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AUTHORITY: 31 U.S.C. 753.

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EDITORIAL NOTE: Nomenclature changes to part 28 appear at 76 FR 76873, Dec. 9, 2011.

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 Government Accountability Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA), 31 U.S.C. 751–755.

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

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

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

(3) 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, United States Code; and

(4) The Board, in carrying out its responsibilities under Subchapters III and IV of chapter 7 of title 31, United States Code.

(c) The scope of the Board's operations encompasses the investigation and 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, as amended at 68 FR 69297, Dec. 12, 2003]

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following:

(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.

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(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 petition 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) The appropriateness of a 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) *Matters involving prohibited personnel practices.* If the negotiated grievance procedure permits the employee to grieve an appealable action involv-

ing a prohibited personnel practice other than prohibited discrimination (as defined in § 28.95), such an action may be raised under either, but not both, of the following procedures:

(A) The Board's procedures; or

(B) The negotiated grievance procedure.

The employee will be deemed to have elected the Board's procedures if the employee files a timely charge with the Board's Office of General Counsel before filing a timely grievance.

(3) *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 paragraphs (c)(1) or (c)(2) of this section, then those matters may only be raised under the negotiated grievance procedure and not before the Board.

(4) *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.

(d) Except for actions involving prohibited discrimination (under § 28.95) or any other prohibited personnel practice, any appealable action that is excluded from the application of the negotiated grievance procedure may be raised only under the Board's procedures.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69298, Dec. 12, 2003; 76 FR 76873, Dec. 9, 2011]

§ 28.3 General definitions.

In this part—