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# The State of Equal Employment Opportunity at GAO in the 21st Century



Personnel  
Appeals  
Board

October 14, 2005

The Honorable David M. Walker  
Comptroller General  
U.S. Government Accountability Office  
Room 7000  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Walker:

Pursuant to the authority granted to it under the Government Accountability Office Personnel Act of 1980, the Personnel Appeals Board has statutory responsibility to oversee equal employment opportunity at GAO. In exercise of that authority, the Board is issuing the attached report, *The State of Equal Employment Opportunity at GAO in the 21<sup>st</sup> Century*. The Board's findings and recommendations are contained in the attached report.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael W. Doheny". The signature is fluid and cursive, written over the printed name and title.

Michael W. Doheny  
Chair

attachment

**THE STATE OF EQUAL EMPLOYMENT OPPORTUNITY  
AT GAO IN THE 21ST CENTURY**

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# THE STATE OF EQUAL EMPLOYMENT OPPORTUNITY AT GAO IN THE 21ST CENTURY

## CHAPTER I: Introduction

### Background

The Personnel Appeals Board (PAB or the Board) was established by the Government Accountability Office Personnel Act of 1980 (GAOPA) and began operating in 1981. The Board is charged with performing the investigatory and adjudicatory functions carried out in the Executive Branch by the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Office of Special Counsel (OSC), and the Federal Labor Relations Authority (FLRA) for employees of the Government Accountability Office (GAO or the Agency).<sup>1</sup> In addition, the GAOPA gave the Board the same authority for oversight that agencies in the Executive Branch exercise.<sup>2</sup> To fulfill that statutory mandate, the Board conducts evaluative studies of GAO's equal employment opportunity policies, practices, and procedures and issues reports containing its findings, conclusions, and recommendations.

### History of EEO Oversight<sup>3</sup>

In the early to mid-1980s, the Board issued reports that were characterized as “Agency-wide oversight reviews” and were broad and far-reaching in scope. The first such report issued in 1985, *Oversight Review of GAO*, covered myriad issues: promotions, awards, performance standards, affirmative action, discipline, programs for employees with disabilities, maternity/paternity leave, day care, job sharing and part-time work, sexual harassment and the role of EEO counselors. At the time, the Board expressed its intention to produce such Agency-wide studies every five years but it was also envisioned that, subsequent to publication of the overview studies, “functional studies,” *i.e.*, studies directed at certain discrete areas of EEO compliance, would be conducted in

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<sup>1</sup> 31 U.S.C §§731, 751. The GAO Human Capital Reform Act of 2004 changed the name of the U.S. General Accounting Office to the U.S. Government Accountability Office. (Pub. Law No. 108-271, 31 U.S.C. §702 note).

<sup>2</sup> 31 U.S.C. §732(f)(1)(A). The GAOPA charges the Comptroller General with establishing and maintaining a personnel management system that shall:

(A) provide that all personnel actions affecting an officer, employee, or applicant for employment be taken without regard to race, color, religion, sex, national origin, political affiliation, marital status, or handicapping condition.

The same section of the statute gives the Board its authority to oversee the personnel management system with respect to officers, employees and applicants at GAO. *Id.* §732(f)(2)(A).

<sup>3</sup> In the late 1980s, the Board established an Office of EEO Oversight to conduct studies. Prior to 1988, that function was performed by the PAB Office of General Counsel (PAB/OGC). The Board's oversight reports may be found on the Board's web site, [www.pab.gao.gov](http://www.pab.gao.gov), under the link to EEO Oversight.

the intervening years. These studies were to derive from specific issue areas that had been identified as requiring more in-depth study than the larger overview analyses provided and were to be much smaller in scale.<sup>4</sup> The Board further determined that there were a number of advantages that could be derived from the functional studies including: (1) verifying compliance information previously provided by the Agency; (2) monitoring the progress made in correcting problems identified in the Agency-wide studies; and, (3) seeking to determine why certain problems persisted.<sup>5</sup>

The first of the focused studies, *EEO Oversight: Functional Study of GAO's Career Ladder Promotional Process*, was issued in 1987. Subsequent oversight reports addressed discrete subjects, including studies of GAO's employment of people with disabilities, age issues, downsizing, affirmative action, promotions, selection into the Senior Executive Service (SES), alternative work arrangements, minority recruitment, pay rates and probationary periods, the discrimination complaint process and mediation program, the Office of Opportunity and Inclusiveness (O&I), and reasonable accommodation.<sup>6</sup>

In addition to encompassing a wide range of topics, the Board's reports have differed in format, objective, and methodology. Some of the reports have focused on specific processes at GAO such as the two studies concerning the discrimination complaint process<sup>7</sup> and the study of procedures for securing reasonable accommodation for a disability.<sup>8</sup> All three of those reports contained recommendations to the Agency, including specific language that the Board believes should be incorporated into GAO's internal Orders, chain of command modifications, and mandatory training, enabling the tracking of the Agency's compliance with each recommendation over the years.<sup>9</sup>

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<sup>4</sup> *Oversight Review of GAO*, p. 2.

<sup>5</sup> *Personnel Appeals Board Policy on EEO Oversight* (Sept. 1, 1983).

<sup>6</sup> A number of the EEO oversight topics that the Board has studied over the years were suggested by employees or employee councils. The Board has typically solicited input about possible oversight topics from the GAO workforce and maintains a Notice on its web site to facilitate such suggestions.

<sup>7</sup> The Board's first dedicated study of this issue culminated in the report entitled *GAO's Discrimination Complaint Process and Mediation Program* (1995); the next in-depth study of the issue resulted in a report entitled *Study of GAO's Office of Opportunity and Inclusiveness* (2004).

<sup>8</sup> *Reasonable Accommodation at GAO* (2004).

<sup>9</sup> In one instance the wait was particularly short: prior to the publication of the Board's 1995 report, *GAO's Discrimination Complaint Process and Mediation Program*, the Agency informed the Board that it was taking immediate steps to implement eight of the Board's 12 recommendations.

Other studies resulted in reports that measured a particular program or process at GAO against an external standard. In its 1993 *Report on GAO's Affirmative Action Planning Process*, the Board compared GAO's program to standards promulgated by the EEOC in its Management Directive on the subject;<sup>10</sup> a 2002 Board report, *Minority Recruitment at GAO*, examined how well the Agency was fulfilling its statutory mandate to “conduct a continuing program for the recruitment of minority groups as part of an overall anti-discrimination policy.”<sup>11</sup>

The Board has also looked at the EEO impact of Agency initiatives, programs and procedures. In a series of reports issued from 1997 to 1999, *Downsizing at the U.S. General Accounting Office*, *Selection into the Senior Executive Service at GAO*, and *Promotions of Banded Employees*, the Board examined neutral processes integral to the functioning of the Agency in order to determine whether there was any indication that race, sex, national origin, disability, or age played any part in the decisions to, in these particular cases, select, promote, or separate employees from the Agency. Along the same lines, the Board also issued a report in 2001 scrutinizing *The Use of Alternative Work Arrangements at GAO* in order to identify any EEO issues arising from the implementation of those programs, such as criteria for participation that could limit certain categories of employees.<sup>12</sup>

On two occasions, the Board has undertaken a review of a number of issues in the context of a particular protected group of employees. The Board's 1991 *EEO Oversight Study of GAO's Employment of Persons with Disabilities* addressed affirmative action planning, recruitment, the selective placement program,<sup>13</sup> training, reasonable accommodation and architectural barriers as they related to employees with disabilities at GAO.<sup>14</sup> In 1995, the Board convened a hearing in which experts addressed the role that age plays in personnel decisions, with particular emphasis on recruiting, training, advancement opportunities, retention efforts and downsizing. The Board issued a report, *Hearing on Age Issues in Employment*, based on the testimony of the participants and materials submitted subsequent to the hearing.

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<sup>10</sup> EEO-MD-714 (Oct. 6, 1987). The directive contained seven policy statements that set forth the fundamental elements that were deemed integral to the development of a “systematic multifaceted methodology for affirmative employment programs.”

<sup>11</sup> The GAOPA directs the Agency to implement a minority recruitment program consistent with 5 U.S.C. §7201.

<sup>12</sup> GAO offers maxiflex, telework and part-time schedules to its employees. Alternative work arrangements are addressed in-depth in Chapter III.

<sup>13</sup> This program was designed to promote the hiring, retention, placement, and advancement of Federal employees who have disabilities. *Handbook of Selective Placement of Persons with Physical and Mental Handicaps in Federal Civil Service Employment*, OPM Doc. 125-11-3 (1981).

<sup>14</sup> At the time the Board's report was issued, Congress was considering, but had not passed, the Americans with Disabilities Act.

During the course of the recent oversight planning cycle, the Board decided that a number of the issues it had addressed in its focused oversight studies of the past eighteen years were ripe for a second look.<sup>15</sup> Due to the current size of the Agency and the relatively small pool of employees affected by the subject matter covered in many of the oversight studies, the Board further determined that aggregating topics and returning to a global approach provides the most efficient means of assessing the overall state of equal employment opportunity at GAO.

## Scope of the Current Study

This review included extensive data-gathering that required the Agency to provide numeric and demographic information about GAO employees relevant to a broad range of topics selected for inclusion in this study, *e.g.*, hiring, promotions, and separations.<sup>16</sup>

Within this study, the Board assessed the changes and progress made in certain specific areas since the publication of previous Board reports. Consequently, this study encompassed many of the topics that the Board has studied in-depth over the past years and evaluated them in the context of “today’s Agency” which is, in many respects, a very different place than it has been throughout the past two decades.<sup>17</sup>

In addition, within the past few years, GAO has revised its internal Orders that addressed many of the topics that the Board studied<sup>18</sup> and has re-organized the Agency’s structure and workforce. In this study, all relevant GAO Orders, directives, internal memoranda and policies that have affected these topics specifically were reviewed and the EEO implications of recent Agency program initiatives were studied, as well.

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<sup>15</sup> In four instances, the Board has re-examined previously-studied topics: *Follow-Up Report on EEO Oversight Study of GAO’s Employment of Persons with Disabilities* (1994); *Follow-Up Report on GAO’s Discrimination Complaint Process and Mediation Program* (1998); *Promotions of Banded Employees*, (1999); *Study of GAO’s Office of Opportunity and Inclusiveness* (2004). Both of the follow-up studies were designed to determine whether and to what extent GAO had implemented the Board’s specific recommendations contained in its earlier reports. In addition, in 2004, the Board once again took an in-depth look at the discrimination complaint process, this time in the context of the operations of GAO’s newly-constituted Office of Opportunity and Inclusiveness which replaced the Civil Rights Office. The Board’s 1999 report on promotions of Banded employees revisited the issue of promotions at GAO during a five year period in the 1990s. Between its 1987 study of promotions and the 1999 study, GAO completely revamped its pay system, removing most of its employees from the General Schedule (GS) career ladder and grouping them in three broad pay Bands. Although the focus of the two studies was similar, the methodologies differed substantially due to the variations in the pay plans in effect during the relevant times.

<sup>16</sup> This study did not break down the data between headquarters and the field because the impact of the five field office closings in 2000/01 would have badly skewed hiring and separations data.

<sup>17</sup> In the early 1990s, GAO had a workforce of nearly 5,200 employees; it now has an authorized strength of approximately 3,200. GAO also had field offices around the world and throughout the United States; it now operates with eleven field offices located in three regions, all within the United States. The Agency has also undergone an organizational realignment and transformed the way in which it conducts its business. *See*, Chapter II.

<sup>18</sup> Since 2003, GAO has revised or updated 64 Orders and rescinded 33 others. Among those that have been updated are the Orders on telework, the SES, voluntary separation, workforce restructuring, maxiflex, merit selection, and recruitment bonuses.



