involved is $100 or less and there is no indication of fraud, misrepresentation, fault, or lack of good faith.

§92.4 Action by the agency or department.

Upon completion of the report, the agency or department,

(a) Shall grant or deny waiver if authorized by §91.4 (b) or (c) of this subchapter, or refer the matter to the General Accounting Office in accordance with §92.2(c), and;

(b) Shall provide the applicant written notice as to whether the application for waiver has been granted, denied, or referred to the General Accounting Office, provided the person can reasonably be located. When waiver is denied, the notice shall state the basis for that decision and that, upon request, the agency or department will forward an appeal to the General Accounting Office pursuant to §92.2.

§92.5 Initial action by the General Accounting Office and appeals to the Comptroller General.

(a) The Claims Group will issue a letter to the agency or department granting or denying waiver in whole or in part. In every case where waiver is denied in whole or in part, the Claims

Group will send a copy of the letter to the employee, member, or other person from whom collection is sought.

(b) Letters issued by the Claims Group granting or denying waiver may be appealed to the Comptroller General upon written request by the agency or department, or by the employee, member, or other person from whom collection is sought. The request should fully explain the errors alleged and the basis of the appeal and should be addressed to: Director, Claims Group, General Government Division, U.S. General Accounting Office, Washington, DC 20548.

(c) The Comptroller General will issue a decision on the appeal and will send a copy of the decision to the agency or department, and to the employee, member, or other person from whom collection is sought.

§ 92.6 Refund of amounts repaid and waived.

(a) When an employee, member, or other person from whom collection is sought has repaid all or part of a claim to the United States and all or part of the claim is subsequently waived, the application for waiver shall be construed as an application for a refund and the agency or department shall, to the extent of the waiver, refund the amount paid. However, no refund shall be paid where the employee, member, or other person from whom collection is sought cannot reasonably be located within 2 years after the effective date of the waiver. Refunds shall be charged to the account into which the agency deposited the collection.

(b) When no refund is made to an otherwise eligible person, the written record should include information as to the attempts made to locate that person and other pertinent information.

§ 92.7 Written record.

(a) The report of the agency or department, any written comments submitted by the employee, member or other person from whom collection is sought, an account of the waiver action taken and the reasons therefor, and other pertinent information such as the action taken to refund amounts repaid shall constitute the written record in each case.

(b) The agency shall retain the written record for 6 years and 3 months for review by the General Accounting Office.

(c) Upon request by an employee, member, or other person against whom collection is sought, the agency or department shall make the written record of the waiver application that pertains to them available for inspection.

§ 92.8 Register of waivers.

(a) The agency or department shall maintain a register for each of the categories listed in paragraph (b) of this section showing the disposition of each application for waiver considered pursuant to this subchapter. These registers shall be retained for review by the General Accounting Office.

(b) The register required in paragraph (a) of this section shall contain the following information:

(1) The total amount waived by the agency or department;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number of waiver applications granted in part and denied in part and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety;

(5) The number of waiver applications referred to the General Accounting Office for action;

(6) The dollar amount refunded as a result of waiver action by the agency or department; and

(7) The dollar amount refunded as a result of waiver action by the General Accounting Office.

§ 92.9 Referral of claims for collection or litigation.

No claim for the recovery of an erroneous payment that is under consideration for waiver shall be referred to the Attorney General unless the time remaining for suit within the applicable limitation does not permit such waiver consideration prior to referral.

PART 93—[Reserved]

CHAPTER II—FEDERAL CLAIMS COLLECTION STANDARDS (GENERAL ACCOUNTING OFFICE—DEPARTMENT OF JUSTICE)

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PART 101—SCOPE OF STANDARDS

Sec.
101.1 Prescription of standards.
101.2 Definitions.
101.3 Antitrust, fraud, tax, and interagency claims excluded.
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101.7 Required administrative proceedings.
101.8 Omissions not a defense.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8896, Mar. 9, 1984, unless otherwise noted.

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under 31 U.S.C. 3711(e)(2), prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims as defined by 31 U.S.C. 3701(b), by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to 31 U.S.C. 3711(e)(1) will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

§ 101.2 Definitions.

