



**STUDY ON DISABILITY
& REASONABLE ACCOMMODATION
IN THE GAO WORKFORCE**

DECEMBER 2019

Personnel Appeals Board

United States Government Accountability Office

JUSTICE



Personnel
Appeals
Board

December 9, 2019

Hand Delivery

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Dodaro:

Pursuant to the GAO Personnel Act of 1980, the Personnel Appeals Board has statutory responsibility to oversee equal employment opportunity at the United States Government Accountability Office. The Board performs its function through a process of review and assessment that includes conducting studies and preparing evaluative reports containing the Board's findings and recommendations. In exercise of this authority, the Board's *Study on Disability & Reasonable Accommodation in the GAO Workforce* is attached.

Sincerely,

A handwritten signature in cursive script, reading "Richard S. Ugelow".

Richard S. Ugelow
Chair

Enclosure

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STUDY ON DISABILITY & REASONABLE ACCOMMODATION IN THE GAO WORKFORCE

Executive Summary

The objective of the *Study on Disability and Reasonable Accommodation in the GAO Workforce* is to conduct a legal review of applicable GAO policies, procedures, and practices, to ascertain the extent to which they reflect the requirements of the Americans with Disabilities Act (ADA), as amended by the Americans with Disabilities Act Amendments Act (ADAAA), a decade after it became law. In this context, the Board reviewed available GAO personnel data relating to employment of people with disabilities across several fiscal years and compared this data, where possible, to similar figures from the federal civilian workforce. The Board also reviewed GAO personnel data relating to requests for reasonable accommodation across a similar time period.

The Board's study reveals that the amended law is reflected in some GAO policies, procedures, and practices, but that several relevant GAO Orders have not been updated to include reference to the ADA, as amended by the ADAAA. The study also reveals that GAO's employment of people with disabilities falls below federal goals and percentages in the federal civilian workforce for the fiscal years under review.

The Board's study offers recommendations to enhance compliance with the ADA, as amended by the ADAAA, in Agency policies, procedures, and practices, including its reasonable accommodation program, to strengthen the Agency's commitment to attract, hire, and retain employees with disabilities.

Recommendations

- 1. Develop and implement a Disability Plan, similar to plans under development in Executive Branch agencies, incorporating best practices for recruiting, hiring, retaining, and advancing qualified people with disabilities, as well as targeted disabilities, and announce the Agency's goals for employing people with disabilities, as well as targeted disabilities, during Town Hall meetings and through postings to GAO's internal and public websites.**
- 2. Undertake early steps in the Agency's recruitment and hiring process to increase awareness among hiring officials, managers, and employees of: (a) the Agency's goals for hiring and retaining qualified people with disabilities and targeted disabilities; and (b) the extent of the Agency's reasonable accommodation program.**
- 3. Review and revise GAO policies, procedures, and practices, as necessary, to ensure they accurately describe the process by which people with disabilities may be hired at GAO (clarifying, for example, GAO's noncompetitive appointment process which is similar, but not identical, to Schedule A in the Executive Branch).**

- 4. Increase responsibilities of the Human Capital Office, its Reasonable Accommodation Office, and the Office of Opportunity and Inclusiveness to: (a) strengthen efforts to track and measure progress toward the Agency’s goals for hiring and retaining people with disabilities (recommended at 12% for disabilities and 2% for targeted disabilities); (b) request and collect feedback from people with disabilities submitting reasonable accommodation requests to identify opportunities for enhancement of the reasonable accommodation program; (c) report this information to the Comptroller General annually; and (d) consider adding an accounting or statistics professional to the Reasonable Accommodation Office to assist in this endeavor while retaining confidentiality of disability records.**

- 5. Develop and advise the Board of a schedule for review and publication of revision to GAO Orders relating to employment of people with disabilities and reasonable accommodation to ensure that GAO Orders: (a) timely reflect changes in law affecting the rights of people with disabilities at the Agency; and (b) afford appropriate opportunity for employees with disabilities to advance within the Agency.**

- 6. Review criteria for approval of reasonable accommodation requests at GAO to ensure the focus of review remains on *providing accommodation* to qualified people with disabilities (rather than on assessing the level of disability) to allow for modifications that do not present an undue hardship for the Agency.**

- 7. Include a direct link to the Agency’s Reasonable Accommodation resources on both the Agency’s intranet and internet home pages to enhance ease of access to these resources.**

The Board offers the above recommendations to assist the Agency in ensuring full legal compliance with the ADA, as amended by the ADAAA. This can increase the number of people with disabilities employed at the Agency and the pool of talent that assists the United States Congress in meeting its responsibilities to improve the performance and accountability of the federal government for the benefit of the American people.

Personnel Appeals Board
December 2019

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STUDY ON DISABILITY & REASONABLE ACCOMMODATION IN THE GAO WORKFORCE

CHAPTER I

INTRODUCTION

This study was conducted by the Personnel Appeals Board (the Board or PAB), which is responsible for overseeing equal employment opportunity at the Government Accountability Office (the Agency or GAO).¹ The Board undertook this *Study on Disability & Reasonable Accommodation in the GAO Workforce* to help GAO review its current policies, procedures, and practices following the sweeping changes to the Americans with Disabilities Act of 1990 resulting from enactment of the Americans with Disabilities Act Amendments Act of 2008. The Americans with Disabilities Act prohibits disability-based discrimination in employment, and includes the requirement that employers provide effective “reasonable accommodation” to people with disabilities, when requested, if doing so would not present an undue hardship to the employer. As GAO makes strategic efforts to maximize diversity, equity, and inclusion,² this study is designed to determine whether GAO has policies in place that are consistent with the Agency’s obligations to comply with federal law under the ADA, as amended, especially relating to reasonable accommodation for people with disabilities.

This study focuses only on the issue of the current status of the law and how GAO has applied the law to its policies, practices, and procedures, which include provisions for reasonable

¹ See 31 U.S.C. § 732(f)(2)(A).

² *Diversity, Equity, and Inclusion Strategic Implementation Plan, 2019-2023* (2019) at 7.

accommodation. It was not designed to be, and could not be, a comprehensive review of all workplace issues that affect people with disabilities.

This Chapter begins with an overview of the Government Accountability Office, the Personnel Appeals Board, and the current state of the law. It also reviews Executive Orders and regulations issued by the Equal Employment Opportunity Commission (EEOC) applicable to the Executive Branch of the federal government. As part of the study, the Board describes the development of federal civilian workforce goals for people with disabilities. The study concludes with the Board's recommendations to assist the Agency in maximizing the conformity of its policies, procedures, and practices to current and applicable law.³

The Government Accountability Office

The Government Accountability Office is an independent agency in the Legislative Branch of the federal government that includes approximately 3,100 employees charged with examining the expenditure of taxpayer dollars for the United States Congress and advising lawmakers and agency heads on improving federal government systems and practices.⁴ The Partnership for Public Service has recognized GAO as one of the best places to work in the federal government, specifically for its support for diversity.⁵

³ The Board offered prepublication review of a draft of this study to selected Agency officials, the Agency's Reasonable Accommodation Coordinator, and selected employee groups with demonstrated interest in the topic. The published version of this study reflects revisions, incorporated where applicable, following receipt of comments from the General Counsel of the Personnel Appeals Board, the Human Capital Office, the Office of Opportunity and Inclusiveness, the Advisory Council for Persons with Disabilities, and GAO Employees Organization, IFPTE Local 1921. *See* Appendix M.

⁴ *Serving the Congress and the Nation, Strategic Plan 2014-2019*, GAO-14-1SP, at 7-8 (Feb. 2014); *Diversity, Equity, and Inclusion Strategic Implementation Plan, 2019-2023* (2019) at 7.