## CHAPTER II: Yesterday and Today at GAO

### The Transformation of GAO

Beginning in 1999, GAO transformed the way it conducts its business and carries out its mission. Adapting to a near 40 percent reduction in staff, with no accompanying diminution in workload, required the Agency to realign its workforce and develop more efficient ways of accomplishing its mission. The Agency consolidated 35 issue areas into 13 teams, decreased the number of mid-level managers, and restructured its field presence.<sup>19</sup>

In addition to a major organizational realignment, GAO discovered that an overhaul and upgrade of GAO's information technology was in order so that the Agency could better address increasingly complex policy issues. In recent years, for example, GAO has expanded and improved its internal and external web sites; designed automated engagement management and job information systems; provided an integrated e-mail and calendaring program; created access to the entire GAO system so that it is mobile, portable and secure; and, supported the uses of personal digital assistants, Blackberries, and cellular phones.<sup>20</sup>

Over the past few years, GAO has also undertaken a major restructuring of nearly every aspect of its personnel management system. In 2000, GAO abolished its Personnel Office and created a Human Capital Office that not only subsumed a number of offices and functions such as training and recruitment, but that began transforming itself from a support office to an office integrally involved in all aspects of workforce management.

In order to attract, retain, motivate and reward new workers and to be able to re-shape the current workforce, GAO has, in recent years, twice sought amendments to the GAOPA. Between the GAO Personnel Flexibilities Act and the GAO Human Capital Reform Act of 2004, the Comptroller General now has, among other things, permanent voluntary early retirement and buyout authority, the ability to adjust GAO pay rates separately from the annual pay raises in the Executive branch, authority to provide relocation benefits, the ability to provide for accelerated accrual of annual leave for certain newly-hired employees, the capacity to hire senior-level people with scientific and technical skills, and the authority to establish an executive exchange program with the private sector.<sup>21</sup>

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<sup>19</sup> *The Human Capital Strategic Plan, Fiscal Years 2004-2006*, p.7 (hereinafter *HC Strategic Plan*).

<sup>20</sup> *Annual Operations Report, Information Systems and Technology Services*, pp. 17-19 (Dec. 17, 2004).

<sup>21</sup> Pub. L. 106-303 (Oct. 13, 2000); Pub. L. 108-271 (July 7, 2004).

## Human Capital Initiatives

GAO has a stated commitment to attracting, hiring, and retaining diverse, highly-skilled, productive employees.<sup>22</sup> In order to be competitive with private industry, GAO has initiated a number of programs, rewards, and benefits. Among them are:

- a student loan repayment program of up to \$6,000 per year premised on a commitment to remain at GAO for three years;
- public transportation subsidies;
- business casual dress policies;
- annual employee feedback surveys to assess satisfaction with GAO, its programs, and the work it performs;
- an elected Employee Advisory Council which has direct input to the Comptroller General and other high-level management;
- employee preference surveys that give employees the opportunity for reassignment;
- an employee suggestion program that rewards employees for coming up with ways to improve life at GAO; and
- a Professional Development Program (PDP) that allows newly-hired staff to rotate assignments; develop an Individual Development Plan; and obtain on-the-job-training.<sup>23</sup>

GAO has also revamped its performance management system into one that is competency based and is tied to compensation decisions that are performance-based; use market-based compensation ranges; and, allocate increases between salary and bonuses. Each pay determination is individual, with the actual dollar amount of annual raises dependent on a number of factors.<sup>24</sup>

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<sup>22</sup> Statement of David M. Walker, Comptroller General of the United States, *reprinted in HC Strategic Plan*.

<sup>23</sup> *Selected GAO Human Capital Administrative Actions, HC Strategic Plan, Table I, p.12.*

<sup>24</sup> *GAO's Proposed Market-Based Compensation Ranges and Framework for Pay Adjustments, Special CG Chat, Power Point Presentation (Dec. 15, 2004).*

GAO has undergone a profound transformation in the past five years that has affected every aspect of its employees' professional lives. The Agency is providing benefits to its employees unequaled in GAO history;<sup>25</sup> it is also implementing systems in which performance determines salary, promotion and annual raises.

In any environment in which substantial rewards and benefits are offered and in which objectively and subjectively measured performance dictates salary, there are bound to be people displeased with decisions that are made and the results of those decisions. As a result, GAO must remain vigilant by monitoring all aspects of its personnel and performance management systems to ensure that all decisions are merit-based.

## An EEO Comparison

The GAO of today is very different from the Agency of the 1980s and 1990s: smaller, more-streamlined, with fewer field offices and no permanent international presence.<sup>26</sup> In 1980, GAO had nearly 5,500 employees on its staff; it began the decade of the '90s with just under 5,200 permanent employees; and, was nearly 40 percent smaller than that by the end of 2004 with just over 3,200 permanent employees. GAO's reduction in size in the 1990s was accomplished by means of a five year hiring freeze; a buyout and separation incentives program; a Reduction-in-Force (RIF); the closing of field offices; the transfer of certain Agency functions; and normal attrition.

In its 1997 report, *Downsizing at the U.S. General Accounting Office*, the Board studied the core period of the Agency's downsizing efforts (July 1, 1995 to September 30, 1996), a time that encompassed the buyout and early retirement offers, three major field office closings, and the Reduction-in-Force at headquarters. The objectives of the study were to determine the overall impact of the downsizing effort on the Agency's EEO profile and to ascertain whether there was any indication that race, sex, national origin, age or disability played a role in decisions to separate employees. The report concluded that although the overall impact of the downsizing on the Agency's EEO profile

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<sup>25</sup> Embracing the student loan repayment program put GAO in the vanguard of Federal agencies. In FY 2001, only one person in the entire Executive branch received a student loan repayment; at GAO, 187 employees received repayment. *Management News*, Vol. 29, No. 49 (Sept. 9-13, 2002).

<sup>26</sup> In the 1980s, GAO closed one of its regional offices, consolidated two others, and closed nine suboffices. By 1993, GAO had 13 regional offices and 12 suboffices in the continental United States and one office in Europe. Eight of those offices were closed between 1994 and 1996 and two regional offices were consolidated with other offices. *GAO Field Structure Study*, enclosure to *Letter from Charles A. Bowsher, Comptroller General to Senators Harry Reid and Connie Mack* (Dec. 15, 1993). The number of field offices was further reduced from 16 to 11 in November 2000 and clustered within three regions. *GAO Organizational Realignment: Outline for Field Office Changes* (Feb. 3, 2000).

was negligible, the headquarters RIF did have EEO implications because it was conducted in the administrative, support and clerical job series which were predominantly female and minority.<sup>27</sup>

A comparative look at the Agency's EEO profile in 1991, well before any major downsizing effort, and the same profile in 2004<sup>28</sup> shows remarkable consistency given GAO's near 40 percent reduction in size in the intervening years and the resumption of aggressive hiring. As the following table indicates, the only significant demographic changes<sup>29</sup> noted were an increase in the percentage of white females in the GAO workforce and a decrease in the percentage of white males.<sup>30</sup>

**TABLE 1: EEO PROFILE**<sup>31</sup>

	WM	WF	BM	BF	HM	HF	AM	AF	TOTAL
<b>1991</b>	2354 (45.4%)	1366 (26.4%)	277 (5.3%)	815 (15.7%)	111 (2.1%)	92 (1.8%)	68 (1.3%)	102 (2%)	5185
<b>2004</b>	1172 (36.5%)	1057 (32.9%)	182 (5.7%)	456 (14.2%)	73 (2.3%)	70 (2.2%)	74 (2.3%)	124 (3.9%)	3208
<b>Percent Change</b>	-8.9%	+6.5%	+4%	-1.5%	+2%	+4%	+1%	+1.9%	

<sup>27</sup> In pre-publication comments on the 1997 report, the Agency pointed out that it had taken a number of steps to minimize the number of RIFs and that normal attrition exceeded projections. Ultimately, in the core quarter of the 1996 RIF, 112 employees were RIFed, 58 percent of whom were black females. The Agency's downsizing efforts resulted in an overall decrease of 1.4 percent of black females in the GAO workforce. *Downsizing at the U.S. General Accounting Office*, pps. 8, 12.

<sup>28</sup> GAO's disability statistics with respect to its workforce are derived from self-reporting. New employees complete a form when they report for duty, indicating whether they wish to report a medical disability. At no time during their tenure at GAO are employees ever asked to update that information. Consequently, the following figures may not accurately reflect the numbers of GAO employees with disabilities. In 1991, the percentage of GAO employees who identified themselves as non-disabled was 95 percent with four percent reporting non-severe disabilities and one percent severe disability. In 2004, 95.7 percent of the workforce reported having no disability; 3.5 percent said that they had a non-severe disability, and .8 percent claimed a severe disability.

<sup>29</sup> It is generally accepted that a finding is statistically significant at the five percent probability threshold, *i.e.*, the result would occur no more than 5 out of 100 times in a random sample with chance variations operating.

<sup>30</sup> In 1980, white males constituted 57 percent of the workforce, 20 percent higher than their representation in the 2004 workforce. White males also comprised 92 percent of the GS-13 through GS-18 population of GAO; in 2004, white males constituted 53 percent of the comparable population.

<sup>31</sup> The categories shown in the profile represent White Males, White Females, Black Males, Black Females, Hispanic Males, Hispanic Females, Asian Males, and Asian Females. The 1991 totals in the two tables are different because nine employees described their race/national origin as "Other."

The age profile of the Agency, however, was not static over time and shows a clear shift from the under 40 population to the 40 and over group. In 1991, 45 percent of the GAO workforce was under 40; today that figure is 35 percent. Conversely, 55 percent of the workforce was 40 or over in 1991; that figure is now 65 percent. The largest change was in the 40 and over female population which increased by more than 15 percent.<sup>32</sup>

**TABLE 2: AGE PROFILE**

	<b>UNDER 40 MALE</b>	<b>UNDER 40 FEMALE</b>	<b>40 &amp; OVER MALE</b>	<b>40 &amp; OVER FEMALE</b>	<b>TOTAL</b>
<b>1991</b>	856 (16.5%)	1473 (28.3%)	1958 (37.7%)	907 (17.5%)	5197
<b>2004</b>	457 (14.3%)	659 (20.5%)	1044 (32.5%)	1048 (32.7%)	3208
<b>PERCENT CHANGE</b>	-2.2%	-7.8%	-5.2%	+15.2%	

## Hires

In order to maintain a diverse workforce, Agency management must pay close attention to recruiting and hiring.<sup>33</sup> For a good portion of the 1990s, GAO was under a hiring freeze; for the past five years, however, recruiting and hiring have been proceeding apace. The following table shows the demographic breakdown of the 1,165 permanent staff hired in 1991 and between October 1, 1999 and June 30, 2004, by race, gender and national origin, in both numbers and percentages.

<sup>32</sup> “Percent change” noted in report tables is the result of calculating the percentage (number divided by the total) of employees in a group (*e.g.*, white males; Hispanic females) for each study period and comparing the two figures.