(a) *Claim and debt.* For the purposes of these standards, the terms ''claim'' and ''debt'' are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

(b) A debt is considered *delinquent* if it has not been paid by the date specified in the agency's initial written notification (§ 102.2 of this chapter) or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.

(c) As used in this chapter, *referral for litigation* means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

(d) In this chapter, words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but which are in the same general class.

§ 101.3 Antitrust, fraud, tax, and interagency claims excluded.

(a) The standards in this chapter relating to compromise, suspension, and termination of collection action (parts 103 and 104) do not apply to any claim based in whole or in part on conduct in violation of the antitrust laws, or to any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim. Only the Department of Justice has authority to compromise, suspend, or terminate collection action on such claims. The standards in this chapter relating to the administrative collection of claims (part 102) do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim of any of the types described in the first sentence of this paragraph, the agency involved should refer the matter promptly to the Department of Justice. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the regulations in this chapter.

(b) Tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

(c) This chapter does not apply to claims between Federal agencies. Federal agencies should attempt to resolve interagency claims by negotiation. If

the claim cannot be resolved by the agencies involved, it should be referred to the General Accounting Office.

§101.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes and implementing regulations other than Subchapter II of Chapter 37 of Title 31 of the United States Code and these Standards, providing for the collection, compromise, termination of collection action, or waiver in whole or in part of such a claim. See, for example, the Federal Medical Care Recovery Act, 76 Stat. 593, 42 U.S.C. 2651 et seq., and applicable regulations, 28 CFR 43.1 et seq. In such cases, the laws and regulations which are specifically applicable to claims collection activities of a particular agency take precedence over this chapter. Except as provided in §102.19 of this chapter (Exemptions), the standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by collection, compromise, or termination of collection action (other than by waiver pursuant to other statutory authority) where neither the specific statute nor its implementing regulations establish standards governing such matters.

§101.5 Conversion claims.

The instructions contained in this chapter are directed primarily at the recovery of money on behalf of the United States and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of the property or the payment of its value.

§101.6 Subdivision of claims not authorized.

Claims may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single claim in determining whether the claim is one of less than $20,000, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§103.1 of this chapter) or suspension or termination of collection action (§104.1 of this chapter).

§101.7 Required administrative proceedings.

Nothing contained in this chapter is intended to require an agency to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§101.8 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

102.1 Aggressive agency collection action.
102.2 Demand for payment.
102.3 Collection by administrative offset.
102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
102.5 Use of consumer reporting agencies.
102.6 Contracting for collection services.
102.7 Personal interview with debtor.
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102.11 Collection in installments.
102.12 Exploration of compromise.
102.13 Interest, penalties, and administrative costs.
102.14 Analysis of costs.
102.15 Documentation of administrative collection action.
102.16 Automation.
102.17 Prevention of overpayments, delinquencies, and defaults.
102.18 Use and disclosure of mailing addresses.
102.19 Exemptions.
102.20 Additional administrative collection action.

AUTHORITY: Subchapter II of Chapter 37 of Title 31, U. S. C. .

SOURCE: 49 FR 8897, Mar. 9, 1984, unless otherwise noted.

§ 102.1 Aggressive agency collection action.

(a) Each Federal agency shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, that agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency, or to perform collection actions which should have been undertaken by any other agency in accordance with the standards set forth in this chapter.

(b) All agencies are expected to cooperate with one another in their debt collection activities.

§ 102.2 Demand for payment.

(a) Appropriate written demands shall be made promptly upon a debtor of the United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, agencies should give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this chapter, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of: (1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the agency; (2) the applicable standards for assessing interest, penalties, and administrative costs (§ 102.13); and (3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered. Agencies should exercise care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated. Apart from this, there is no prescribed format for the demand letters. Agencies should utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(c) As appropriate to the circumstances, agencies may consider including, either in the initial demand letter or in subsequent letters, such items as the agency's willingness to discuss alternative methods of payment, policies with respect to use of consumer reporting agencies (§ 102.5) and collection services (§ 102.6), the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) Agencies should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(e) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, an agency determines to pursue offset, then the procedures specified in §§ 102.3, 102.4, or 5 U.S.C. 5514, as applicable, should be followed. The availability of funds for offset and the agency's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§ 102.3, 102.4, or 5 U.S.C. 5514.