⁵ The Partnership for Public Service is a non-profit and non-partisan organization that, in collaboration with Boston Consulting Group, publishes annual rankings of the best places to work in the federal government using data obtained from the Office of Personnel Management's Federal Employee Viewpoint Survey. The annual rankings are at <https://www.bestplacestowork.org>.

It is GAO's stated policy to have a work environment "where all employees are valued, treated fairly, and given opportunities to develop to their full potential."⁶ GAO also aims "to provide equal opportunity in employment for all [employees or applicants]" and strives "to prohibit discrimination in the workplace because of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, or gender identity."⁷ In protecting against disability-based discrimination, GAO bears responsibility for "making reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with disabilities unless the accommodation would impose an undue hardship on GAO operations."⁸

The Personnel Appeals Board

The Personnel Appeals Board is an independent entity established by the GAO Personnel Act of 1980 that is comprised of five Board Members appointed by the Comptroller General of the United States.⁹ As part of its statutory mandate, the Board oversees equal employment opportunity at GAO to ensure that Agency employees and applicants enjoy the same protections as their

In the Partnership for Public Service rankings, GAO placed second among mid-size federal agencies in 2017, 2016, 2014, and 2012; third among mid-size federal agencies in 2015 and 2013; and fourth among mid-size federal agencies in 2018. Before the Partnership for Public Service introduced its category for mid-size agencies in 2012, GAO placed third among large federal agencies in 2011, and second among large agencies in 2010 and 2009. See <https://bestplacestowork.org/rankings/detail/GA00> (for GAO's most recent annual ranking).

The Partnership for Public Service ranked GAO first in the category of "Support for Diversity" among mid-size federal agencies every year from 2012 through 2018. GAO also ranked first in this category as a large agency in 2011. See the Partnership for Public Service's "Support for Diversity" category ranking at <https://bestplacestowork.org/rankings/categories/mid/diversity>.

⁶ *Workforce Diversity Plan* at 26 (2016).

⁷ Order 2713.2, *Discrimination Complaint Resolution Process* at Ch. 1, ¶ 5.a (2009).

⁸ *Id.* at Ch. 1, ¶ 6.b(5).

⁹ 31 U.S.C. § 751. Members of the Board are each appointed for a staggered and limited term of five years. 31 U.S.C. § 751(c).

Executive Branch counterparts.¹⁰ In accordance with this mandate, the PAB: (1) reviews and assesses GAO policies, procedures, and practices relating to laws prohibiting employment discrimination on the bases of race, color, religion, age, sex, national origin, political affiliation, marital status, and disability; and (2) conducts studies and prepares evaluative reports on selected issues containing the findings and recommendations of the Board.¹¹ The Board’s studies are produced independently from, and reported without direction by, the Agency, its employees, or employee groups.¹²

The Americans with Disabilities Act

This study begins with a review of the Americans with Disabilities Act of 1990 (ADA), which was designed to protect people with disabilities against discrimination.¹³ Title I of the ADA protects employees and applicants with disabilities against discrimination on account of their disability during job application procedures, hiring, advancement and separation procedures, as well as job training and other conditions of employment.¹⁴ The ADA also requires covered employers to provide effective reasonable accommodation, upon request, to people who have conditions that meet the definition

¹⁰ See 31 U.S.C. § 732(f). In addition to the functions of the EEOC, the Board also performs the functions of the Office of Special Counsel, the Federal Labor Relations Authority, and the Merit Systems Protection Board for employees of GAO. Board decisions in adjudicatory matters may be appealed to the United States Court of Appeals for the Federal Circuit. 31 U.S.C. §§ 753(a), 755(a).

¹¹ 31 U.S.C. § 732(f); see also 4 C.F.R § 28.92.

¹² The Board’s studies are available on its website at <https://pab.gao.gov/oversight.html>. Board studies are not issued by GAO and need not follow generally accepted accounting principles, auditing standards of practice, and leading practices for strategic planning, including defining goals, the development and use of performance measures, or other methodologies GAO may use in the preparation of Agency reports.

¹³ 42 U.S.C. § 12101, *et seq.* (1994).

¹⁴ 42 U.S.C. §§ 12111-12117.

of having a “disability,” unless it presents undue hardship for the employer.¹⁵

The Board’s study reviews the processes in place to protect applicants and employees with disabilities at GAO against discrimination in employment as provided in the ADA, as amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).¹⁶ The ADAAA broadened the scope of conditions that fall within the definition of disability and expanded the number of people eligible for coverage under the ADA.¹⁷ Thus, the ADAAA increased the number of people protected from disability-based discrimination and for whom the Agency is required by law to provide reasonable accommodation upon request under the ADA, unless it would impose undue hardship on the Agency.¹⁸

Executive Orders

The Board also reviewed Presidential Executive Orders designed to direct Executive Branch agencies and departments to focus on the employment of people with disabilities in the federal workforce.¹⁹ On July 26, 2000, President William J. Clinton issued Executive Order 13163, *Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government*. The aim of this Executive Order is “to promote an increase in the opportunities for individuals with disabilities to be employed at all levels and occupations of the federal government, and to support the goals articulated in section 501 of the Rehabilitation Act of 1973.”

¹⁵ 42 U.S.C. § 12112.

¹⁶ 42 U.S.C. §§ 12101-12213 (2010).

¹⁷ ADAAA § 2(b)(1).

¹⁸ In keeping with the scope of this study to conduct a legal review, as stated above, the study incorporates use of statutory language. See Appendix B for key changes to the ADA enacted by the ADAAA.

¹⁹ See Appendix A for the full text of the Executive Orders detailed in this study.

The Executive Order states:

[E]vidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field.²⁰

This Executive Order instructs Executive Branch agencies to use available hiring authorities, expand outreach measures, increase efforts to make adjustments for people with disabilities, and lead in educating the public about employment opportunities available for people with disabilities.²¹

On July 26, 2010, President Barack H. Obama issued Executive Order 13548, *Increasing Federal Employment of Individuals with Disabilities*, to commit the federal government to becoming a model employer offering inclusion for people with disabilities.²² To achieve this commitment, the Executive Order calls for Executive departments and agencies to increase their efforts to recruit, hire,

²⁰ Exec. Order No. 13163 at § 1(a); 3 C.F.R. 285 (2001).

²¹ Exec. Order No. 13163 at § 1(b)-(c).

²² Exec. Order No. 13548 at § 1; 3 C.F.R. 232 (2011). This Executive Order works in coordination with: (1) Executive Order 13518: *Employment of Veterans in the Federal Government*, 3 C.F.R. 267 (2010); (2) Presidential Memorandum: *The Presidential POWER Initiative: Protecting Our Workers And Ensuring Reemployment*, 3 C.F.R. 356 (2011); and (3) Executive Order 13583: *Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*, 3 C.F.R. 266 (2012).

retain, and advance qualified individuals with disabilities²³ and targeted disabilities²⁴ at all levels of federal employment and in all occupations. Additionally, Executive Order 13548 requires the Executive Branch to plan for increasing inclusion opportunities for people with disabilities and sets a goal for hiring 100,000 people with disabilities over five years.²⁵ Executive Order 13548 also requires that Executive Branch agencies develop an agency-specific “Disability Plan” for promoting employment opportunities for people with disabilities and draft strategies to accomplish the goals set out therein as part of overall recruitment policy and practice. The White House, the Office of Personnel Management (OPM), the Chief Human Capital Officers Council, the Department of Labor, the EEOC, and the Office of Management and Budget (OMB) have worked with Executive Branch agencies to implement Disability Plans. In accordance with the Executive Orders, these plans must contain inclusion goals for employment of people with disabilities and sub-goals for employment of people with targeted disabilities.²⁶

²³ Disability with respect to an individual is “(A) a physical or mental impairment that substantially limits one or more major life activities of such an individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” ADA 42 U.S.C. § 12102(1); OPM Standard Form 256; Exec. Order No. 13548 at § 4(a).