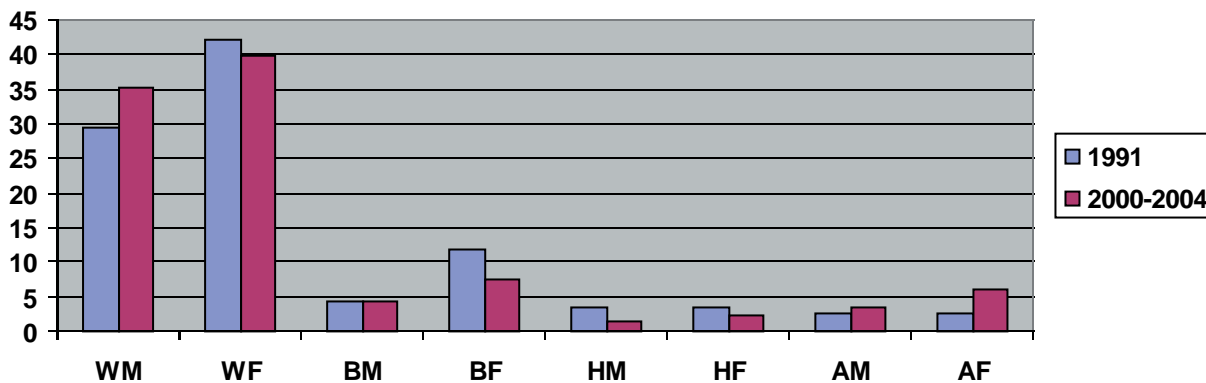
<sup>33</sup> Student interns who successfully complete a 10 week program are eligible for noncompetitive appointments to GAO. In FY 2003, 67 interns were offered positions; 50 accepted. In FY 2004, 124 offers were extended; 80 accepted. Of those, 47 were white males (36.2%); 43 were white females (33.1%); 3 were black males (2.3%); 16 were black females (12.3%); one was a Hispanic male (.7%); 3 were Hispanic females (2.3%); 6 were Asian males (4.6%); 10 were Asian females (7.7%); and, one was an American Indian male (.7%). This data was captured in the New Hires numbers.

**TABLE 3: NEW HIRES: 1991; 2000 – 2004**

	WM	WF	BM	BF	HM	HF	AM	AF	TOTAL
<b>1991</b>	160 (29%)	226 (41.7%)	24 (4.4%)	64 (11.8%)	19 (3.5%)	20 (3.7%)	14 (2.6%)	15 (2.8%)	542
<b>2000</b>	53 (31.4%)	78 (46.2%)	4 (2.4%)	12 (7.1%)	4 (2.4%)	4 (2.4%)	5 (3%)	9 (5.3%)	169
<b>2001</b>	107 (37.2%)	106 (36.8%)	19 (6.6%)	20 (6.9%)	5 (1.7%)	7 (2.4%)	7 (2.4%)	17 (5.9%)	288
<b>2002</b>	116 (29.6%)	166 (42.3%)	20 (5.1%)	30 (7.7%)	6 (1.5%)	6 (1.5%)	14 (3.6%)	34 (8.7%)	392
<b>2003</b>	64 (40.5%)	61 (38.6%)	4 (2.5%)	8 (5.1%)	1 (.6%)	4 (2.5%)	6 (3.7%)	10 (6.3%)	158
<b>2004</b>	58 (36.7%)	55 (34.8%)	9 (5.7%)	18 (11.4%)	2 (1.3%)	4 (2.5%)	6 (3.7%)	6 (3.7%)	158
<b>5 year average</b>	35.1%	39.7%	5.3%	7.6%	2.2%	2.3%	3.3%	6%	

The following chart shows the percentages of those hired, broken down by race, gender and national origin during fiscal year 1991 and the average percentage for each category in the other five fiscal years represented.

**FIGURE 1: NEW HIRE PERCENTAGE**



Although the percentage of white males among the newly-hired increased on average over the five year period of this study by 6.1 percent, their overall representation in the workforce actually declined by 8.9 percent from 1991-2004. The only other notable increase was in the percentage of Asian women who, on average, constituted 6 percent of the new hires which almost doubled their representation in the workforce between 1991 and 2004.

When new hires are disaggregated by age, there are no differences between the 1991 percentages and the percentages in fiscal years 2000-04. In 1991 and the 2000-04 fiscal years, 82 percent of the new hires were under 40 and 18 percent of the new hires were 40 and over. A further breakdown by gender also reveals no significant differences between 1991 and the 2000-04 time period.<sup>34</sup>

Within the population of new hires with disabilities, in 1991, 4.8 percent indicated that they had a non-severe disability and 1.2 percent reported having a severe disability. Among the new hires in 2000-04, 4.2 percent reported having a non-severe disability and .5 percent claimed a severe disability.

## Separations

A majority of employees who leave GAO do so voluntarily, either by resigning, retiring, or transferring to another Federal agency. In fact, during the past five fiscal years, 92 percent of those leaving their positions at GAO did so through these voluntary means. The remainder were either terminated involuntarily or at the expiration of their term appointments, retired or resigned in lieu of involuntary action (ILIA), were removed or discharged during their trial periods, or died.

The table that follows tracks separations from GAO in fiscal year 1991 and for fiscal years 2000-2004, broken down by race, gender and national origin.<sup>35</sup>

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<sup>34</sup> The percentages for 1991 were: males under 40, 32.6%; females under 40, 49%; males 40 and over, 7.4%; and females over 40, 11%. The corresponding percentages for 2000-04 are: males under 40, 35.6%; females under 40, 46.4%; males 40 and over, 8%; and, females over 40, 10%.

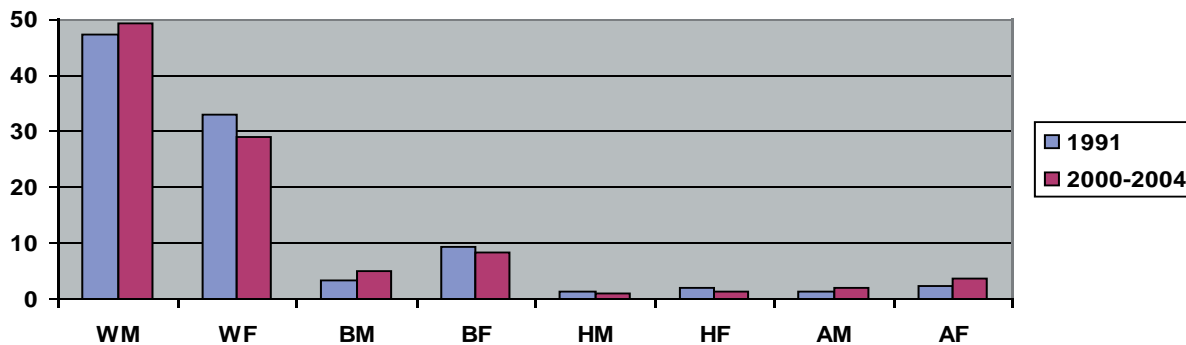
<sup>35</sup> The chart reflects a total of 1,340. Six employees identified themselves as American Indian/Alaskan Native which brings the five year total of employees leaving GAO to 1,346.

**TABLE 4: SEPARATIONS AT GAO 1991; 2000-04**

	WM	WF	BM	BF	HM	HF	AM	AF	TOTAL
<b>1991</b>	186 (47.5%)	130 (33.2%)	13 (3.3%)	36 (9.2%)	6 (1.5%)	8 (2%)	4 (1%)	9 (2.3%)	392
<b>2000</b>	132 (46.6%)	80 (28.3%)	12 (4.2%)	30 (10.6%)	5 (1.8%)	7 (2.5%)	5 (1.8%)	12 (4.2%)	283
<b>2001</b>	143 (51.3%)	81 (29%)	12 (4.3%)	18 (6.5%)	4 (1.4%)	4 (1.4%)	9 (3.2%)	8 (2.9%)	279
<b>2002</b>	148 (51.2%)	78 (27%)	15 (5.2%)	30 (10.4%)	2 (.7%)	2 (.7%)	7 (2.4%)	7 (2.4%)	289
<b>2003</b>	129 (50.8%)	74 (29.1%)	10 (3.9%)	18 (7.1%)	1 (.4%)	1 (.4%)	6 (2.4%)	15 (5.9%)	254
<b>2004</b>	112 (47.7%)	73 (31.1%)	18 (7.7%)	15 (6.4%)	3 (1.7%)	4 (1.7%)	2 (1.9%)	8 (3.4%)	235
<b>5 year average</b>	49.5%	28.9%	5.1%	8.2%	1.1%	1.3%	2.1%	3.8%	

The following chart displays the percentages of employees separating from the GAO workforce, broken down by race, gender and national origin during fiscal year 1991 and the average percentage for each category of the five fiscal years at issue in this study.

**FIGURE 2: SEPARATION PERCENTAGES**





There were no significant changes in the percentages within racial, gender, or national origin categories of separations at GAO in 1991 and the past five fiscal years, although both Asian males and females separated in each of the five years in higher percentages than in 1991.<sup>36</sup> The percentage of black males leaving has also been increasing. In 1991, 3.3 percent of those separating from GAO were black males; by 2004, the percentage was 7.7.

The rate at which black men are separating from the Agency continues to cause the Board concern. In 2002, the Board conducted a study to determine whether GAO had implemented a minority recruitment program as mandated by the GAOPA.<sup>37</sup> Because an integral component of a successful recruitment program is the retention of newly-hired employees, the Board asked the Agency to provide it with a breakdown of employees who had been hired between January 1, 1997 and December 31, 2000 and who had already left the Agency. The figures showed that while 23 percent of its new hires overall had left, 31 percent of the black males who had been hired during the time period in question (9 of 29) had separated from the Agency.<sup>38</sup>

The starkest differences among those separating from the Agency during the two time periods are apparent when the numbers are broken down by age. The following table shows the numbers and the percentages between 1991 and 2000-04 combined.

**TABLE 5: SEPARATIONS BY AGE**

	<b>MALE UNDER 40</b>	<b>FEMALE UNDER 40</b>	<b>MALE 40 &amp; OVER</b>	<b>FEMALE 40 &amp; OVER</b>	<b>TOTAL</b>
<b>1991</b>	77 (19.6%)	131 (33.3%)	132 (33.6%)	53 (13.5%)	393
<b>2000-04</b>	157 (11.7%)	247 (18.4%)	621 (46.1%)	321 (23.8%)	1346
<b>Percent change</b>	-7.9%	-14.9%	+12.5%	+10.3%	

<sup>36</sup> In 2003, 5.9 percent of those separating from the Agency were Asian females; that percentage dropped by 2.5% the following year. At this juncture, no trend can be discerned.

<sup>37</sup> 31 U.S.C. §(f)(1)(B).

<sup>38</sup> Minority Recruitment at GAO, p. 14.

In all, 70 percent of those leaving the Agency in 2000-04 were 40 or over; that group constituted 47 percent of the separations in 1991.<sup>39</sup>

Of those employees separating from the Agency in 1991, 5.5 percent reported having a non-severe disability and .5 claimed a severe disability. The comparable percentages for the 2000-2004 period show 5.9 percent of the employees leaving had a non-severe disability and 1.1 percent reported a severe disability.

Of further note, of the 1,346 employees who left GAO from October 1, 1999 through June 30, 2004, 426 (32 percent) of them left within the first five years of their employment with the Agency;<sup>40</sup> of those, 58 percent left in their first year of employment. In addition, 47 percent of the 1,346 separating employees retired, 27 percent resigned, and 18 percent transferred to another agency.<sup>41</sup>

## Promotions

An area of great concern to the Board over the years in the exercise of its oversight function has been promotion opportunities at GAO. In its 1985 Agency-wide oversight report, more than a third of the contents was devoted to the issues of the competitive and merit selection programs at GAO. Unfortunately, data collection and processing problems plagued the Agency during the Board's study, rendering the career ladder (non-competitive) promotion data unusable.<sup>42</sup>

GAO's Merit Selection Plan (MSP) was implemented in 1983 and governed promotions of evaluators and those in evaluator-related positions. After reviewing the data and operation of the program, the Board concluded that minority employees were being selected for promotion to certain grades at a rate "statistically significantly below the goal for promoting such employees."<sup>43</sup> The report further found that minority employees were making the "best qualified" (BQ) lists at statistically

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<sup>39</sup> The age shift in separations was predictable. Due, in large part, to its downsizing efforts in the 90s, GAO's workforce has become older and increasingly top-heavy. At the end of FY 2004, 34 percent of GAO employees were eligible to retire, including 48 percent of Band III employees and 55 percent of the SES. *HC Strategic Plan*, p. 6.

<sup>40</sup> In fact, the percentages of those leaving with five full years or fewer at GAO have been increasing. In 2003 and 2004, 40 percent of those separating from the Agency met that criterion.