§102.3 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these standards and implementing regulations established by each agency on all claims which are liquidated or certain in amount in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) For purposes of this section, the term ''administrative offset'' has the meaning provided in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies should consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset in every instance in which there is an available source of funds. Agencies may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Except as provided in §101.4, this paragraph or §102.4, the standards in this paragraph shall apply to the collection of debts by administrative offset under 31 U.S.C. 3716, some other statutory authority, or the common law.

(1) Agencies shall prescribe regulations for the exercise of administrative offset.

(2) Agency regulations required by paragraph (b)(1) of this section shall establish procedures for providing a debtor, before the offset is made, with appropriate procedural rights. Except as otherwise required by law, those regulations shall provide for: Written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt. Agency regulations shall also establish procedures for making requests for offset to other agencies holding funds payable to the debtor, and for processing requests for offset that are received from other agencies.

(i) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(ii) In cases where the procedural requirements specified in paragraph (b)(2) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance, the agency is not required to duplicate those requirements before taking administrative offset.

(3) Agencies may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) Agencies are not authorized by 31 U.S.C. 3716 to use administrative offset with respect to: (i) Debts owed by any

State or local Government; (ii) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (iii) any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(5) Agencies may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (b)(2) of this section if: (i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and (ii) the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(c) Type of hearing or review: (1) For purposes of this section, whenever an agency is required to afford a debtor with a hearing or review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when: (i) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (ii) the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the agency should always carefully document all significant matters discussed at the hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency shall nevertheless accord the debtor a ''paper hearing,'' that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(d) Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including use of the Army Holdup List. Generally, agencies should not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable provisions of these standards or the offset would be otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with.

(g) When collecting multiple debts by administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special

attention to applicable statutes of limitations.

§102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, agencies may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, an agency shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The requesting agency has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The requesting agency has complied with the requirements of §102.3 of this part, including any required hearing or review.

(c) Once an agency decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and ''flag'' the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the requesting agency collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the agency shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the requesting agency's determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

§102.5 Use of consumer reporting agencies.

(a) Agencies shall develop and implement procedures for reporting delinquent debts to consumer reporting agencies. For purposes of this section, the term ''consumer reporting agency'' has the meaning provided in 31 U.S.C. 3701(a)(3).

(b) In developing procedures under paragraph (a) of this section, agencies must have due regard for compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a. However, consumer reporting agencies themselves are not subject to the Privacy Act.

(c) Agency procedures developed under paragraph (a) of this section shall be consistent with the requirements of 31 U.S.C. 3711(f) and §102.3(c) of this part.

§102.6 Contracting for collection services.

(a) All agencies have authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation (§105.1) must be retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to § 105.2(a) (1), (2), and (3) of this chapter upon returning an account to the creditor agency for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) An agency may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) An agency may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) An agency may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance in its appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under pargraph (b)(2) of this section, or unless otherwise specifically provided by law, agencies must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

§ 102.7 Personal interview with debtor.

Agencies will undertake personal interviews with their debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

§ 102.8 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222, May 8, 1965, 30 FR 6469.

§ 102.9 Suspension or revocation of license or eligibility.

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance should give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim, and the debtor should be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans should give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time, and the debtor should be so advised. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

§ 102.10 Liquidation of collateral.

An agency holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. The agency should provide the debtor with reasonable notice of the

sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§102.11 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by §102.13 of this part, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Agencies should obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. Agencies which agree to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, agencies should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statues of limitations.

§102.12 Exploration of compromise.

Agencies may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in part 103 of this chapter.

§102.13 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (h) and (i) of this section, agencies shall assess interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, an agency must mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning the charges. (See §102.2 of this part.)