²⁴ A targeted disability is a subset of the larger disability category, which receives attention and recognition based on the theory that qualified individuals with certain targeted disabilities (such as partial or complete paralysis or missing extremities) can face heightened barriers to employment as compared to the larger set of individuals with disabilities in general. See OPM Standard Form 256; EEOC, *Questions and Answers: The EEOC’s Final Rule on Affirmative Action for People with Disabilities in Federal Employment* (Questions and Answers: EEOC Final Rule on Affirmative Action for People with Disabilities in Federal Employment) at www.eeoc.gov/laws/regulations/qanda-ada-disabilities-final-rule.cfm.

²⁵ Exec. Order No. 13548 at § 1.

²⁶ *Id.* at § 2(b); see also OPM, *Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015* at 4 (Oct. 2016); Department of Labor, Office of Disability Employment Policy, *Summary: Promising and Emerging Practices for Enhancing the Employment of Individuals with Disabilities Included in Plans Submitted by Federal Agencies Under Executive Order 13548*, at 1 (2012).

Equal Employment Opportunity Commission Regulations

The Board also reviewed the Final Rule of the EEOC²⁷ issued on January 3, 2017, which amended regulations implementing Section 501 of the Rehabilitation Act of 1973 for the Executive Branch and codified obligations derived from the Executive Orders outlined above.²⁸ The Final Rule imposes the following requirements on Executive Branch agencies: (1) adopt inclusion goals for employment of people with disabilities, with sub-goals for employment of people with targeted disabilities; (2) provide personal assistance services²⁹ to certain employees with particular disability-related needs (unless doing so would impose an undue hardship on the agency); and (3) meet a number of other requirements designed to enhance the recruitment, hiring, retention, and advancement of people with disabilities in the federal workforce.

More specifically, the Final Rule requires Executive Branch agencies to:

- Adopt the goal of having **12% of the workforce be comprised of people with disabilities** and **2% of the workforce be comprised of people with targeted disabilities** (with the goals applying at both the higher and lower salary levels);
- Recruit people with disabilities and ensure that people with disabilities are aware of and have an opportunity to apply for positions;

²⁷ The EEOC is an agency within the Executive Branch of the federal government that enforces laws against workplace discrimination, including complaints based on race, color, national origin, religion, sex, age, disability, genetic information, and retaliation.

²⁸ EEOC, *Final Rule*, 82 Fed. Reg. 654 (Jan. 3, 2017) (codified at 29 C.F.R. 1614.203) (applicable Jan. 3, 2018) at <https://www.federalregister.gov/documents/2017/01/03/2016-31397/affirmative-action-for-individuals-with-disabilities-in-federal-employment>.

²⁹ *Id.* at 654. Personal assistance services for individuals (who, because of targeted disabilities, require help to perform basic activities of daily living, like eating and using the restroom) are different from services that help an individual perform job-related tasks (such as sign language interpreters and readers for people with disabilities, including hearing and vision loss, or learning disabilities). See Questions and Answers: EEOC Final Rule on Affirmative Action for People with Disabilities in Federal Employment at *supra* n.24.

- Provide sufficient staff to answer disability-related questions from applicants and members of the public and to process requests for reasonable accommodation in the hiring process for people with disabilities;
- Provide sufficient opportunities for employees with disabilities to advance within the agency, such as specialized training and mentoring programs and strong enforcement against disability-based discrimination;
- Provide written, easily available and comprehensible reasonable accommodation procedures and a written explanation whenever a request for a reasonable accommodation is denied;
- Ensure that key decision-makers know how to access resources necessary to pay for reasonable accommodations that are legally required;
- Inform job applicants and employees of their accessibility rights under Section 508 of the Rehabilitation Act and the Architectural Barriers Act, and explain how and where to file complaints under those laws.³⁰

The EEOC required Executive Branch agencies to modify their existing practices to conform to the regulations above by January 3, 2018.³¹ Moreover, Executive Branch agencies are required to submit information regarding their recruitment, hiring, advancement, and retention of people with disabilities to the EEOC annually.³² Upon receipt of such information, the EEOC will issue Affirmative Action Plans that are to be posted on the agencies' public websites.³³

While the Executive Branch directives noted above are not controlling on the Agency, it is important for GAO to be consistent with these directives as a matter of public policy and to be a

³⁰ EEOC, *Final Rule*, 82 Fed. Reg. 654, 677-80 (emphasis added). See also Questions and Answers: EEOC Final Rule on Affirmative Action for People with Disabilities in Federal Employment at *supra* n.24.

³¹ EEOC, *Final Rule*, 82 Fed. Reg. 654.

³² See EEOC, *Section III: Reporting Requirements and Line-By-Line Instructions*, at <https://www.eeoc.gov/federal/directives/715instruct/section3.html>; see also EEOC, *Federal Agency Annual EEO Program Status Report* at <https://www.eeoc.gov/federal/directives/md715/partj.cfm> (instructions for federal agency annual reporting requirements).

³³ EEOC, *Performance and Accountability Report: Fiscal Year 2017* at 46 (Nov. 15, 2017).

competitive model employer for people with disabilities.³⁴ In addition, offering the full extent of the ADA's protections, as amended, would allow the Agency to provide expanded access to reasonable accommodation. It also would help the Agency to increase its representation of people with disabilities in employment, and enhance GAO's ability to recruit, hire, and retain people with disabilities, particularly in competing with Executive Branch agencies.

Additional Background

The Board reviewed additional sources for context regarding employment for people with disabilities, including available data on population statistics and disability discrimination complaints. According to 2017 Census data, an estimated 12.6% (39,792,082 out of 316,027,641)

³⁴ It is of note that GAO has recognized the Executive Branch's efforts to increase employment opportunities for people with disabilities. *See*:

- *Disability Employment: Further Action Needed to Oversee Efforts to Meet Federal Government Hiring Goals*, GAO-12-568 (May 2012) (reviewing case studies at the Department of Education, the Social Security Administration, the Department of Veterans Affairs, and the Office of Management and Budget and concluding that much work remains in the Executive Branch to meet the goals of Executive Order 13548);
- *Employment for People with Disabilities: Little is Known about the Effectiveness of Fragmented and Overlapping Programs*, GAO-12-677 (June 2012) (recommending review and coordination of 45 federal programs for employment of people with disabilities to reduce inefficiencies and improve effectiveness among programs that overlap);
- *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others* at 589-60, GAO-17-317 (Feb. 15, 2017) (identifying certain federal disability programs as "high risk," and recommending improving and modernizing federal disability programs; noting that GAO first designated the need to improve and modernize federal disability programs as high risk in 2003 and concluding that disability programs across the federal government face significant challenges; and finding that federal disability programs have focused on medical conditions without sufficient consideration of whether people with disabilities could work with adjustments in workplace accommodation and assistive technologies); and
- *Strategic Plan: Key Efforts 2018-2023* at 8, GAO-18-395SP (noting that one of GAO's performance goals is to "[i]dentify ways to improve federal policies and support for people with disabilities" by "[a]ssess[ing] trends and emerging issues related to federal disability laws and programs, including implementation of the Americans with Disabilities Act").

of Americans in the civilian noninstitutionalized population are reported as having a disability.³⁵

Data from the Bureau of Labor Statistics also indicate that people with a disability are much less likely to be employed than people without a disability.³⁶

Disability is increasingly cited as a basis of alleged unlawful action in equal employment opportunity cases. For example, disability was a frequently alleged basis for charges filed with the EEOC across fiscal years 2006-2018 (rising from 20.6% in 2006 to 32.2% in 2018).³⁷ Office of Congressional Workforce Rights³⁸ statistics on the frequency of alleged bases for claims and

³⁵ 2017 Census at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_S1810&prodType=table.