<sup>41</sup> The remainder were discharged during their trial periods, were removed, resigned or retired ILIA, or were terminated, either involuntarily or at the expiration of their term appointments, or died.

<sup>42</sup> *Oversight Review of GAO*, pps. 19-20. The Board agreed to study the matter further in a future functional study.

<sup>43</sup> *Id.* p. 29.

significantly lower rates than non-minority candidates in a number of job categories and that a significant number of the merit selection panels lacked any female or minority representation.<sup>44</sup>

In 1987, the Board issued a report, *Functional Study of GAO's Career Ladder Promotional Process*, based on a five year study of the rates at which members of protected groups (race, gender and national origin) were being promoted and the time that members of those groups were spending in grade prior to a career ladder promotion.<sup>45</sup> Based on extensive data analysis, the Board concluded that there were no significant differences in the rates at which members in protected classes were being promoted but that black evaluators were spending significantly more time in grade than were white evaluators.<sup>46</sup>

In the mid-nineties, the Board again addressed the issue of promotions, this time looking at promotions of Banded employees<sup>47</sup> at GAO from January 1, 1991 through December 31, 1995. The purpose of the study was to determine whether members of any particular race, gender, national origin, age, or disability group received less favorable treatment in the award of promotions. For the study, the Board looked at all promotions for Banded employees for five years to determine the median time to promotion, factoring in race, age, national origin, gender and disability status at each promotion point. The Board also compared promotion rates of males and females by age, race, national origin and disability status, after adjusting for the composition of the BQ lists.<sup>48</sup> The results of the Board's study revealed that white employees were promoted from Band I-D to Band I-F (non-competitive) at a median time of 490 days; black employees at 546 days; Asian employees at 560 days; and, Hispanic employees at 574 days. From Band I-F to Band II (competitive), the median time for all black employees under 40 was more than five years compared to a median time of 1,526 days

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<sup>44</sup> *Id.* pps. 31-33, 42.

<sup>45</sup> A career ladder is a job series that has one or more grades between the entry level and the full performance level. While appointment to a career ladder position is competitive, subsequent progress through the grades is non-competitive and based upon an employee's successful job performance and time in grade.

<sup>46</sup> *Functional Study of GAO's Career Ladder Promotional Process*, pps. 4, 5. Subsequent to a review of the draft report, the Agency told the Board that it was taking immediate steps to address the time-in-grade disparities revealed by the Board's study. Letter from Ira Goldstein, Assistant Comptroller General for Operations, (Aug. 20, 1987). It is not possible to ascertain the steps, if any, the Agency took; GAO abolished grades in the General Schedule pay system for evaluators within 18 months of the Board's report.

<sup>47</sup> In 1989, GAO replaced the career ladder pay rates for most of its non-support personnel with a broad band system that grouped its evaluators and specialists into three pay bands and most attorneys into two pay bands. Within a pay band, employees may receive pay increases related to performance without receiving a promotion. As a result, generally, there is one non-competitive promotion point and two competitive promotion points during a Banded employee's career.

<sup>48</sup> *Promotions of Banded Employees (1991-1995)*.

for white, Asian, and Hispanic employees under 40. All employees over 40 spent more than five years at this promotion point. No differences were discerned for promotions from Band II to Band III.<sup>49</sup>

When rates of promotion were analyzed, the Board found that employees under 40 were nearly twice as likely to be promoted and females were promoted at more than twice the rate of males.<sup>50</sup>

In the past five fiscal years, there have been 1,252 promotions at GAO.<sup>51</sup> The raw figures and percentages of total promotions follow, broken down by race, sex and national origin. A separate table, by age and gender, follows, as well.<sup>52</sup>

**TABLE 6: PROMOTIONS (TOTAL WORKFORCE) 2000-2004**

	<b>WM</b>	<b>WF</b>	<b>BM</b>	<b>BF</b>	<b>HM</b>	<b>HF</b>	<b>AM</b>	<b>AF</b>
<b>2000</b>	43 (25%)	61 (35.5%)	9 (5.2%)	36 (20.9%)	4 (2.3%)	5 (2.9%)	3 (1.7%)	11 (6.4%)
<b>2001</b>	50 (23.7%)	90 (42.6%)	7 (3.3%)	38 (18%)	5 (2.4%)	7 (3.3%)	3 (1.4%)	11 (5.2%)
<b>2002</b>	91 (31%)	126 (42.9%)	18 (6.1%)	31 (10.5%)	4 (1.4%)	8 (2.7%)	4 (1.4%)	12 (4.1%)
<b>2003</b>	96 (29.5%)	131 (40.2%)	16 (4.9%)	32 (9.8%)	5 (1.5%)	12 (3.7%)	6 (1.8%)	28 (4.6%)
<b>2004</b>	81 (32.7%)	100 (40.3%)	9 (3.6%)	27 (10.9%)	6 (2.4%)	5 (2%)	5 (2%)	15 (6.1%)
<b>% of promotions</b>	28.4%	40.3%	4.6%	14%	2%	2.9%	1.7%	5.3%
<b>% of 2004 workforce</b>	36.5%	32.9%	5.7%	14.2%	2.3%	2.2%	2.3%	3.9%

<sup>49</sup> *Id.* p. 25. Replicating the statistical techniques used to allow for the computation of median time in grade or Band in the previous studies was outside the scope of this study.

<sup>50</sup> *Id.* p. 26.

<sup>51</sup> The chart that follows reflects 1,251 promotions; one employee was identified in the “Other” category in 2000 and that designation is not captured in the chart.

<sup>52</sup> Aggregating simple numbers without controlling for certain variables such as the composition of individual BQ lists does not reflect rates of promotion. Such an analysis is beyond the scope of this particular study.

**TABLE 7: PROMOTIONS BY AGE 2000-2004<sup>53</sup>**

	<b>&lt; 40 MALE</b>	<b>&lt; 40 FEMALE</b>	<b>40 AND OVER MALE</b>	<b>40 AND OVER FEMALE</b>
<b>2000</b>	39 (23.5%)	77 (44.5%)	20 (11.6%)	37 (21.4%)
<b>2001</b>	44 (20.9%)	101 (47.9%)	21 (10%)	45 (21.3%)
<b>2002</b>	94 (32%)	128 (43.5%)	23 (7.8%)	49 (16.7%)
<b>2003</b>	88 (27%)	160 (49.1%)	35 (10.7%)	43 (13.2%)
<b>2004</b>	75 (30.2%)	107 (43.2%)	26 (10.5%)	40 (16.1%)
<b>% of promotions</b>	26.7%	45.6%	10.1%	17.6%
<b>% of 2004 workforce</b>	14.3%	20.5%	32.5%	32.7%

<sup>53</sup> During the past five fiscal years, employees reporting a non-severe disability garnered 38 of the promotions (3%); they represent 3.5 percent of the workforce. For those reporting a severe disability, three were promoted (.02%); they make up .72% of the GAO workforce.

## Conclusion

The past 15 years have been a period of great change at GAO. Throughout the downsizing and necessary re-configuring of the Agency that that entailed, GAO has maintained a consistent EEO profile and has managed to preserve its diversity gains.

## Chapter III: Alternative Work Arrangements

### Introduction

The 1990s developed into the decade in which the Federal Government sought to re-make its image and become a “family-friendly” employer. At the urging of the President and sparked by Congressional legislation, a series of initiatives emerged that were designed to encourage employees to seek balance in their personal and professional lives, which, it was believed, would serve to promote employee effectiveness and job satisfaction.<sup>54</sup> Among the programs and practices that the Federal Government fostered during that decade were the widespread use of flexible and compressed schedules, telecommuting from home or satellite work locations, job sharing, the development of career part-time employment, the ability to use accumulated leave to care for family members, and the provision of on-site child care facilities.<sup>55</sup>

GAO was in step with the Executive Branch’s initiatives and found itself frequently in the forefront of Federal agencies, particularly in the area of alternative work arrangements where the Agency established programs that have flourished and remain integral parts of GAO’s culture today.

### GAO’s Programs

#### Maxiflex

GAO first offered flexible work hours to some of its employees in August, 1979.<sup>56</sup> Since that time, the approval process has been streamlined and the Agency’s core hours have been expanded.<sup>57</sup> The use of flexible schedules at GAO is governed by GAO Order 2620.1, *GAO Maxiflex Alternative Work Schedules Program*, which allows employees to complete their biweekly work requirement in fewer than 10 days, to change their times of arrival and departure, and to vary the number of hours

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<sup>54</sup> See, e.g., Family and Medical Leave Act of 1993, 29 U.S.C. §§2601-54 (made applicable to the Legislative Branch in 1995, 2 U.S.C §1302); Federal Employees Family Friendly Leave Act, 5 U.S.C. §6301; *Presidential Memorandum: Expanding Family Friendly Work Arrangements in the Executive Branch*, 30 Weekly Comp. Pres. Doc. 1468 (July 11, 1994); *Presidential Memorandum: Implementing Federal Family Friendly Work Arrangements*, 32 Weekly Comp. Pres. Doc. 1119 (June 21, 1996).

<sup>55</sup> GAO opened its on-site day care facility, Tiny Findings, in June 1990. It was one of the first Federal facilities to be accredited by the National Association for the Education of Young Children. *Management News*, Vol. 23, No. 50, (Sept. 30-Oct. 4, 1996).

<sup>56</sup> *Management News*, Vol. 30, No. 43 (August 4-8, 2003).

<sup>57</sup> Employees may complete their required duty hours any time between the hours of 6:00 a.m. and 7:00 p.m. GAO Order 2620.1 (Appendix I).

worked each day. Employees who choose maxiflex schedules are required to submit their schedules for approval annually. In 2001, GAO expanded its program to include members of the SES and Senior Level (SL) employees, allowing them to use maxiflex schedules. With that change, all GAO employees, except those who work intermittently, are eligible to participate in the program.<sup>58</sup>

## Telework

GAO's history with telework, originally known as flexiplace, began when it participated in an Office of Personnel Management-sponsored pilot project on flexible workplaces in 1990.<sup>59</sup> Subsequently, the Agency conducted its own pilot program and established a permanent policy on teleworking in 1994.<sup>60</sup> GAO now has three types of teleworking available to its employees: 1) continuing, in which the employee works at home on a recurring basis as part of a regular work schedule; 2) episodic, where the arrangement is used occasionally on an "as needed" basis; and, 3) short-term, which continues over a single period of time and most commonly involves a convalescent period.<sup>61</sup> All employees who have achieved the "Meets Expectations" rating in all of their competencies on their most recent performance appraisal are eligible to request a teleworking arrangement.<sup>62</sup>

The Agency revised its internal Order governing the telework program in 2004. Although there were few substantive changes, the tone of the recent Order reflects a noticeably different underlying philosophy. The first "Basic Principle" of flexiplace laid out in GAO's 1994 Order stated: "Flexiplace is a management option, not an employee benefit."<sup>63</sup> In stark contrast, the first "Basic Principle" of the 2004 Order declares that:

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<sup>58</sup> GAO Order 2620.1 (A-01), Notice, March 21, 2001. Supervisors retain the right to limit or restrict arrival and departure times, as well as the earning and using of credit hours in order to ensure adequate coverage within the office. GAO Order 2620.1, ch. 2, ¶ 2.

<sup>59</sup> GAO Order 2300.5 (Supp.) *Alternative Workplace Arrangements (Flexiplace)*, ch. 1, ¶1-2 (June 15, 1994), superseded by GAO Order 2300.5, *GAO's Telework Program* (May 24, 2004). See also, *Telework: A Management Priority (A Guide for Managers, Supervisors, and Telework Coordinators)*, OPM ([www.opm.gov/telework](http://www.opm.gov/telework)).

<sup>60</sup> GAO Order 2300.5. See also, *Telework FAQs*, Human Capital Office (June 17, 2004).

<sup>61</sup> Order 2300.5, ch. 2, ¶ 4 (a-c).

