

## Government Accountability Office

## § 28.101

(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 challenge that action by filing directly with the PAB, thus bypassing both the Office of Opportunity and Inclusiveness and the Board's Office of General Counsel.

(e)(1) The charging party shall file the charge with the Board's Office of General Counsel in accordance with § 28.11. That Office 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; 68 FR 69303, Dec. 12, 2003]

### § 28.99 Petitions 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 Agency 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.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

### § 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, Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*,