

to ensure that the Board's rule is effectively implemented consistent with the laws and policies enforced by the Commission. Accordingly, the Board believes that no changes to these provisions in the interim rule are appropriate.

The Commission also commented on a provision in the Board's interim regulation implementing the Rehabilitation Act (29 U.S.C. 791), which prohibits discrimination against individuals with disabilities by the federal government. The particular provision at issue addresses alcoholism, 12 CFR 268.203(h)(3). The Commission questioned whether section 268.203(h)(3) was consistent with current law. Before the Board could address the Commission's concerns, however, the Commission adopted changes to the parallel provision in the Commission's rule. On May 21, 2002, the Commission published a final rule revising the sections in its rule regarding the Rehabilitation Act. (67 FR 35732). The Commission's rule provides that the federal government shall be a model employer of individuals with disabilities. The rule also provides that in determining whether the Rehabilitation Act, as amended, has been violated in a complaint alleging nonaffirmative action employment discrimination, the standards under Titles I and V of the Americans with Disabilities Act of 1990, insofar as they cover employment in the private sector, shall be applied. The rules also provide that these standards are set forth in the Commission's ADA regulation at 29 CFR part 1630. The Board has determined that it would be appropriate to revise its Rehabilitation Act rules consistent with the Commission's May 21, 2002, final rule. By making these changes, the Board is addressing the Commission's concern with the provision on alcoholism in the interim rule as that provision will be deleted.

In order to incorporate the Commission's May 21, 2002, final rule, section 268.102, paragraph (9) of the interim rule, which relates to the obligations of the Board's EEO program with respect to employees with physical or mental limitations, has also been deleted in the final rule. This provision corresponds to a provision in the Commission's prior regulation, which the Commission deleted.² In addition,

the present language in section 268.203 has been replaced with the corresponding language from the Commission's final rule, which provides that the government shall be a model employer of individuals with disabilities and applies the ADA standards (Title I and V) to determine whether a violation of section 501 of the Rehabilitation Act has occurred. The Board's final rule also incorporates the reference to the Commission's ADA regulation. Thus, as these changes to the Board's rules are made in response to the comment received on the interim rule and are consistent with those made by the Commission in its May 21, 2002, final rule, additional comment would not serve the public interest as the Commission's rule was adopted only after public comment. As described above, the changes to the Rehabilitation Act provisions in the Board's corresponding rule incorporate existing Commission procedures which were adopted after public notice and comment. Further, as the Commission's changes to the Rehabilitation Act provisions are effective as of June 20, 2002, to ensure that EEO complaints by Board employees are handled consistently with the procedures of the Commission, it is important that the Board adopt corresponding changes without additional delay.

Finally, the Commission suggested that the Board apply the interim rule retroactively to cover employee complaints of discrimination pending on November 9, 1999, the effective date of the Commission's revised rule, which prompted the Board's revision of its corresponding rule. The Board does not believe that any further action in this regard is necessary, however, because the interim rule was effective immediately upon publication of the interim rule and applied to all pending cases as of January 25, 2001. Thus, to the extent an EEO complaint was in the administrative process on that date, it was processed under procedures similar to those adopted by the Commission. It appears that, for the most part, the administrative processing at the Board of complaints pending as of January 2001 has been completed, so that retroactive application at this time would have little effect.

Accordingly, with the exception of the substantive changes discussed above, the Board is now adopting the interim rule on equal employment opportunity as a final rule. No other substantive changes have been made to the interim rule. The final rule makes

editorial changes to certain other parts of the Board's interim regulation, namely, the provision on employment of noncitizens and the subpart prohibiting discrimination in Board programs and activities on the basis of disability, which are not administered by the Commission.

Pursuant to the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), the Board has determined that it is unnecessary and would be impracticable to defer the effective date of this final rule for 30 days. The final rule, like the interim rule, which was effective immediately on publication, in substance is applying the Commission's existing regulation, which was revised twice and in both instances adopted only after notice and public comment. Thus, the Board's rule will not cause unfair prejudice as the standards that are being applied in the final rule in virtually all respects are not new and are already in effect under the interim rule. The one major substantive change to the interim rule by the final rule conforms the Rehabilitation Act provisions covering Board employee to those governing Federal employers generally.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs the Board's dealings with its employees, applicants for employment, and others affected in a like manner.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. Because the Board has determined that this final rule, similar to the interim rule, should conform to the greatest possible with the parallel regulation of the Equal Employment Opportunity Commission, the Board's ability to specifically address the plain language requirement was limited.

² The Board's final rule, similar to the Commission's changes to its regulation, renumbers the remaining paragraphs. Further, the citation to section 268.203(a)(6) in section 268.702(e)(3) of Subpart H, which prohibits discrimination in Board programs and activities on the basis of disability and which is a matter not administered by the

Commission, has been changed to section 268.203 as the prior citation is no longer valid.