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an agency uses an ''advance billing'' procedure—that is, if it mails a bill before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Agencies should exercise care to insure

that the notices required by this section are dated and mailed or hand-delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the U.S. Treasury (*i.e.*, the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. An agency may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the agency may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) An agency shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt,—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 101.2(b) of this chapter. Calculation of administrative costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) An agency shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 101.2(b) of this chapter for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) An agency shall waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. An agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, an agency may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in part 103 of this chapter relating to the compromise of claims (without regard to the amount of the debt), or if the agency determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised only in accordance with regulations issued by the agency identifying the standards and appropriate circumstances for waiver. Examples of situations which agencies may consider including in their interest waiver regulations are: (1) Waiver of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and (2) waiver of interest where the agency has accepted an installment plan under § 102.11 of this part, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is large enough in relation to the size of the installments that the debtor can reasonably afford to pay that the debt will never be repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 104.2(c)(1) of this chapter.

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply: (i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) To debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) However, agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§102.14 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program, evaluating the feasibility and cost effectiveness of contracting for debt collection services under §102.6, and determining appropriate charges for administrative costs under §102.13(d).

§102.15 Documentation of administrative collection action.

All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation shall be retained in the appropriate claims file.

§102.16 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

§102.17 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed.

§102.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this chapter, an agency may send a written request to the Secretary of the Treasury (or designee) in order to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) An agency may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors, in order to facilitate the collection or compromise of debts under this chapter, except that a mailing address may be disclosed to a consumer reporting agency only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) Each agency shall ensure, by appropriate regulations and contract administration, that the agency and its agents, including consumer reporting agencies and collection service contractors, comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

§102.19 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982, such as administrative offset (§§102.3 and 102.4), use of consumer reporting agencies (§102.5), contracting for collection services (§102.6), and interest and related charges (§102.13), do not apply to debts arising under or payments made under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

However, these remedies and procedures may still be authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in the preceding paragraph unless the debt ''arose under'' those laws.

§ 102.20 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of any other administrative remedy which may be available.

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.
103.1 Scope and application.
103.2 Inability to pay.
103.3 Litigative probabilities.
103.4 Cost of collecting claim.
103.5 Enforcement policy.
103.6 Joint and several liability.
103.7 Compromise for a combination of reasons.
103.8 Further review of compromise offers.
103.9 Restrictions.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8902, Mar. 9, 1984, unless otherwise noted.

§ 103.1 Scope and application.

(a) The standards set forth in this part apply to the compromise of claims pursuant to 31 U.S.C. 3711. The head of an agency may exercise such compromise authority with respect to claims for money or property arising out of the activities of that agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation. Agency heads, including the Comptroller General, may designate officials within their respective agencies to exercise the authorities referred to in this section.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. The agency should evaluate the offer, using the factors set forth in this part. If the agency then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See 4 CFR 105.2(b). Claims for which the gross amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. Justice Department approval is not required if the agency wishes to reject the compromise offer.

§ 103.2 Inability to pay.

(a) A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of: (1) The debtor's inability to pay the full amount within a reasonable time, or (2) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings.

(b) In determining the debtor's inability to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income which may be realized by enforced collection proceedings.

(c) The agency should give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in §102.11 of this chapter, in every case in which this is possible.

(e) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expenses. Forms such as Department of Justice Form OBD–500 or OBD–500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as seems required.

§103.3 Litigative probabilities.

A claim may be compromised pursuant to this part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a *bona fide* dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

§103.4 Cost of collecting claim.

A claim may be compromised pursuant to this part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

§103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will

be adequately served by acceptance of the sum to be agreed upon. Mere accidential or technical violations may be dealt with less severely than willful and substantial violations.

§ 103.6 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 103.7 Compromise for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

§ 103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

104.1 Scope and application.
104.2 Suspension of collection activity.
104.3 Termination of collection activity.
104.4 Transfer of claims.

AUTHORITY: 31 U.S.C. 3711(a)(3).

SOURCE: 49 FR 8903, Mar. 9, 1984, unless otherwise noted.

§ 104.1 Scope and application.

(a) The standards set forth in this part apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. The head of an agency (or designee) may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of that agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the agency thinks suspension or termination may be appropriate, it should evaluate the matter, using the factors set forth in this part. if the agency then concludes that suspension or termination is appropriate, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See 4 CFR 105.2(b). The referral should specify the reasons for the agency's recommendation. If the agency decides not to suspend or terminate collection action on the claim, Justice Department approval is not required. If an agency determines that its claim is plainly erroneous or clearly without

legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

§104.2 Suspension of collection activity.