<sup>62</sup> Although all employees who meet the criteria are eligible, all positions are not. A GAO employee whose position requires extensive face-to-face contact, frequent access to classified documents or a necessary level of security that cannot be duplicated would be deemed unsuitable for teleworking. *Id.* ch 2, ¶ 2.

<sup>63</sup> Order 2300.5 (Supp.), ch. 1, ¶ 1-5 (1994).



Telework can (1) increase employee morale and productivity by helping employees balance their work and family life while at the same time achieving the goals of GAO, (2) improve GAO's ability to recruit and retain employees, (3) reduce traffic congestion, energy consumption, and air pollution, and (4) allow GAO to respond to the changing demands of the workforce.<sup>64</sup>

In another change, designed to facilitate consistency in teleworking practices and data collection, the application process for long-term telework was centralized. Such continuing arrangements must be approved by the Chief Human Capital Officer; episodic and short-term arrangements still need only unit head approval.<sup>65</sup> In addition, GAO has issued laptop computers to its employees with a goal of providing “. . . near 24x7 access to its computing environment within its facilities and to telecommuters and traveling employees to facilitate long-distance work.”<sup>66</sup> Teleworkers now have full access to the GAO Intranet, internal e-mail accounts, and all other Agency web applications and programs that are available to them in their GAO offices.<sup>67</sup>

### **Part-time Employment**

GAO offers the option of part-time employment which can be requested by anyone, at any time, from his or her unit head. Part-time employees are required to work between 16 and 32 hours per week and are eligible to participate in the maxiflex and teleworking programs. GAO's Human Capital Office, however, cautions those interested in working part-time to “be aware of all of the implications,” which include paying a higher share of health insurance premiums and computing one's annuity differently at retirement.<sup>68</sup> Part-time service is the same as full-time for purposes of conversion to excepted tenure, completion of a trial period, within-grade increase eligibility,

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<sup>64</sup> Order 2300.5, ch. 1, ¶ 4 (2004).

<sup>65</sup> Id. ch 2, ¶ 5.

<sup>66</sup> Internal and External Access to the GAO Network: Guidelines for GAO and Contract Employees (January 31, 2003). The GAO telework Order now notes: “The use of GAO-issued equipment by employees is preferred.” Id. ch. 4, ¶ 2(c).

<sup>67</sup> In October, 2001, the 435 Members of the House of Representatives and their key staff temporarily moved into GAO Headquarters while awaiting environmental tests in the wake of anthrax incidents on Capitol Hill. GAO employees vacated 1,200 offices to make room for the guests; most of the GAO staff affected by the move were able to telecommute, using their Citrix software to access GAO's network and voicemail to maintain contact with their offices. *Management News*, Vol. 29, No. 5 (Oct. 29 – Nov. 2, 2001).

<sup>68</sup> “Welcome to Your Human Capital Website,” *Life Events, Part-Time Work*, [www.gao.gov/humancapital](http://www.gao.gov/humancapital).

changes in leave categories and time-in-grade restrictions. In addition, GAO groups part-time and full-time employees together for purposes of workforce restructuring procedures.<sup>69</sup> Recently, in response to continuity and succession concerns, the Agency established a program that facilitates part-time work. The “Knowledge Transfer/Retention Program,” in which separating employees in certain categories<sup>70</sup> are permitted to return to GAO as reemployed annuitants on a part-time or intermittent basis, was designed to “. . . retain the expertise of employees in order to transfer knowledge, train and mentor new staff and ensure the successful accomplishment of mission-critical responsibilities.”<sup>71</sup> The annuitants are given temporary appointments for a year or less with an option for an additional year at the Agency’s discretion.

## PAB Study

In 2001, the PAB issued a report entitled *The Use of Alternative Work Arrangements at GAO* that sought to identify potential EEO problems in the implementation of the GAO programs offering the options of part-time employment, maxiflex, and flexiplace, now referred to as the telework program. In that study, the Board reviewed the GAO internal policies and practices that governed the operations and eligibility requirements of those programs. The Board also conducted a GAO-wide employee survey designed to elicit perceptions of how the programs were being managed and to identify barriers to participation.

In many ways, the survey results were more instructive about the alternative work programs than was the data supplied by the Agency pursuant to Board request. Because GAO neither collected data nor maintained any information about rejections of requests for permission to participate in the three programs, the Board’s ability to evaluate fully the implementation of them was hampered.<sup>72</sup> The survey, however, with a response rate of nearly 50 percent, showed a workforce willing to embrace alternative

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<sup>69</sup> *Id.*

<sup>70</sup> GAO Order 2553.1, Appendix I. The categories of employees eligible to participate are: analysts and specialists in Bands II and III; Band II attorneys; employees at the GS-14 level and above; SES and SL employees; and others whose positions meet the criteria of the program. ¶ 2.

<sup>71</sup> *Id.* ¶ 1. Reemployed annuitants are subject to a reduction in their salaries equal to the amounts of their annuities. Pursuant to 5 U.S.C. §§8344 and 8468, the Comptroller General has the authority to waive the salary offset and has been doing so under the Knowledge Transfer/Retention Program.

<sup>72</sup> A denial of a request to telework must now be indicated on the application form submitted. The reason for the denial must also be communicated to the employee. GAO Order 2300.5, ch. 2, ¶ 5.

programs but uncertain about their mechanics.<sup>73</sup> For example, of the survey respondents, 60 percent reported that they did not know how to go about changing their schedules to part-time; more than half did not know how to make a flexiplace arrangement. Another 25 percent believed that their division or work group prohibited participation in the flexiplace program.

The Board concluded that, despite the fact that GAO was in the forefront of Federal agencies in establishing these programs, there was a general dearth of specific information available to employees about its alternative work programs.

The Board also expressed concern about the apparent lack of promotional opportunities for part-time GAO employees, 90 percent of whom were female. During the course of the Board's five-year study, 333 employees worked part-time; 14 were promoted. No promotional opportunity offered during that time period was designated for part-time work.<sup>74</sup> Subsequent to the report, the Agency reviewed application and promotion rates for part-time employees and reported to the Board that part-timers had constituted 2.2 percent of the applicants and 1.9 percent of those promoted during the Board's study. Although that did not constitute a statistically significant difference, the Agency agreed to include an analysis of part-time application and selection rates in its annual promotion process reviews.<sup>75</sup>

With respect to teleworking arrangements, however, the Board did note that "Because GAO staff assignments are dictated by issue area rather than geography, nearly two-thirds of the [survey] respondents had had experience supervising staff in remote locations and 86 percent felt that the arrangements were successful."<sup>76</sup> This was particularly significant since management resistance to the concept of telecommuting is one of the foremost impediments to the successful implementation of a teleworking program.<sup>77</sup>

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<sup>73</sup> *The Use of Alternative Work Arrangements at GAO*, pps. 15-16. There was full GAO representation among the survey respondents: 39.5 percent identified themselves as supervisors or managers; 59 percent were evaluators; 10.5 percent were from the administrative ranks; 2.8 percent were attorneys; and technical staff constituted 4.5 percent of the respondents. The EEO breakdown mirrored the Agency at the time.

<sup>74</sup> *Id.* p. 19. The possibility of a negative effect on promotion potential was cited by 41 percent of the survey respondents as a reason for not requesting a part-time schedule. Almost 60 percent of those who had worked part-time believed that their schedules did have a negative effect on advancement at GAO.

<sup>75</sup> Letter from John H. Luke, Chief Human Capital Officer (October 11, 2000).

<sup>76</sup> *The Use of Alternative Work Arrangements at GAO*, p. 18.

<sup>77</sup> *The Status of Telework in the Federal Government*, OPM ([www.opm.gov/telework](http://www.opm.gov/telework)).

## Then and Now

The Board's previous study covered the time period from October 1, 1993 through September 30, 1998.<sup>78</sup> During that time, 333 permanent employees worked part-time; 90 percent of whom were female and 63 percent of whom were under 40. During the course of this study, 213 permanent employees worked part-time; of those, again, 90 percent were female but only 30 percent were under the age of 40.

The following tables display the demographics for GAO's part-time employees during the time periods of the Board's first study and the present study.

**TABLE 8: PART-TIME EMPLOYEES BY RACE/GENDER**

	WM	WF	BM	BF	HM	HF	AM	AF	TOTAL
<b>1993-98</b>	29 (8.7%)	232 (69.7%)	3 (.9%)	34 (10.2%)	0	10 (3%)	0	25 (7.5%)	333
<b>1999-04</b>	19 (8.9%)	152 (71.4%)	0	18 (8.5%)	1 (.5%)	5 (2.3%)	0	18 (8.5%)	213
<b>Percent change</b>	+ .2%	+ 1.7%	- .9%	- 1.7%	+ .5%	- .7%	0	+ 1%	

**TABLE 9: PART-TIME EMPLOYEES BY AGE**

	< 40 M	< 40 F	40-50 M	40-50 F	50-60 M	50-60 F	60 + M	60 + F	TOTAL
<b>1993-98</b>	13 (3.9%)	197 (59.2%)	11 (3.3%)	87 (26.1%)	4 (1.2%)	12 (3.6%)	4 (1.2%)	5 (1.5%)	333
<b>1999-04</b>	2 (2.1%)	61 (28.6%)	9 (4.2%)	85 (40%)	6 (2.8%)	42 (19.7%)	3 (1.4%)	5 (2.3%)	213
<b>Percent change</b>	- 3.8%	- 30.6%	+ .9%	+13.9%	+1.6%	+16.1%	- .2%	+ .8%	

<sup>78</sup> During the time period of the Board's prior study, approximately 95 percent of the GAO workforce was eligible to participate in the maxiflex program; nearly everyone takes advantage of the program at some time in his or her tenure with the Agency. The Agency does not collect data on the use of maxiflex. *The Use of Alternative Work Arrangements at GAO*, p. 8.

The only significant changes in the part-time workforce occurred in the groups of females under the age of 40 and females over the age of 40. Although 30 percent fewer females under 40 worked part-time during the latter time period, there were 30 percent more females over the age of 40 working part-time during the same time period, a phenomenon that could, in part, be attributed to the same population shifting into an older demographic in the years since the first study.

Of the 367 employees who participated in the flexiplace program between 1993 and 1998, 60.5 percent were female and 37 percent were under 40.<sup>79</sup> At the end of 2004, there were 183 employees formally enrolled in the continuing telework program, 71 percent of whom were female and 30 percent of whom were under 40.<sup>80</sup>

The next tables show the breakdowns of the GAO workforce who telework in a continuing arrangement:

**TABLE 10: TELEWORK PARTICIPANTS BY RACE/GENDER**

	WM	WF	BM	BF	HM	HF	AM	AF	TOTAL
<b>1993-98</b>	124 (33.8%)	175 (47.7%)	10 (2.7%)	26 (7.1%)	9 (2.5%)	8 (2.2%)	2 (.5%)	13 (3.5%)	367
<b>1999-04</b>	41 (22.4%)	89 (48.6%)	5 (2.7%)	26 (14.2%)	2 (1.1%)	5 (2.7%)	5 (2.7%)	10 (5.5%)	183
<b>Percent change</b>	- 11.4%	+ .9%	0	+ 7.1%	- 1.4%	+ .5%	+2.2%	+ 2%	

<sup>79</sup> *The Use of Alternative Work Arrangements at GAO*, p. 10.

<sup>80</sup> For the Board's study in the 1990s, GAO counted everyone who had taken advantage of flexiplace. Because GAO has simplified the telework process, only those employees who work under a "continuing" telework agreement were, until very recently, being counted as their requests are processed centrally by HCO. The episodic and short-term participants need only secure unit head permission for which data is now being captured through innovations in the web-based time and attendance program. Early projections show that 29 percent of the GAO workforce is participating in some form of telework.