³⁶ Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary* (Feb. 26, 2019) at <https://www.bls.gov/news.release/disabl.nr0.htm>. The Bureau of Labor Statistics reports that in 2018, the employment-population ratio was much lower for individuals with a disability at 19.1% (compared to workers with no disability at 65.9%). For individuals with a disability age 16-64, the employment-population ratio was 30.4% (compared to individuals without a disability at 74.0%). Among individuals with a disability age 65 and over, the employment-population ratio was about 7.4% (compared to those without a disability at 23.6%). The Bureau of Labor Statistics defines “unemployed persons” as those “who did not have a job, were available for work, and were actively looking for a job” within four weeks preceding the Bureau’s data collection. The Bureau of Labor Statistics data also indicate that in 2018, 31% of workers with a disability were employed part-time (compared to individuals without a disability at 17%). The data are collected as part of the Bureau of Labor Statistics *Current Population Survey (CPS)*, which is “a monthly sample survey of about 60,000 households that provides statistics on employment and unemployment in the United States.” The collection of data on individuals with a disability is sponsored by the Department of Labor’s Office of Disability Employment Policy (ODEP).

³⁷ EEOC reports the following statistics on disability-based charges per fiscal year:

2006: 20.6% (15,575/75,768); 2007: 21.4% (17,734/82,792); 2008: 20.4% (19,453/95,402);
2009: 23.0% (21,451/93,277); 2010: 25.2% (25,165/99,922); 2011: 25.8% (25,742/99,947);
2012: 26.5% (26,379/99,412); 2013: 27.7% (25,957/93,727); 2014: 28.6% (25,369/88,778);
2015: 30.2% (26,968/89,385); 2016: 30.7% (28,073/91,503); 2017: 31.9% (26,838/84,254); and
2018: 32.2% (24,605/76,418).

See table on *Charge Statistics (Charges filed with EEOC)* at <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>.

³⁸ The Office of Congressional Workplace Rights, formerly known as the Office of Compliance, is an agency within the Legislative Branch of the federal government that administers and enforces the Congressional Accountability Act of 1995. Its jurisdiction includes claims of disability discrimination in the workplace, within the meaning of section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, and sections 102 through 104 of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112-12114, 2 U.S.C. § 1301, *et seq.*

information requests filed with their office reveal that disability ranked as the second most frequent basis for information requests³⁹ involving discrimination for fiscal year 2017; the third most frequently alleged basis for claims received for fiscal years 2011, 2013, and 2014; and the fourth most frequently alleged basis for claims received for fiscal years 2010, 2012, and 2016 and for information requests involving discrimination and retaliation in fiscal year 2018.⁴⁰ In fiscal year 2018, the Office of Congressional Workforce Rights also reported disability discrimination to be the third most frequent basis for allegations of discrimination among protected categories.⁴¹ The Judicial Branch also reports an increase in cases raising ADA employment discrimination

³⁹ Information requests include requests for informal advice and information by covered employees under the Congressional Accountability Act of 1995 from the Office of Congressional Workplace Rights counselors regarding workplace issues and avenues to obtain resolution of a dispute. See Office of Congressional Workplace Rights, *Annual Report* at 10 (FY 2017).

⁴⁰ Office of Congressional Workplace Rights reported claims (or information requests) based on disability appear below:

FY 2010: 16.7% of reported claims (28/168); FY 2011: 11.7% of reported claims (23/196);
FY 2012: 16.4% of reported claims (22/134); FY 2013: 17.1% of reported claims (28/164);
FY 2014: 20.2% of reported claims (19/94); FY 2016: 11.7% of reported claims (9/77);
FY 2017: 23.6% of reported information requests (26/110); and FY 2018: 16.57% of
reported information requests (29/175).

Data were compiled from the following Office of Congressional Workplace Rights *Annual Reports*:

(1) *Annual Report* at 11 (FY 2018); (2) *Annual Report* at 11 (FY 2017); (3) *Annual Report* at 18 (FY 2016);
(4) *Annual Report* at 24 (FY 2014); (5) *Annual Report* at 24 (FY 2013); (6) *Annual Report* at 26 (FY 2012);
(7) *Annual Report* at 26 (FY 2011); and (8) *Annual Report* at 25 (FY 2010). (Data was not available for
FY 2015.)

⁴¹ See Office of Congressional Workforce Rights, *Annual Report* at 13 (FY 2018) (noting 25% (28/110) of allegations based on disability discrimination). Protected categories under Section 201 of the Congressional Accountability Act of 1995 include age, disability, national origin, race/color, religion, and sex/gender/pregnancy.

claims (up 196% from 2005 to 2017).⁴² At GAO, the number of disability complaints decreased between 2014 and 2017, and increased in 2019.⁴³

Accordingly, with the number of federal charges, claims, information requests, and allegations of disability-based discrimination reported above, a review of applicable GAO policies, procedures, and practices relating to the employment of people with disabilities, as well as the extent of the Agency's compliance with current disability law, is a timely subject for study. This effort should be helpful to the Agency's continued diversity, equity, and inclusion efforts to recruit, hire, and retain qualified people with disabilities and targeted disabilities.

⁴² Administrative Office of the U.S. Courts, Judiciary Data and Analysis Office, *Just the Facts: Americans with Disabilities Act* (July 12, 2018) available at <https://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act>.

⁴³ Data from GAO *No-FEAR Act Reports* (relating to the Notification and Federal Employee Antidiscrimination and Retaliation Act) indicate: 3 of 6 equal employment opportunity complaints in fiscal year 2014 concerned disability as a basis for discrimination; as did 2 of 7 in fiscal year 2015; 2 of 3 in fiscal year 2016; 0 of 4 in fiscal year 2017; 1 of 8 in fiscal year 2018; and 4 of 6 in the first three-quarters of fiscal year 2019. See <https://www.gao.gov/pdfs/no-fear-act-data/nofear2019june30.pdf> (complaints may have more than one basis).

CHAPTER II

METHODOLOGY

The scope of the Board's *Study on Disability & Reasonable Accommodation in the GAO Workforce* is to conduct a legal review of applicable GAO policies, procedures, and practices, to ascertain the extent to which they reflect the requirements of the ADA, as amended by the ADAAA, a decade after it became law. In this context, the Board reviewed available GAO personnel data relating to employment of people with disabilities across several fiscal years⁴⁴ and compared this data, where possible, to similar figures from the federal civilian workforce.⁴⁵ The Board also reviewed GAO personnel data relating to requests for reasonable accommodation across a similar time period.

To undertake this review, the Board requested information from the Agency, including applicable Orders, directives, policy statements, instructions, memoranda, legal guidance, and any other internal documents governing GAO's policies, procedures, and practices relating to the Agency's employment of people with disabilities, including reasonable accommodation. The Board also requested personnel data across several fiscal years relating to employment of people with disabilities at the Agency. Further, the Board requested information about the process by which reasonable accommodation requests are considered, including information relating to the Agency's acceptance or denial of requests for reasonable accommodation. The Agency provided extensive information and data to the Board for consideration in the form of written statements, spreadsheets of

⁴⁴ For the purpose of its study, the Board relied on the accuracy of the data the Agency presented to the Board for consideration.

