

Proposed Rules

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.

GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 81

Public Availability of Government Accountability Office Records

AGENCY: Government Accountability Office.

ACTION: Proposed rule; request for comments.

SUMMARY: These proposed revisions would clarify and broaden the existing exemption regarding the disclosure of congressional correspondence and create a new exemption to allow for the withholding of records of interviews created by GAO in connection with its work. Specifically, the proposed revision to the congressional correspondence exemption would enable GAO to release or withhold congressional correspondence without prior congressional authorization. The proposed new exemption would enhance the open, frank, and honest exchange of information from other agencies, nonfederal organizations, and individuals to GAO during the course of a GAO audit, evaluation, or investigation.

DATES: Comments must be received on or before November 2, 2006.

ADDRESSES: Comments on these proposed revisions may be mailed or hand-delivered to: Government Accountability Office, Office of the General Counsel, Attn: Legal Services, Room 7838, 441 G Street, NW., Washington, DC 20548. Comments may also be e-mailed to bielecj@gao.gov or faxed to 202-512-8501.

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Deputy Assistant General Counsel; telephone 202-512-2846; e-mail bielecj@gao.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

GAO is not subject to the Administrative Procedures Act and accordingly is not required by law to

seek comments before issuing a final rule. However, GAO has decided to invite interested persons to participate in this rulemaking by submitting written comments regarding the proposed revisions. Application of the Administrative Procedures Act to GAO is not to be inferred from this invitation for comments.

GAO will consider all comments received on or before the closing date for comments. GAO may change the proposed revisions based on the comments received.

Background

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, functions, and responsibilities to the Congress. 4 CFR 81.1. Application of the Freedom of Information Act to GAO is not to be inferred from the provisions of these regulations. *Id.*

Under § 81.6(a), GAO is not required to obtain congressional authorization before releasing or withholding congressional contact memoranda. The proposed revision to § 81.6(a) would clarify that GAO is also not required to obtain congressional authorization prior to the release or withholding of congressional correspondence from its records. This proposed revision would thereby ensure consistency in the handling of records that contain information regarding the communications between GAO and congressional members.

GAO also is proposing an amendment to § 81.6 that would enable it to protect from disclosure records of interviews created in connection with its audits, evaluations or investigations. In order to carry out its audit, evaluation and investigation functions, GAO frequently needs to interview employees of other agencies and nonfederal organizations. The success of GAO's work requires that employees of these agencies and organizations provide open, frank, and honest opinions during these interviews. Since the terrorist attack on September 11, 2001, employees from certain agencies and organizations have expressed concern and reluctance to share sensitive information with GAO without some assurance that the information will not be disclosed to the public. Of particular concern is that through the audit process and agency-provided access to their employees and

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officials, a record is being created that would not necessarily otherwise exist that may be unprotected from public disclosure. To enhance the cooperation from other agencies and nonfederal organizations with GAO during the interview process, GAO proposes to add a new exemption to § 81.6. The exemption will provide GAO with the discretion to withhold records of interviews created in connection with its audits, evaluations, and investigations of programs, activities, and funding of government agencies.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Freedom of information.

For the reasons set forth in the preamble, GAO proposes to amend 4 CFR part 81 as follows:

PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

1. The authority citation for part 81 continues to read as follows:

Authority: 31 U.S.C. 711.

2. In § 81.6, revise paragraph (a) and add a new paragraph (n) to read as follows:

§ 81.6 Records which may be exempt from disclosure.

* * * * *

(a) Records relating to work performed in response to a congressional request (unless authorized by the congressional requester), congressional correspondence, and congressional contact memoranda.

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(n) Records of interviews created by GAO in connection with an audit, evaluation, or investigation of a program, activity, or funding of a government agency.

Dated: September 11, 2006.

Gary L. Kepplinger,
General Counsel, Government Accountability Office.

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