**TABLE 11: TELEWORK PARTICIPANTS BY AGE**

	<b>&lt; 40 MALE</b>	<b>&lt; 40 FEMALE</b>	<b>40-50 MALE</b>	<b>40-50 FEMALE</b>	<b>50-60 MALE</b>	<b>50-60 FEMALE</b>	<b>60+ MALE</b>	<b>60+ FEMALE</b>	<b>TOTAL</b>
<b>1993-98</b>	41 11.3%	94 25.8%	47 12.9%	83 22.8%	57 15.7%	37 10.2%	4 1.1%	1 .3%	364
<b>1999-04</b>	14 (7.7%)	41 (22.4%)	13 (7.1%)	42 (23%)	21 (11.5%)	43 (23.5%)	5 (2.7%)	4 (2.2%)	183
<b>Percent change</b>	- 3.6%	- 3.4%	- 5.8%	+2%	- 4.2%	+13.3%	+1.6%	+1.9%	

Although there were changes in the percentages of those teleworking, with men decreasing their participation and women increasing theirs, the overall numbers skew the actual participation because of the failure, until recently, to capture data relating to episodic or short term telework.

## Conclusion

Twenty years ago, when the Board last issued an Agency-wide oversight review, neither GAO nor the Federal Government, in general, could have been characterized as “family-friendly” places to work. The Board’s 1985 report noted, for example, there simply were “no programs developed for working parents at GAO.”<sup>81</sup> As of January 1984, 105 GAO employees, roughly two percent of the workforce, worked part-time. Two other studies in the early ’80s reached similar conclusions: the Agency’s Federal Women’s Program issued a report that showed that GAO had lost a number of qualified female evaluators over the years because management did not allow them to work part-time; GAO’s own Office of Personnel concluded that the Agency’s “part-time practices do not encourage increased part-time employment.”<sup>82</sup>

By the time the Board issued its 2001 report on alternative work arrangements, there had been much progress at GAO. Eight to ten percent of the workforce held part-time positions; 95 percent of employees were eligible for maxiflex and nearly all had availed themselves of the option at some point in their careers. Telework was becoming more accepted at GAO as teams of employees from around the country routinely worked together under remote supervision to perform Agency studies.

Today, GAO touts the maxiflex, telework, and the part-time employment programs in its recruiting efforts, describing them as means to “further enhance our productivity and our competitiveness as an employer” and “to help our employees balance their personal and professional lives.”<sup>83</sup> Both the maxiflex and telework internal Orders have been revised since the Board’s study in the ’90s, making it easier for employees to participate through such measures as streamlining application processes, lengthening the Agency’s core hours, issuing laptops to the workforce, and ensuring access to GAO’s internal applications and programs. As was the case during the two earlier study times, part-time employment must be sought from and approved by supervisors with the impetus coming from the employee. GAO still does not designate any specific vacancies as part-time. The Board remains concerned that employees’ perceptions that those who work part-time do not have the same career opportunities as full-time employees are credible.

In its response to the Board’s concerns that were raised in its most recent report on alternative work arrangements, the Agency noted that it was making information about the programs available through fact-sheets on its web site. It also promised to include information about the programs

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<sup>81</sup> *Oversight Review of GAO*, p. 92.

<sup>82</sup> *Id.* p. 97.

<sup>83</sup> *Taking Steps to Meet Current and Emerging Human Capital Challenges*, Statement of David M. Walker, Comptroller General of the United States, before the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, Committee on Governmental Affairs, U.S. Senate, pps. 20-21 (July 17, 2001).

in new employee orientation and training programs; to monitor the application and promotion rates for part-time employees; and to gather information on denials of requests to telework.<sup>84</sup>

The Agency's alternative work programs are much more a part of GAO culture and practices than was the case when the Board studied this issue six years ago.

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<sup>84</sup> Letter from John H. Luke, Chief Human Capital Officer (October 11, 2000). GAO now includes information about its alternative work programs in its *New Employee Handbook*. In addition, only the Chief Human Capital Officer may approve and deny requests for continuing arrangements. With the centralization of these functions, data is now being maintained. GAO Order 2300.5, ch. 2, ¶ 5.



## Chapter IV: The Senior Executive Service at GAO

### Introduction

The Government Accountability Office Personnel Act of 1980 that established the Personnel Appeals Board also created a Senior Executive Service (SES) at GAO.<sup>85</sup> By law, the SES at GAO currently has an authorized strength of 129, a number that includes senior-level (SL) positions, as well.<sup>86</sup> The goal of GAO's SES system is to “ensure that executive management resources are responsive to GAO's needs, policies, and goals and otherwise are of the highest quality.”<sup>87</sup>

There are three types of SES appointments at GAO: career; Comptroller General (CG) career; and limited term. Selections for career appointments are made competitively through a recruitment and selection process or by way of the Executive Candidate Assessment and Development Program (ECADP); noncompetitively through a transfer from an Executive branch SES position or reinstatement after leaving the SES for a prescribed reason.<sup>88</sup> CG career appointments<sup>89</sup> are made based on merit competition but the appointee's executive qualifications for the position are approved by the Comptroller General rather than by GAO's Executive Resources Board (ERB).<sup>90</sup> The third type of appointment, limited term, allows the Comptroller General to make renewable, noncompetitive appointments to the SES and to SL positions for up to three years. Appointees under this authority serve at the Comptroller General's pleasure.<sup>91</sup> The primary source for SES appointments at GAO is the ECADP which was established in 1981 to identify and select highly qualified candidates to staff the SES ranks.<sup>92</sup> Every year, the ERB considers the number of projected vacancies in the SES for the upcoming year, and then authorizes

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<sup>85</sup> 31 U.S.C. §731, §733. The Civil Service Reform Act of 1978 established an SES in the Executive Branch. 5 U.S.C. §3131.

<sup>86</sup> 31 U.S.C. §732(c)(4). An SL position is classified above the Band III or GS-15 level. Staff in those positions possess critical scientific, technical or professional skills and generally have no managerial or supervisory responsibilities. 31 U.S.C §732a; GAO Order 2317.1, *GAO's Senior Executive Service and GAO Senior Level Positions*, ch. 3, ¶ 2(a) (Jan. 18, 2005).

<sup>87</sup> *Id.* ch. 2, ¶ 1.

<sup>88</sup> *Id.* ch. 2, ¶¶ 6, 8, 9.

<sup>89</sup> An SES member in a CG career appointment position is not eligible to transfer noncompetitively to a career civil service SES appointment in the Executive branch.

<sup>90</sup> The ERB is comprised of SES members appointed by the Comptroller General. The Board conducts the merit staffing process for the SES and SL positions and oversees the ECADP. GAO Order 2317.1 ch. 1, ¶ 6(d)(1)(a-c).

<sup>91</sup> *Id.* ch. 2, ¶ 11.

<sup>92</sup> *Id.* Appendix 1; *Oversight Review of GAO*, p. 52.

the government-wide recruitment of candidates to the ECADP. The ERB rates and ranks the applicants and determines who among them are the best-qualified. The list of the best-qualified candidates is forwarded to the Comptroller General for final selection into the program.<sup>93</sup>

Following selection, each candidate undergoes a skills and ability assessment and then receives specific training designed to develop executive competencies. In consultation with a mentor, the candidate prepares an individual development plan. Once a candidate completes his or her development program, which is usually about 18 months to two years, he or she is eligible for an immediate, non-competitive appointment to the SES.<sup>94</sup>

## The SES in the '90s

In 1998, the Board issued a report entitled *Selection into the Senior Executive Service at GAO (1992-1997)* which chronicled the results of its study of the process by which 75 appointments to the SES were made during a five year period (October 1, 1992 through September 30, 1997). Specifically, the Board set out to determine whether members of protected racial, national origin, gender, age or disability groups were represented in the SES in the percentages that would be expected based on their representation in the pool of employees eligible for selection into the SES.<sup>95</sup>

During the relevant time period of the Board's study, the majority of the SES appointments came from the ECADP. Women experienced the largest gains in the SES, garnering 40 percent of the appointments even though they constituted 26.8 percent of employees eligible for consideration for the SES.<sup>96</sup> In addition, black employees were selected to fill 10.6 percent of the SES positions and constituted 6.9 percent of the pool of eligibles. At the time of the Board's study, nearly 55 percent of the SES corps was between the ages of 50 and 59. The Board determined, however, that 80 percent of the SES members entered the corps before they were 50 and 20 percent before they were 40 years old. The Board noted an appreciable decline in applicant success for appointment to the SES after the age of 50.<sup>97</sup>

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<sup>93</sup> *Id.* Appendix 1.

<sup>94</sup> *Id.* ch. 10, ¶ 2.

<sup>95</sup> SES eligibles are defined as those in Band III analyst and analyst-related positions; Band II attorneys; and GS-15s.

<sup>96</sup> *Selection into the Senior Executive Service at GAO*, p. 30.

<sup>97</sup> *Id.* pps. 31-32.

## The SES at GAO Today

At the end of 2004, there were 120 members of the SES at GAO. The following table shows the breakdown by race, gender, and national origin of the SES at GAO in 1991 and 2004 and the change, in percentage, of each group’s representation in the SES in those two years.

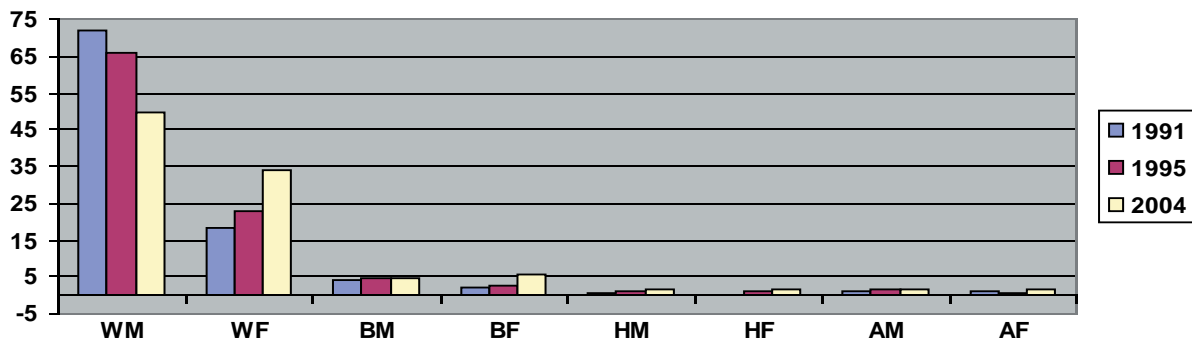
**TABLE 12: THE SES AT GAO IN 1991 AND 2004**

	WM	WF	BM	BF	HM	HF	AM	AF	TOTAL
<b>1991</b>	107 (76.4%)	16 (11.4%)	7 (5%)	2 (1.4%)	1 (.7%)	3 (2.1%)	3 (2.1%)	1 (.7%)	140
<b>2004</b>	59 (49.2%)	39 (32.5%)	8 (6.7%)	4 (3.3%)	2 (1.7%)	1 (.8%)	5 (4.2%)	2 (1.7%)	120
<b>Percent change</b>	-27.2%	+21.1%	+1.7%	+1.9%	+1%	-1.3%	+2.1%	+1%	

The significant decrease in the percentage of white males and increase in the percentage of white females in the SES ranks tracks the demographic changes and concomitant diversity gains at GAO over the past 15 years which are also apparent in the pool of those employees eligible for consideration for an SES position. The only other group to experience a loss in percentage was Hispanic females whose actual numbers decreased from 3 to 1 in the SES.

The following chart shows the percentages by race, gender, and national origin for the pool of GAO employees eligible to apply for SES positions in 1991, 1995, and 2004.

**FIGURE 3: PERCENTAGES OF SES ELIGIBLES**



The chart shows that, over the years, there has been a clear downward progression in the percentages of white males in the pool of eligibles and a steady increase in the percentages of white females. The representation of black females in the pool of eligibles has also grown, increasing from 2.1 percent in 1991 to 5.8 percent in 2004.