⁴⁵ GAO has used federal civilian labor force data as a framework for analysis of its equal opportunity programs. See *GAO's Diversity and Inclusion Strategic Plan: 2012-2014 Progress* at 12 n.6 (June 2015). Additionally, EEOC's *Management Directive 715* references establishment and maintenance of effective federal agency equal opportunity programs and recommends federal agencies use the most recently available civilian labor force data as a benchmark when comparing representation of their overall workforce. See EEOC, *Management Directive 715* (MD-715), at <https://www.eeoc.gov/federal/directives/md715.cfm>.

raw personnel data relating to applicants and employees with disabilities, and requests for reasonable accommodation at GAO.⁴⁶

The Board's legal review was based on an examination of GAO's policies, procedures, and practices. It did not include surveys, interviews, or focus group discussions with Agency applicants, employees, or employee groups. An in-depth review of every Agency policy that could affect people with disabilities at the Agency also was beyond the scope of the study. The Board recognizes the importance of detailed feedback, however, and encourages the Agency to consider conducting employee feedback surveys, allowing for narrative comments, to gather additional information about people with disabilities and their experiences relating to implementation of Agency policies, procedures, and practices a decade after the ADA was amended by the ADAAA.

The Board's findings and recommendations, issued at the close of its review, are based on:

- (1) the Agency's response to the Board's requests for data and information;
- (2) the Board's independent research on relevant law;
- (3) the Board's analysis of applicable Orders, policies, procedures, and practices;
- (4) the Board's analysis of personnel data on employment of people with disabilities; and
- (5) the Board's analysis of the Agency's actions on requests for reasonable accommodation.

The Board's conclusions and recommendations appear at the end of this study. They highlight issues that warrant further review and action by the Agency.

⁴⁶ The Agency's Human Capital Office and Reasonable Accommodation Office representatives met with the Board staff to verify agreement on interpretation of numeric values contained in the Agency's data submitted to the Board for review and analysis in this study.

CHAPTER III

THE AMERICANS WITH DISABILITIES ACT, AS AMENDED, AND THE GAO PERSONNEL ACT OF 1980

This Chapter discusses the Americans with Disabilities Act (ADA), as amended, and the GAO Personnel Act of 1980 that governs equal employment opportunity at GAO and prohibits discrimination on the basis of disability, among other factors, in GAO's workplace. Under the GAO Personnel Act, the Comptroller General is responsible for maintaining a personnel management system at GAO in which all personnel actions are to be taken without regard to race, color, religion, age, sex, national origin, political affiliation, marital status, or disability.⁴⁷ This responsibility includes ensuring that applicants to, and employees at, GAO receive protection against disability discrimination afforded by the ADA, as amended. The Comptroller General also is responsible for ensuring that people with disabilities who are qualified to work at GAO have access to effective reasonable accommodation to allow for full and efficient job performance, unless doing so would impose an undue hardship on the Agency.⁴⁸

A. The Americans with Disabilities Act of 1990

The Americans with Disabilities Act was signed into law on July 26, 1990.⁴⁹ It protects Americans with disabilities from discrimination in a similar fashion to the Civil Rights Act of 1964,⁵⁰ which prohibits discrimination against Americans based on race, color, religion, sex, or national

⁴⁷ 31 U.S.C. § 732(f)(1)(A).

⁴⁸ Order 2306.1, *Employment of Individuals with Disabilities* (2006) at Ch. 1, ¶¶ 4 & 5.

⁴⁹ 42 U.S.C. § 12101, *et seq.* (1994).

⁵⁰ 42 U.S.C. § 2000e, *et seq.* (2018).

origin. Modeled after regulations implementing the Rehabilitation Act of 1973,⁵¹ which applies to Executive Branch employees,⁵² Title I of the ADA allows for administrative claims of workplace discrimination based on disability, with protections that extend to GAO employees.⁵³ Title I protects against discrimination on account of a disability during job application procedures, hiring, advancement, and separation procedures, as well as job training and other conditions of employment.⁵⁴ Discrimination occurs when an employer treats a qualified applicant or employee with a disability unfavorably because he or she has a disability.⁵⁵

The ADA, as amended, allows people with disabilities to request reasonable accommodation, and requires an employer to provide effective reasonable accommodation for people with disabilities

⁵¹ S. Rept. 101-116 at 10, *reprinted in* Vol. I, Committee Print Serial No. 102-A, Legislative History of Public Law 101-336 The Americans With Disabilities Act, prepared for the House Committee on Education and Labor at 108 (Dec. 1990).

⁵² Executive Branch employees can file claims of discrimination based on disability under the Rehabilitation Act, as amended, 29 U.S.C. § 794, rather than under the ADA, as amended. *See also Bonnette v. Shinseki*, 907 F. Supp. 2d 54, 60 (D.D.C. 2012).

⁵³ 42 U.S.C. §§ 12111-12117. *See also Gray v. GAO*, PAB Docket No. 17-02 (Oct. 30, 2017) at 1, n.1, *aff'd en banc* (Mar. 28, 2018) (“The rights and protections of the ADA expressly apply with respect to the conduct of GAO, (42 U.S.C. § 12209), subject to remedies and procedures established pursuant to the GAO Personnel Act of 1980 (GAOPA), 31 U.S.C. §§ 731-755”).

⁵⁴ 42 U.S.C. § 12112(a); *see also* DOJ, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act: Employment (Title I)* at https://www.ada.gov/ada_title_I.htm. Title II of the ADA was designed to prevent discrimination and denial of access to services and activities of state and local governments to people with disabilities. *See* DOJ, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act: State and Local Governments (Title II)* at https://www.ada.gov/ada_title_II.htm. Title III of the ADA prohibits discrimination on the basis of disability in the activities of places of public accommodations, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors’ offices and requires newly constructed or altered places of public accommodation, and commercial facilities, to comply with the standards of the ADA. *See* DOJ, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act: Public Accommodations and Commercial Facilities (Title III)* at https://www.ada.gov/ada_title_III.htm.

⁵⁵ *See* EEOC, *Disability Discrimination* at <https://www.eeoc.gov/laws/types/disability.cfm>. Qualified individuals with disabilities must be able to perform the job duties associated with the job for which they are hired. EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* at <https://www.eeoc.gov/policy/docs/accommodation.html>.

upon request, unless doing so would cause an undue hardship.⁵⁶ “Reasonable accommodation” under the ADA, is an exception made to normal operating procedures, which can change the way a person performs his or her job.⁵⁷ Modifications in the workplace from reasonable accommodation allow for equal employment opportunity for people with disabilities to apply for a job, perform the essential functions of their job, enjoy equal access to the benefits and privileges of employment, and meet the normal performance requirements of a position. A person must establish that they have an “actual disability” or a “record of disability” to qualify for reasonable accommodation under the ADA.⁵⁸

B. The Americans with Disabilities Act Amendments Act of 2008

The Americans with Disabilities Act Amendments Act became law on September 25, 2008.⁵⁹ Congress enacted the ADAAA to make clear its intention that the term “disabled,” as used in the ADA, offers protections to people with disabilities similar to those provided for people who were “handicapped,” as previously used in the Rehabilitation Act,⁶⁰ and that the range of people covered

⁵⁶ 42 U.S.C. §§ 12111(10), 12112; *see also* 29 C.F.R. 1630.2(p) (1997) (“Undue hardship” means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business).