(a) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and registration records; state and local governmental agencies; the Internal Revenue Service (§102.18 of this chapter); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(b) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running anew; or

(2) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review.* (1) If the statute under which waiver or administrative review is sought is ''mandatory,'' that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki,* 422 U.S. 682 (1979)), then collection action must be suspended until either: (i) The agency has considered the request for waiver/review, or (ii) the applicable time limit for making the waiver/review request, as prescribed in the agency's regulations, has expired and the debtor, upon proper notice, has not made such a request.

(2) If the applicable waiver/review statute is ''permissive,'' that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/review request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted, or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(3) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request in the event the agency acts favorably on it, collection action should ordinarily be suspended, without regard to the factors specified in paragraph (c)(2) of this section, unless it appears clear,

based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection.

§ 104.3 Termination of collection activity.

The head of an agency (or designee) may terminate collection activity and consider the agency's file on the claim closed under the following standards:

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(b) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, and either: (1) There is no security remaining to be liquidated, or (2) the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(c) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(e) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

§ 104.4 Transfer of claims.

When an agency has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105—REFERRALS TO DEPARTMENT OF JUSTICE OR GAO

Sec.
105.1 Prompt referral.
105.2 Claims collection litigation report.
105.3 Preservation of evidence.
105.4 Minimum amount of referrals to Department of Justice.
105.5 Preliminary referrals to GAO.

AUTHORITY: 31 U.S.C. 3711.

SOURCE: 49 FR 8904, Mar. 9, 1984, unless otherwise noted.

§ 105.1 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with parts 103 and 104 of this chapter, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over $100,000

shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, D.C. 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the U.S. Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this chapter, and in any event, well within the period for bringing a timely suit against the debtor. Ordinarily, referrals should be made within one year of the agency's final determination of the fact and the amount of the debt.

(b) Claims arising from audit exceptions taken by the General Accounting Office to payments made by agencies must be referred to the General Accounting Office for review and approval prior to referral to the Department of Justice for litigation, unless the agency concerned has been granted an exception by the General Accounting Office.

(c) When the merits of the Government's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the agency concerned should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, the referring agency shall refrain from having any contact with the debtor and shall direct the debtor to GAO or the Department of Justice, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the Department of Justice, as appropriate, shall be immediately notified by the referring agency of any payments which are received from the debtor subsequent to referral of a claim under this section.

§105.2 Claims collection litigation report.

(a) Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by the General Accounting Office on January 20, 1983, shall be used with all referrals of administratively uncollectible claims made pursuant to §105.1. As required by the CCLR, the following information shall be included.

(1) *Report of prior collection actions.* A checklist or brief summary of the actions previously taken to collect or compromise the claim will be forwarded with the claim upon its referral. If any of the administrative collection actions enumerated in part 102 of this chapter have been omitted, the reason for their omission must be provided. GAO, the U.S. Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in part 102 of this chapter.

(2) *Current address of debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made shall be provided. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government, shall be included.

(i) Such credit data may take the form of:

(A) A commercial credit report;

(B) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(C) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(D) An audited balance sheet of a corporate debtor.

(ii) Such credit data may be omitted if:

(A) A surety bond is available in an amount sufficient to satisfy the claim in full;

(B) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(C) The referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(D) The debtor is in bankruptcy or receivership;

(E) The debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(F) The nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(b) Agencies shall also use the CCLR when referring claims to the Department of Justice in order to obtain the approval of that Department with respect to compromise, suspension, or termination, as required by §§ 103.1(b) and 104.1(b).

§ 105.3 Preservation of evidence.

Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or to the U.S. Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

§ 105.4 Minimum amount of referrals to Department of Justice.

Agencies will not refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless: (a) Referral is important to a significant enforcement policy, or (b) the debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

§ 105.5 Preliminary referrals to GAO.

Preliminary referrals of claims to the General Accounting Office, as required by § 105.1(b) and (c), will be in accordance with instructions, including monetary limitations, contained in the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the provisions of §§ 105.2 and 105.3 of this part.

FINDING AIDS

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