The age range for the SES at GAO has always skewed older. In 1991, there were three members of the SES under the age of 40; there were two at the end of 2004, one male and one female.

The following shows the comparisons by race and national origin of the SES at GAO and the SES in the Executive Branch.<sup>98</sup>

	<b>EXECUTIVE BRANCH</b>	<b>GAO</b>
<b>White</b>	85.1%	81.7%
<b>Black</b>	8.2%	10.0%
<b>Hispanic</b>	2.9%	2.5%
<b>Asian</b>	1.8%	5.9%
<b>Native American</b>	1.1%	0

Of further note, the gender breakdown of the SES in the Executive Branch is 74.5 percent male and 25.5 percent female. At GAO, the breakdown of the SES is 61.7 percent male and 38.3 percent female.

## Appointments to the SES 1999-2004

During the past five fiscal years, 57 individuals were appointed to the SES at GAO. Of those appointees, 58 percent were between the ages of 40 and 50; 35 percent were between the ages of 50 and 70, a noticeable increase since the Board's earlier study in which only 20 percent of appointments went to persons over the age of 50.

The Board's earlier report also noted that no appointee to the SES during the course of the Board's study reported having a disability. Of the appointees during the past five years, 21 percent reported having a non-severe disability.

<sup>98</sup> *Senior Executive Service by Race and National Origin; Senior Executive Service by Gender*, OPM (Sept. 30, 2002) [www.opm.gov/ses](http://www.opm.gov/ses).

Of those 57 appointees, 46 (80.6%) were white, 5 (8.9%) were black, and 6 (10.5%) were Asian. There were no Hispanics appointed in the five year time span.

The following chart shows percentages by race, national origin, and gender in the GAO workforce, in the pool of eligibles, in the SES, and in the appointments to the SES for the past five years.

**TABLE 13: SES PERCENTAGES FY 2000-04**

	<b>GAO WORKFORCE</b>	<b>2004 ELIGIBLES</b>	<b>APPOINTMENTS (FY 2000-04)</b>	<b>2004 SES</b>
<b>White males</b>	36.5%	49.5%	45.6%	49.2%
<b>White females</b>	32.9%	34%	35%	32.5%
<b>Black males</b>	5.7%	4.5%	7.2%	6.7%
<b>Black females</b>	14.2%	5.8%	1.7%	3.3%
<b>Hispanic males</b>	2.3%	1.8%	0	1.7%
<b>Hispanic females</b>	2.2%	1.4%	0	.8%
<b>Asian males</b>	2.3%	1.6%	8.8%	4.2%
<b>Asian females</b>	3.9%	1.4%	1.7%	1.7%

As the table illustrates, white males constitute a larger percentage of the SES ranks compared to their representation in the GAO workforce but their share of SES positions is remarkably consistent with their percentage in the pool of eligibles. Black females, on the other hand, constitute a smaller percentage of the SES ranks in comparison to their representation in the pool of those eligible for appointment to the SES, as do Hispanics.<sup>99</sup>

<sup>99</sup> Black females also have the largest percentage difference between their representation in the GAO workforce as a whole (14.2%) and in the pool of eligibles (5.8%). They make up 43 percent of the Administrative Professional and Support Staff (APSS) at GAO whose members are only eligible for consideration for the relatively small number of SES vacancies that occur in staff offices; most SES and SL positions are associated with mission teams at GAO.

## Conclusion

GAO's diversity gains over the past 15 years are clearly reflected in the ranks of its Senior Executive Service. From a mostly white male corps in the early nineties, the GAO SES is currently nearly 40 percent female and over 18 percent minority. There have been gains in all the protected groups except for Hispanic females, of whom there is only one in the SES at GAO today. In fact, the data shows that no Hispanics have been appointed to the SES within the past five years even though they make up 3.2 percent of the employees eligible for selection into the SES.

Older employees and persons with disabilities are being appointed to the SES in significantly higher numbers than when the Board studied SES selections in the mid-nineties.

## Chapter V: Findings and Recommendations

### FINDINGS

#### GAO's Current EEO Profile

It can certainly be said that the state of equal employment opportunity at GAO in the 21st century, when measured demographically, has improved. The Agency's EEO profile reflects diversity gains over the past decade in all protected categories except among black females who, to a large extent, bore the brunt of the Agency's mid-90s RIF. More significant, however, is the new-found diversity in the upper echelons of supervisors and managers. The SES corps is nearly 40 percent female and more than 18 percent minority; the attendant pool of employees eligible for appointment to the SES has increased in every protected category since the Board last studied the issue except for black males, where the percentages remained the same, and Asian males who had a drop of a tenth of a point. During the past five years, however, not one Hispanic employee was appointed to the SES even though they currently comprise 3.2 percent of those eligible for appointment within GAO.

#### Hiring

Among the newly-hired population of the past five years, Asian females constituted nearly six percent and both black females and black males showed gains in 2004. The Hispanic population of the Agency has grown by less than one percent since the early 1990s, and their percentages among the new hires for each of the past five years were substantially lower than the comparable percentages in 1991.<sup>100</sup> Age and disability were relatively constant factors and correlated with 1991 figures.

#### Separations

A look at the percentages for separations during the past five years reveals that there has been a noticeable increase in the percentage of black males leaving GAO. Black women, in general, are the only protected group where the percentage of those separating from the Agency for the prior five years exceeded the percentages in which they were hired.<sup>101</sup>

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<sup>100</sup> Hispanics remain the only underrepresented minority group in the Federal Government, comprising 7.3% of the Federal workforce and 12.6% of the Civilian Labor Force. *Federal Equal Opportunity Recruitment Program*, Annual Report to Congress (2004).

<sup>101</sup> The Board has recently approved an EEO Oversight study to commence later this year that will address retention issues. The data collection portion of the study will include a survey of employees who separate from the Agency in order to identify the reasons underlying their decisions.

## Work Environment

One of GAO's long-range, strategic goals is to "Maximize the Value of GAO by Being a Model Federal Agency and a World-Class Professional Services Organization." Particularly in the area of creating a family and worker friendly environment, GAO has been in the forefront of the Federal Government's efforts, which is most likely a significant boon to its successful recruiting program. Both the maxiflex and telework programs have had makeovers since the Board last studied them, rendering them more user-friendly by streamlining application processes and providing a transportable computer environment. While GAO has encouraged reemployed annuitants to return to GAO on a part-time or intermittent basis as part of a knowledge transfer initiative, its permanent part-time employees must negotiate their status with management. GAO does not designate or advertise specific vacancies as part-time opportunities.

## Agency practices and procedures

Board studies over the years have shown that GAO is, at times, very slow to make institutional changes in its policies and procedures as they relate to equal employment opportunity. As noted at the outset of this report, the GAOPA charges the Comptroller General with maintaining a personnel management system that ensures that all personnel actions are taken without regard to race, color, religion, sex, national origin, political affiliation, marital status, or handicapping condition. A current, comprehensive discrimination complaint process is the cornerstone of a viable personnel management system yet, as the Board noted in its 2004 report on the activities of the Office of Opportunity and Inclusiveness, the GAO Order that governs the discrimination complaint process has not been updated since 1997 and is lacking in some basic protections; clear, consistent procedures; and current nomenclature.

The same can be said for the Agency's policies as they relate to the provision of reasonable accommodation. In its recent report on the issue, the Board found that GAO's policies and procedures do not conform to basic standards under which Executive branch agencies operate and that the Agency lags significantly behind in its conformance to current law in the area.

## RECOMMENDATIONS

### Prior recommendations revisited

The Board has an interest in ensuring the integrity of the entire discrimination complaint process at GAO. This continuing obligation led the Board, in 1995, to take an in-depth look at the operation of the complaint process from initial contact with a counselor through the issuance of the final Agency



decision.<sup>102</sup> In the ensuing report, the Board made 12 recommendations to the Agency, calling for improvements or changes to the complaint process. In 1998, the Board issued a follow-up report that tracked the Agency's compliance with the Board's recommendations from its earlier study of the complaint process.<sup>103</sup>

In 2003, the Board began a study revisiting the discrimination complaint process, this time in the context of the office responsible for the functions of complaint processing and mediation. In 2001, the Civil Rights Office became the Office of Opportunity and Inclusiveness and its role was greatly expanded beyond that of its predecessor office.<sup>104</sup> In its study, however, the Board was primarily concerned about discrimination complaint processing and focused on data concerning complaints filed with, processed or dismissed by O&I, contacts with the Office, mediations, informal resolutions, investigations and settlements.

In 2004, the Board issued a report based on its study that contained a brief history of the Agency's past compliance with Board recommendations in this area and new recommendations based on the changes in the office administering the complaint process and mediation program. Underlying all of the Board's recommendations was the fact that GAO Order 2713.2 had not at that time, and still has not, been updated since 1997.<sup>105</sup>

Initially, the Board revisited the two remaining areas of disagreement with the Agency from its earlier studies.<sup>106</sup> The first issue involved the prior situation at GAO where the Director of the Civil Rights Office reported to the Agency official who supervised the Personnel Office and reviewed final Agency decisions issued in discrimination complaints. The Board identified this as a conflict of interest as it allowed the same person to oversee both the development of personnel policies and the process by which complaints about those policies are raised. Although the new structural change, which has the Managing Director of O&I reporting directly to the Comptroller General, appears to comport with the Board's previous recommendation, the additional duties assumed by the Managing Director of O&I include substantial participation in GAO's human capital procedures and practices. The Board, in

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<sup>102</sup> *GAO's Discrimination Complaint Process and Mediation Program*. The report also contained an evaluation of GAO's mediation program, along with a recommendation to conform that program to widely accepted standards in use at the time.

<sup>103</sup> *Follow-Up Report on GAO's Discrimination Complaint Process and Mediation Program*.

<sup>104</sup> *Study of GAO's Office of Opportunity and Inclusiveness*, p. 6. The Office is now involved in Agency recruiting efforts, human capital operations, and training programs.

<sup>105</sup> The Board was advised in October 2003 that the Order was in the process of being revised. Interview with Jesse E. Hoskins, Chief Human Capital Officer (Oct. 9, 2003). In its pre-publication comments on this report, the Agency states that it is "in the process of revising all orders that relate to discrimination complaint processing and the role of the Office of Opportunity and Inclusiveness." Letter from Jesse E. Hoskins, Chief Human Capital Officer (Oct. 6, 2005).

<sup>106</sup> *See supra*, note 9.

expressing its concern about the new system, cited an EEOC directive which cautioned that “. . . the same agency official responsible for executing and advising on personnel actions may not also be responsible for managing, advising, or overseeing the EEO pre-complaint or complaint processes.”<sup>107</sup>

To alleviate the appearance of a conflict of interest, the Board recommended that GAO consider creating a separate complaint unit in which assigned staff would process discrimination complaints exclusively and would have no responsibility for human capital issues within the Agency. In pre-publication comments on the report, the Agency stated that it did not believe that creation of a separate unit was warranted due to the very small number of discrimination complaints filed each year and that the appearance of any conflict of interest is mitigated due to the fact that GAO contracts out its complaint investigations.<sup>108</sup> The Board continues to believe that administrative separation between the functions is warranted.

*GAO's Response: We have created the Office of Opportunity and Inclusiveness to investigate discrimination complaints. We are in the process of revising all orders that relate to discrimination complaint processing and the role of the Office of Opportunity and Inclusiveness. Further, processing discrimination complaints and drafting decisions in a separate unit would be inefficient in view of the limited complaints received by O&I.*

The second recommendation from the earlier reports addressed the practice of having draft final Agency decisions in the complaint process reviewed by the same unit in the Office of General Counsel (OGC) which represents the Agency in subsequent legal proceedings. The Board has long suggested that another unit of OGC be given the review function.

*GAO's Response: Legal Services (LS) has the most expertise in the area of discrimination in OGC and should continue its role in the discrimination process. However, to mitigate any appearance of conflict, LS will not exercise any review function if it has a substantive role in the action under review.*

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<sup>107</sup> Equal Employment Opportunity Management Directive 110, U.S. Equal Employment Opportunity Commission (Nov. 9, 1999).