⁵⁷ EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* at <https://www.eeoc.gov/policy/docs/accommodation.html>.

⁵⁸ EEOC, *Fact Sheet on the EEOC’s Final Regulations Implementing the ADAAA (Fact Sheet)* at https://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm.

⁵⁹ Pub. L. No. 110-325, 122 Stat. 3553 (2008) (effective Jan. 1, 2009).

⁶⁰ ADAAA § 2(a)(3). The Rehabilitation Act originally referred to individuals covered under the Act as “handicapped” individuals. This changed in 1992 when the Rehabilitation Act was amended to cover individuals with “disabilities.” 29 U.S.C. § 701, *et seq.* (1994).

under both statutes would be similar.⁶¹ Prior to the enactment of the ADAAA, Congress's expectation for the ADA did not become a reality.⁶² Both EEOC regulations and decisions of the Supreme Court of the United States interpreted statutory provisions narrowly, effectively reducing coverage for people with disabilities, which Congress had intended to provide in the ADA.⁶³ Therefore, Congress enacted the ADAAA to make clear that it intended the ADA to provide broad coverage to protect anyone who faces discrimination on the basis of disability.⁶⁴ The ADA, as amended by the ADAAA, retains the ADA's definition of "disability," with respect to an individual, as:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.⁶⁵

This definition aligns with the intended definition of disability in the Rehabilitation Act.⁶⁶

⁶¹ See ADAAA § 2(a)(1), (3) ("in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage").

⁶² See ADAAA § 2(a)(3) ("while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973 [which included more variations of disability], that expectation has not been fulfilled").

⁶³ See ADAAA § 2(a)(4)-(8) (noting that EEOC's ADA regulations imposed too high a standard, inconsistent with Congressional intent, and the Supreme Court "narrowed the broad scope of protection" and required a "greater degree of [disability] limitation" than Congress intended).

⁶⁴ See 154 Cong. Rec. 13769 (2008); see also the ADAAA's introductory title, introducing the Act as "An Act [t]o restore the intent and protections of the Americans with Disabilities Act of 1990." Pub. L. No. 110-325, 122 Stat. 3553.

⁶⁵ ADAAA § 4(a) (amending 42 U.S.C. § 12102(1)).

⁶⁶ See 29 U.S.C. §§ 705(9), 705(20) (defining individual with a disability).

EEOC Regulations

With enactment of the ADAAA, Congress directed the EEOC to amend its regulations interpreting Title I of the ADA.⁶⁷ The EEOC had been interpreting an “impairment” that “substantially limits” a major life activity under the ADA to be one that prevents or severely or significantly restricts a major life activity.⁶⁸ After the ADA was amended by the ADAAA, an “impairment” “substantially limiting” a major life activity need only meet the lower standard of a functional limitation rather than a higher standard that prevents or severely or significantly restricts a major life activity. This change extended the protections of the ADA, as amended, to far more people.⁶⁹

The EEOC’s *Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act as Amended*, reflect this change:

Pursuant to the Amendments Act, the definition of disability under the ADA, 42 U.S.C. 12101, *et seq.*, shall be construed in favor of ***broad coverage*** to the maximum extent permitted by the terms of the ADA as amended, and the ***determination of whether an individual has a disability should not demand extensive analysis***.... The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.⁷⁰

Additionally, after enactment of the ADAAA, the EEOC created the following list of conditions that should be included within the definition of disability under the ADA, as amended:

⁶⁷ ADAAA § (2)(b)(6).

⁶⁸ See EEOC, *Questions and Answers on the Notice of Proposed Rulemaking for the ADA Amendments Act of 2008* at https://www.eeoc.gov/policy/docs/qanda_adaaa_nprm.html.

⁶⁹ See ADAAA § 4(a) (“The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008”).

⁷⁰ EEOC, *Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended*, 76 Fed. Reg. 16978 (Mar. 25, 2011) (codified at 29 C.F.R. 1630) (emphasis added); see also EEOC, *Fact Sheet* at https://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm.

[D]eafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.⁷¹

The ADA, as amended, also more clearly defined “major life activity”⁷² to include “major bodily functions.”⁷³ In short, enactment of the ADAAA, amending the ADA, required the EEOC to broaden the reach of the ADA’s protection.

Supreme Court

Enactment of the ADAAA, amending the ADA, also effectively reversed several rulings issued by the Supreme Court of the United States that had interpreted the definition of a disability narrowly, thereby ensuring a wider scope of ADA protections for people with disabilities. Some examples of the effects of amending the ADA include:

- Overturning the holding in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), as it relates to the third prong of the definition of disability (being “regarded as” a person with a disability) and reinstating the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987), which set forth a broad view of the third prong of the definition of “handicap” under the Rehabilitation Act of 1973;

⁷¹ EEOC, *Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008* (Questions and Answers: EEOC Final Rule on Implementing the ADAAA), ¶ 19, at https://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm; see also EEOC, *Summary of Key Provisions: EEOC’s Notice of Proposed Rulemaking (NPRM) to Implement the ADA Amendments Act of 2008 (ADAAA)* at <https://www.eeoc.gov/laws/regulations/adaaa-summary.cfm>.

⁷² The ADA, as amended by the ADAAA, expands the interpretation of “major life activities” to include, but not be limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” ADAAA § (4)(a) (amending 42 U.S.C. § 12102(2)(A)). Additional examples include “interacting with others, writing, engaging in sexual activities, drinking, chewing, swallowing, reaching, and applying fine motor coordination.” H.R. Rep. No. 110-730, pt. 1, at 11 (2008).

⁷³ The ADA, as amended by the ADAAA, interprets “major bodily functions” as “including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” ADAAA § 4(a) (amending 42 U.S.C. § 12102(2)(B)).

- Overturning the Supreme Court’s holding from 1999 in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), *Murphy v. UPS*, 527 U.S. 516 (1999), and *Albertson’s v. Kirkingburg*, 527 U.S. 555 (1999), that mitigating measures must be considered in determining whether an “impairment” constitutes a disability under the law; and
- Overturning the Supreme Court’s holding in *Toyota Motor Mfg. v. Williams*, 534 U.S. 184 (2002), which narrowed the scope of being substantially limited with respect to manual tasks.⁷⁴

The ADA, as amended, thus required that EEOC policies ensure a wider scope of protection for people in the workplace against discrimination on account of a disability.⁷⁵

Under the Supreme Court’s pre-ADAAA analysis, the more successful a person was at coping with or mitigating a disability, the more likely it was that a Court would find that the person was not a person with a disability, or no longer a person with a disability, and therefore not covered under the ADA.⁷⁶ Some lower courts, relying on the Supreme Court decisions outlined above (holding that an individual’s condition did not constitute a disability), never reached the legal analysis as to whether disability-based discrimination had occurred. This, too, had the effect of denying ADA protection for people with conditions such as amputation, intellectual disability, multiple sclerosis, HIV/AIDS, muscular dystrophy, cancer, diabetes, and epilepsy.⁷⁷

⁷⁴ 42 U.S.C. § 12101; Pub. L. No. 110-325, §§ 2(b)(2), (3), (4), (5); Eric Dunleavy & Art Gutman, “Understanding the ADA Amendments Act of 2008 (ADAAA): Back to the Future?” *Industrial-Organizational Psychologist*, 46(3) 81-87 (2009).

⁷⁵ See ADAAA § 2(b).

⁷⁶ See ADAAA § 2(a)(6) (noting that “as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities”); see also 154 Cong. Rec. 18522-23 (2008) (Statement of Sen. Tom Harkin).

