

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 27, 28 and 29

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Proposed rule.

SUMMARY: The General Accounting Office Personnel Appeals Board (PAB) has authority with respect to employment practices within the General Accounting Office (GAO or agency), pursuant to the General Accounting Office Personnel Act of 1980. The PAB is proposing to revise its procedural regulations. The changes are intended to clarify the meaning of some sections, to correct a few provisions affected by changes in law or agency structure, and to refine certain procedures. The Board invites public comment on the proposed regulations.

DATES: Comments must be received on or before September 15, 2003, in order to be considered.

ADDRESSES: Comments may be mailed to: Clerk of the Board, General Accounting Office Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. Comments may also be submitted by facsimile transmission to 202-512-7525.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, or Susan Inzeo, Solicitor, 202-512-6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board is authorized by Congress, pursuant to 31 U.S.C. 751-755, to hear and decide cases brought by GAO employees concerning various personnel matters including adverse or performance-based actions, claims of discrimination, alleged prohibited personnel practices, and labor-management relations. The Board also exercises oversight authority over equal employment opportunity at the agency, and has authority to consider, decide,

and order corrective action in labor-management representation matters. The Board's current procedural regulations applicable to GAO appear at 4 CFR parts 27 and 28. The Board is proposing to revise these regulations. The changes are intended to clarify the meaning of some sections, to correct a few provisions affected by changes in law or agency structure, and to streamline certain procedures. The significant proposed changes are described below.

The Board no longer has jurisdiction over claims concerning employment practices at the Architect of the Capitol. As a result, the regulations in part 29 are being repealed and the part reserved. This also necessitates a few conforming changes to the provisions in parts 27 and 28.

Highlights of Significant Changes in the Proposed Regulations

The proposed revisions contain several significant refinements to the Board's procedures. Over the last several years, the Board has repeatedly observed that litigants not represented by the PAB Office of General Counsel (PAB/OGC) have been confused by such terms as the "Right to Appeal Letter" issued by that Office following an investigation and the "Petition for Review" to be filed with the Board. Many individuals misinterpreted the previous terminology to mean that the Board was reviewing the investigation or conclusion of its Office of General Counsel, or where applicable, GAO's Office of Opportunity and Inclusiveness, rather than exercising de novo authority to review the underlying agency action that was the subject of investigation. For this reason, the term "Right to Petition Letter" has been substituted for "Right to Appeal Letter" and the term "Petition" has been substituted for "Petition for Review." Similarly, the revisions clarify that an "appeal" before the PAB is the stage of a Board proceeding when the full Board reviews the decision of a single member, panel of members, or appointed administrative judge.

Other notable proposed changes to the Board's regulations are summarized below:

Section 27.1 (The Board): Reference to part 29 is deleted, and the last sentence is revised to reflect the Board's role of reviewing rather than reconsidering the action of an individual member, panel

or appointed administrative judge; reconsideration refers to the process whereby the same decisionmaker examines whether or not to change a decision.

Section 28.2 (Jurisdiction): The introductory language of paragraph (a) is streamlined. Subsection (b)(3) is revised to clarify that the Board's jurisdiction extends to determination of the appropriateness of a unit for collective bargaining.

Section 28.3 (General definitions): Several clarifying changes are found in the definitions section. Definitions for Clerk of the Board, Director of EEO Oversight, and Executive Director of the Personnel Appeals Board are new. The definition of Charge is revised to clarify that the term applies to requests for the PAB Office of General Counsel to investigate a matter. References to Recommended Decisions and Exceptions are deleted, in conformity with the Board's decision to delete section 28.86. "Notice of Appeal" is substituted for "Request for Review" to more clearly define the process of appealing an initial decision to the full Board. The definition of Pleading is revised to specifically include documents pertaining to a request for appellate review by the full Board. Workforce Restructuring Action (WRA), as defined by GAO Order 2351.1 (January 21, 2003), is added in the definition section and substituted throughout the regulations for Reduction in Force (RIF).

Section 28.8 (Informal procedural advice): This provision is revised to expand the list of persons who provide informal procedural advice at the Board.

Section 28.11 (Filing a charge with the Office of General Counsel): The section is revised to clarify the options as to how to file a charge. Subsection (d)(2) is revised to state that the PAB Office of General Counsel investigates rather than reviews actions underlying a charge.

Section 28.12 (General Counsel procedures): "Right to Petition Letter" is substituted for "Right to Appeal Letter," and "Petition" is substituted for "Petition for Review," throughout this section. Subsection (d) is reorganized and further divided into subdivisions (1), (2) and (3). Subsection (d)(2) is amplified to clarify that a charging party may file a Petition with the Board in accordance with § 28.18 even if the PAB Office of General Counsel does not find