<sup>108</sup> Letter from Jesse E. Hoskins, Chief Human Capital Officer (Aug. 21, 2003) (hereinafter Hoskins Letter (8/21/03)).

The Board's recommendations from its most recent report were, for the most part, directed at long overdue revisions to GAO Order 2713.2.<sup>109</sup> In pre-publication comments, the Agency indicated that it would incorporate Board proposals to require annual training for EEO counselors; to provide a customer satisfaction survey to everyone who contacts O&I; to identify all Agency EEO counselors on the forthcoming O&I web site; and, to prepare a handbook or handouts that delineate timing issues at various stages of the process.<sup>110</sup> Not one of those agreed to proposals has yet to be implemented.<sup>111</sup>

*GAO's Response: We annually train our EEO investigators at training sessions sponsored by the Equal Employment Opportunity Commission. We have a web design for the O&I webpage; however, have not yet finalized our implementation plan. Once completed, we will list GAO's EEO investigators on this webpage and a summary of the various stages of the EEO complaint process. O&I plans to do a customer satisfaction survey in Fiscal 2006.*

In 1990, the Board issued a report, *EEO Oversight Study of GAO's Employment of People with Disabilities*,<sup>112</sup> in which it made a number of recommendations that were designed to assist the Agency in its efforts to develop and implement a viable program for persons with disabilities. In 1993, the Board conducted a follow-up study to determine whether, and to what extent, the Agency had carried out the 1990 recommendations.<sup>113</sup> It was determined that the Agency had complied with nearly all of the recommendations but was still resisting the establishment of a database to track requests for reasonable accommodation.<sup>114</sup> Passage of the Americans with Disabilities Act (ADA)<sup>115</sup> and a number of progressive initiatives in the Executive branch sparked renewed interest in issues of concern to persons with disabilities and, in 2004, the Board took an in-depth look at reasonable accommodation policies, practices, and processes at GAO.

<sup>109</sup> The Board did note that only one final Agency decision has been issued in the past four years and that 65 percent of those contacting O&I decided not to pursue their complaints.

<sup>110</sup> Hoskins Letter (8/21/03).

<sup>111</sup> The Board also recommended that Order 2713.2 be revised to include standards for discretionary dismissal of complaints which form the basis of a Charge filed with the PAB's Office of General Counsel (PAB/OGC). In the Executive Branch, an agency must inform complainants of their rights under the discrimination complaint process and the Merit Systems Protection Board appeal process to ensure that any election is knowing and voluntary. 29 C.F.R. §1614.302(2)(b). The Agency declined to comment on this recommendation.

<sup>112</sup> Among the topics covered in the report were accessibility, recruitment and hiring, reasonable accommodation, supervisory training, and affirmative action.

<sup>113</sup> *Follow-Up Report to EEO Oversight Study of GAO's Employment of Persons with Disabilities*.

<sup>114</sup> Letter from Joan M. Dodaro, Deputy Assistant Comptroller General for Human Resources (Dec. 14, 1993).

<sup>115</sup> 42 U.S.C. §§12201-14. Unlike the Rehabilitation Act, the ADA specifically applies to GAO.

Among other matters addressed, the resulting report compared the requirements of Executive Order 13164,<sup>116</sup> which mandates a number of very specific steps that agencies must take to ensure that they are processing requests for reasonable accommodation effectively, to GAO's policies and procedures. The Board found that the provision-by-provision comparison revealed a failure on the part of GAO to provide adequate explanation of the requirements for making and processing requests for reasonable accommodation. The Board concluded that GAO's policies and procedures do not conform to the basic standards to which Executive branch agencies are expected to adhere and that the Agency lags significantly behind in its conformance to current law in the area.

Based on its findings, the Board made a number of specific recommendations to GAO. Chief among them was calling for revisions to GAO Order 2306.1, which governs employment of individuals with disabilities. At a minimum, the revisions should:

- describe the steps necessary to initiate a request for reasonable accommodation;
- inform employees of their rights under the ADA;
- designate an office to function as a clearinghouse;
- mandate that denials of reasonable accommodation requests be in writing;
- identify the person who made the decisions to deny the request;
- explain the steps to file an EEO complaint;
- mandate training about reasonable accommodation for managers and supervisors; and
- require that GAO establish and maintain a database of reasonable accommodation requests. The database should be designed to comply with the requirements that Executive Order 13164 imposes on Executive branch agencies.

In June 2003, the Agency informed the Board that it was in the process of developing a tracking system and database for reasonable accommodation requests.<sup>117</sup> In its April 2004 pre-publication comments on the draft report, the Agency said that it was in the process of finalizing a draft order that would address many of the Board's concerns. As of the last quarter of 2005, neither has occurred.

*GAO's Response: We have drafted revisions to our reasonable accommodation order. We have briefed GAO's Executive Committee, Managing Directors, and Employee Advisory Committee on these proposed revisions. Following these briefings, we will send the draft order out to employees for comment.*

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<sup>116</sup> 65 F.R. 46,565 (2000), reprinted in 29 U.S.C. §791.

<sup>117</sup> Letter from Jesse E. Hoskins, Chief Human Capital Officer (June 27, 2003).

## New recommendations

In addition to prior recommendations discussed above, the Board makes the following recommendations.

- GAO should attempt to expand its pool of qualified black and Hispanic candidates through supplementing and further refining its recruiting efforts and using existing networks for disseminating vacancy information.<sup>118</sup>

*GAO's Response: We agree. GAO has developed a recruitment strategy that will increase our number of Hispanic and Black applicants. Our plan is to do focus recruiting at colleges and universities that have a high concentration of Hispanics and other minorities. GAO will use its direct hire authority for hard to fill vacancies – FMA auditors and IT specialists. We will continuously monitor and review our hires throughout the year to assess the extent to which our strategy adequately addresses this recommendation.*

- The Agency should review its SES selection process to ensure that it is EEO neutral.

*GAO's Response: Following each selection of SES candidates or ad hoc SES selections, the ERB reviews the processes used to select the candidates. Generally, the ERB discusses how it can attract a greater diversity of applications, including recruitment sources and advertising with special interest groups.*

- GAO should designate and advertise certain job vacancies as eligible for part-time employment.

*GAO's Response: The Federal Employees Part-Time Career Employees Act of 1978, 5 U.S.C. Section 3401-08 seeks to increase part-time employment in the federal government and requires each agency head, including the Comptroller General, to establish and maintain a program of part-time career employment. We acknowledge that GAO's program does not comply with the Act in all respects; however, GAO does*

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<sup>118</sup> The Board takes note that within the past few years, GAO has reached out to students at Historically Black Colleges or Universities (HBCU) and has targeted schools with high minority percentages in order to expand recruiting efforts. In addition to the HBCU's, these have included schools with large Hispanic, Asian, and American Indian populations. *Minority Recruitment at GAO*, p. 9.

*make the opportunity for its employees to work a part-time schedule widely available. In addition, GAO's program appears to be consistent with OPM guidance as set forth in its "Part-time Employment and Job Sharing Guide." GAO has decided not to advertise positions (hires or promotions) as part-time. We have not received any grievances on this issue and are not aware of any issues related to any employees' part-time status. GAO continues to permit employees to request a part-time schedule. These requests are reviewed on a case-by-case basis. In addition, GAO's Executive Committee has authorized some changes that relate to part-time employees. These include:*

*The establishment of ½ FTE in each GAO unit for part-time positions to be used at the discretion of the Managing Director or Office Head.*

*Modifying GAO's Part-Time Order on the basis of recommendations from GAO's Part-Time Task Team. Employees will have an opportunity to comment on these proposed changes prior to finalizing the Order.*

- GAO should ask its employees to complete Form 256, *Self-Identification of Handicap*, annually so that the Agency can ensure that its programs and services available to persons with disabilities are adequate for the population in need of them.

*GAO's Response: We support this recommendation. Annually HCO will issue a notice to all employees to provide an opportunity for employees to change his/her disability status by using this form. We will also post this information to the HCO website.*

- In its 2004 report on the Office of Opportunity and Inclusiveness, the Board recommended against the Agency amending Order 2713.2 to include complaints of discrimination based on sexual orientation. The reason for that recommendation was concern that such discrimination complainants would not have the right to pursue their claims beyond GAO's administrative process because sexual orientation is not covered under the Federal anti-discrimination statutes. The Board did note at that time that a GAO applicant or employee could seek redress by filing a PAB charge alleging a prohibited personnel practice based upon alleged discrimination because of sexual orientation and appeal any adverse decision to the U.S. Court of Appeals for the Federal Circuit.

In 1999, the Comptroller General issued a Memorandum directing that employees be permitted to file complaints with the Civil Rights Office when they believe that discrimination has occurred based upon their sexual orientation. While Order 2713.2 has not yet been amended

to reflect the Comptroller General's stance, numerous GAO Orders have been so amended.<sup>119</sup> It is fairly clear, at this point, that GAO intends that Order 2713.2 cover discrimination on the basis of sexual orientation when it is revised.<sup>120</sup>

Based on that intention, the Board suggests a different approach that will provide employees alleging discrimination on the basis of sexual orientation with some, but not full, appeal rights.<sup>121</sup> The GAOPA, in section 753(a)(8), provides that the PAB may consider and decide cases arising from personnel issues that the Comptroller General determines the Board shall resolve. Pursuant to this authority, the Comptroller General could revise Order 2713.2 to provide that complaints on the basis of sexual orientation may be appealed to the PAB in the same manner as other discrimination complaints. The Board recommends this approach as providing more consistent protection for employees in areas of employment discrimination.

*GAO's Response: GAO does not plan to expand jurisdiction of the PAB to cover discrimination complaints related to sexual orientation.*

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<sup>119</sup> See, e.g., GAO Orders 2771.1 (Administrative Grievance Procedure); 2432.1 (Dealing with Unacceptable Performance); 2751.1 (Discipline); 2752.1 (Adverse Action); 2713.1 (Office of Opportunity and Inclusiveness); and 2711.1 (Labor-Management Relations).

<sup>120</sup> In its earlier report, the Board cautioned that any such revision should contain language explaining that, unlike complaints alleging discrimination on other bases, GAO's internal administrative process is as far as these complaints can go. There are no appeal rights under this proposal.

<sup>121</sup> Any such revision based on this recommendation should include notification to complainants that, although they would be able to file a Charge with the PAB/OGC, a final decision of the Board could not be appealed to the U.S. Court of Appeals for the Federal Circuit.

## CONCLUSION

The Board appreciates that GAO has been mindful of its mandates to maintain a personnel management system that operates free of discrimination and to develop a diverse workforce that reflects the nation and its workers, at large. The efforts that the Agency has made to assist its employees achieve a balance between their careers and their personal lives are especially commendable. However, this Board is charged with reviewing and evaluating GAO's procedures and practices as they relate to laws prohibiting discrimination in employment and, in exercise of that authority, the Board concludes that GAO's lengthy delay in updating two internal Orders so critical to equal employment opportunity at the Agency jeopardizes basic principles of fairness and equality. The Board remains hopeful that GAO will rectify the situation by amending the Orders under discussion expeditiously and in accordance with its recommendations.



## **Appendix: Summary of Comments**

Both GAO and the Board's Office of General Counsel submitted comments on the draft report. The Agency's comments included an enclosure with a response to each of the Board's recommendations. Those responses were added to the report and can be found, in italics, after each specific recommendation. The remainder of GAO's comments clarified two conclusions in the body of the report and pointed out two possible discrepancies in the data. Those issues have been addressed in the final version of the report.

The Board's General Counsel's letter indicated concurrence with the Board's recommendations contained in the draft report. She, too, asked for clarification on two issues not touched upon by the Agency in its comments and they have been addressed in the report, as well.