⁷⁷ A review of the Supreme Court’s analysis after enactment of the ADA in 1990, and prior to the enactment of the ADAAA in 2008, indicates that the conditions were found not within the definition of disability because they did not substantially limit a major life activity under the ADA in the following court cases (with the noted condition): (Footnote continued on next page)

With enactment of the ADAAA, amending the ADA, people with such conditions are offered more protection. Today, the determination of whether an “impairment” “substantially limits” a major life activity per the ADA, as amended, is to be made without regard to the

(Footnote continued from previous page)

- *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 562-67 (1999) (vision in one eye);
- *Sorensen v. University of Utah Hosp.*, 194 F.3d 1084, 1087-89 (10th Cir. 1999) (multiple sclerosis);
- *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 724-25 (8th Cir. 2002) (diabetes);
- *Epstein v. Kalvin-Miller Int’l, Inc.*, 100 F. Supp. 2d 222, 224-29 (S.D.N.Y. 2000) (heart disease);
- *Littleton v. Wal-Mart Stores, Inc.*, 231 Fed. Appx. 874, 875-78 (11th Cir. 2007) (intellectual and developmental disabilities);
- *Eckhaus v. Consolidated Rail Corp.*, 2003 WL 23205042 at *8-*10 (D.N.J. 2003) (hearing aid);
- *Johnson v. North Carolina Dep’t of Health & Human Servs.*, 454 F. Supp. 2d 467, 473-74 (M.D. N.C. 2006) (bipolar disorder);
- *Tangieres v. Johns Hopkins Hosp.*, 79 F. Supp. 2d 587, 594-96 (D. Md. 2000) (asthma);
- *Cruz Carrillo v. AMR Eagle, Inc.*, 148 F. Supp. 2d 142, 144-46 (D.P.R. 2001) (HIV infection);
- *Todd v. Academy Corp.*, 57 F. Supp. 2d 448, 452-54 (S.D. Tex. 1999) (epilepsy).

The United States Court of Appeals for the District of Columbia Circuit also has held that the ADAAA, amending the ADA, does not apply retroactively. *Lytes v. DC Water & Sewer Authority*, 572 F.3d 936 (D.C. Cir. 2009).

Compare with legal analysis of conditions found within the definition of disability under Section 504 of the Rehabilitation Act (pre-ADA) in the following court cases with the noted condition:

- *Kampmeier v. Nyquist*, 553 F.2d 296, 299 n.7 (2d Cir. 1977) (vision in one eye);
- *Pushkin v. Regents of Univ. of Colorado*, 658 F.2d, 1372, 1377, 1387 (10th Cir. 1981) (multiple sclerosis);
- *Bentivegna v. U.S. Dep’t of Labor*, 694 F.2d 619, 621 (9th Cir. 1982) (diabetes);
- *Bey v. Bolger*, 540 F. Supp. 910, 927 (E.D. Pa. 1982) (heart disease);
- *Flowers v. Webb*, 575 F. Supp. 1450, 1456 (E.D.N.Y. 1983) (intellectual and developmental disabilities);
- *Strathie v. Dep’t of Transp.*, 716 F.2d 227, 230 (3d Cir. 1983) (hearing aid);
- *Gardner v. Morris*, 752 F.2d 1271, 1280 (8th Cir. 1985) (bipolar disorder);
- *Carter v. Tisch*, 822 F.2d 465, 466 (4th Cir. 1987) (asthma);
- *AFGE v. U.S. Dep’t of State*, 662 F. Supp. 50, 53-54 (D.D.C. 1987) (HIV infection);
- *Reynolds v. Brock*, 815 F.2d 571, 574 (9th Cir. 1987) (epilepsy).

ameliorative effects of mitigating measures. The ADA, as amended, explains:

[t]he determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (II) use of assistive technology; (III) reasonable accommodations or auxiliary aids or services; or (IV) learned behavioral or adaptive neurological modifications.⁷⁸

In short, enactment of the ADAAA established a lower threshold for people with certain conditions to show coverage under the ADA's definition of disability.

Summary of the Effects of the ADAAA's Enactment

Enactment of the ADAAA, amending the ADA, shifted analytical focus away from the actual effect of an individual's disability and redirected the *focus on whether the individual experienced discrimination* on account of the disability.⁷⁹ Another way to describe this change is that legal analysis shifted away from focusing on what an employer believed about whether an individual's condition substantially limited the individual in a major life activity and redirected the *focus toward how an individual had been treated* because of an actual or perceived condition.⁸⁰ As one legal expert has described this shift, "[a]fter the passage of the ADA Amendments Act in 2008, the law

⁷⁸ ADAAA § 4(a) (amending 42 U.S.C. § 12102(4)(E)(i)).

⁷⁹ 154 Cong. Rec. 18520 (2008) ("[C]ourts [are required] to focus primarily on whether discrimination has occurred or accommodations were improperly refused") (Statement of Managers). See also EEOC, *Fact Sheet* at https://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm ("In keeping with Congress's direction . . . the primary focus of the ADA is on whether discrimination occurred, *the determination of disability should not require extensive analysis*" (emphasis in original)).

⁸⁰ ADAAA § 4(a) (amending 42 U.S.C. § 12102(1)(C)) (an individual meets the requirement of being "regarded as" having an "impairment" if the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived "physical or mental impairment" whether or not the "impairment" limits or is perceived to limit a major life activity); see also H.R. Rep. No. 110-730, pt. 1, at 13-14 (2008).

changed, and the EEOC issued regulations that told employers they needed to *focus on the accommodation process more so than [on] whether or not someone was [a person with a disability]*.⁸¹ This shift in analysis effectively broadened coverage under the ADA, as amended,⁸² and allowed individuals to overcome the hurdle of proving they are a person with a disability within the meaning of the ADA more easily.⁸³ This change also had the effect of increasing the number of individuals who could meet eligibility requisites for reasonable accommodation under the ADA, as amended.⁸⁴

⁸¹ *Employment Law This Week: ADA Special Edition*, National Law Review (July 30, 2018) (emphasis added) at <https://www.natlawreview.com/article/employment-law-week-ada-special-edition> (comment by Joshua A. Stein of Epstein Becker & Green, P.C.). In focusing on the accommodation process, however, an employer can require that an individual with a nonapparent disability provide documentation to support a request for accommodation. *Ward v. McDonald*, 762 F.3d 24, 31-32 (D.C. Cir. 2014).

⁸² ADAAA at § 4(a) (amending 42 U.S.C. § 12102(4)(A)) (“[t]he definition of disability in this Act shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of this Act”); *see also* 154 Cong. Rec. 18518 (2008) (“the definition of disability should not be unduly used as a tool for excluding individuals from the ADA’s protections”) (Statement of Managers).

⁸³ Disability analysis can focus on the “condition, duration, and manner” of a disability. 154 Cong. Rec. 18518 (2008) (Statement of Managers) (Conditions that are trivial, transitory, and minor, such as a cold or the flu, “with an actual or expected duration of 6 months or less,” are not considered disabilities under the law). ADAAA § 4(a) (amending § 42 U.S.C. § 12102(3)(B)); H.R. Rep. No. 110-730, pt. 2, at 3, 14, 27 (2008). A disability must limit at least one major life activity, but the condition need not be permanent or severe to be covered by the ADA, as amended. ADAAA § 4(a) (amending 42 U.S.C. § 12102(4)(C)-(D)) (“An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active”); *see also* EEOC, *Fact Sheet* at https://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm.

⁸⁴ Gregory A. Hearing & Marquis W. Heilig, “Recent Developments in Employment Law & Litigation,” *45 Tort Trial & Ins. Prac. L. J.* 319, 321-23 (2010).

CHAPTER IV

ANALYSIS OF GAO POLICIES, PROCEDURES, AND PRACTICES

In exercise of its oversight responsibility, the Board conducted the following legal review of Agency policies, procedures, and practices as they relate to the expanded definition of disability under the ADA, as amended. Additionally, the Board examined the Agency’s reasonable accommodation process for consistency with the amended law’s requirements. The Board’s review also encompassed the Agency’s recent focus on “Pathways to Inclusion at GAO”; the Comptroller General’s Equal Employment Opportunity Statement and diversity video; the Agency’s “People Values” campaign; applicable GAO Orders; the Agency’s *Diversity, Equity, and Inclusion Strategic Implementation Plan (DE&I Plan)*;⁸⁵ the Agency’s *Workforce Diversity Plans*; the Agency’s *Reasonable Accommodation Reports*; and additional resources, including Agency events, training courses, and panel discussions.⁸⁶

Review of these materials reveals that GAO has taken steps to address the issue of equal employment opportunity and to create an atmosphere where applicants and employees, including people with disabilities, are valued, respected, and treated fairly. GAO has issued several Orders, plans, and reports codifying its general commitment to equal employment opportunity. The Board finds, however, that there are areas where the Agency can update its policies, procedures, and practices to align with the ADA, as amended, and more closely align with ongoing efforts in the

⁸⁵ See *supra* n.2.

⁸⁶ See Appendix L for a listing of “Applicable GAO Policies, Procedures, and Practices” reviewed for this study.

Executive Branch to increase inclusion levels in employment for qualified people with disabilities to 12% generally and 2% for those with targeted disabilities.⁸⁷

A. Equal Employment Opportunity

On June 5, 2019 the Comptroller General reaffirmed GAO's commitment to diversity and inclusion by recognizing "Pathways to Inclusion at GAO," in which the Comptroller General highlighted GAO's diversity, equity, and inclusion efforts and core people values aimed at reflecting a diverse workforce, ensuring GAO employees are valued, respected, and treated fairly in the workplace and given opportunities to develop to their full potential.⁸⁸ The prior year, on June 1, 2018, in conjunction with the Agency's celebration of diversity and inclusion, the Comptroller General posted an Agency-wide video recording noting:

June 1st marks the beginning of our 21st formal celebration of diversity and inclusiveness at GAO. This celebration demonstrates the Agency's commitment to valuing the diverse talents of all GAO staff and their contributions to GAO's mission. In 2017, we expanded our Core Values to include our People Values of valuing, respecting, and treating each other fairly

This year's theme "The Journey to Inclusion: Respect, Engage, Acknowledge and Listen" incorporates the essence of our People Values. This involves seeking out and appreciating each person's perspectives; treating everyone with dignity; and fostering a work environment that provides opportunities for all employees to excel. It also denotes that, while we have made momentous progress towards becoming a diverse and inclusive environment since GAO's founding in 1921, we must continue to build on and sustain these gains

⁸⁷ The Board recognizes, however, that GAO, as a mid-size agency, is smaller in size than the Executive Branch as a whole; the Agency engages in highly-specialized hiring for the sophisticated level of work that Congress and the American people expect from GAO's workforce; and these factors do not readily lend GAO to experience the same level of employee turnover as found in the Executive Branch as a whole. Considering these factors, the Board notes that rapid, immediate movement toward the 12% and 2% figures can be difficult for an agency of GAO's size and specialization.

⁸⁸ GAO Notice, *From the Comptroller General: Recognizing Pathways to Inclusion* (June 5, 2019).

The Comptroller General’s video message emphasizes the Agency’s stated commitment to sustaining a work environment that provides opportunities for all employees to excel, which includes making reasonable accommodation for people with disabilities.

These initiatives also complement the Agency’s equal employment opportunity (EEO) statement. The Comptroller General has issued several written EEO Statements annually, with the last statement being published on July 24, 2019.⁸⁹ The Comptroller General’s latest EEO Statement reaffirms GAO’s commitment to achieving equal employment opportunity, diversity, equity, and inclusion in the workplace. An excerpt from the Comptroller General’s 2019 EEO Statement follows:

GAO continues to promote equal employment opportunity and diversity, equity and inclusion in the workplace, as seen in the recent celebration of Diversity and Inclusion Month, where the theme was “Pathways to Inclusion.” This statement reaffirms GAO’s commitment, as well as my commitment as Comptroller General, to equal employment opportunity, diversity, equity, and inclusion in the GAO workplace.

Our commitment to the GAO workforce includes our people values where every employee is respected, valued and treated fairly, and all are provided opportunities to develop to their full potential. These values are central for GAO to successfully achieve our mission of supporting Congress in meeting its constitutional responsibilities and ensure the accountability of the federal government for the benefit of the American people. Each person’s unique skills, talents, experiences and characteristics broaden the range of perspectives and approaches to GAO’s work.

GAO policy provides for equal opportunity in employment for all employees and applicants and prohibits workplace discrimination because of race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, or gender identity. This policy applies to all human capital and employment practices, prohibits harassment based on any of these protected categories, and bans any form of retaliation or reprisal against any person for supporting or participating in the agency’s equal employment opportunity process.

⁸⁹ Memorandum to All GAO Employees from the Comptroller General re: *Equal Employment Opportunity Policy and Diversity, Equity and Inclusion Statement* (July 23, 2019) at <https://notices.gao.gov/2019/07/equal-employment-opportunity-policy-statement-3>. In 2018, a similar message was conveyed by video.

All employees have a role in supporting a diverse, equitable, and inclusive work environment by demonstrating respect for each other and acting with integrity in every aspect of our workplace experiences. GAO provides multiple resources for employees who have concerns in this area. Among other things, employees should bring any equal employment opportunity issues to the attention of management, including Directors and Managing Directors, each of whom has a responsibility to address and rectify matters that may negatively impact our strong commitment to diversity, inclusion and equal employment opportunity.

Finally, and importantly, the services of the Office of Opportunity and Inclusiveness (O&I) are available to address the concerns of those who believe they have been discriminated against, harassed, or subject to unlawful retaliation. These resources include confidential counseling, mediation and discrimination complaint processing.⁹⁰

The purpose of the Comptroller General’s annual EEO Statement is to demonstrate intent to:

- Foster a work environment that reflects the diversity of today’s society and supports a culture of equal employment opportunity, diversity, equity, and inclusion;
- Remind GAO employees of the Agency’s ongoing commitment to create and sustain a workplace devoid of all forms of discrimination, including disability discrimination; and
- Remind employees of resources available to them should they have concerns involving equal employment opportunity in the workplace.⁹¹

As stated above, the Comptroller General’s annual EEO Statement contributes to the Agency’s diversity, equity, and inclusion efforts by emphasizing for all employees, including people with disabilities, the full extent of their legal rights to equal employment opportunity.

⁹⁰ *Id.*

⁹¹ *Id.*

B. “People Values” Campaign

In November 2017, GAO launched its “People Values” campaign⁹² and “Culture & Connectedness” initiative,⁹³ to build upon the commitment expressed in the Comptroller General’s annual EEO Statement. The goal of the “People Values” campaign is to emphasize that all individuals working at GAO are to be valued, respected, and treated fairly over the course of their employment. Specifically, the “People Values” campaign encourages recognition of the talents and life experiences that all individuals at GAO bring to their work. It also supports fair and equal access to employment opportunity at the Agency and aims to advance GAO’s mission and productivity through a supportive environment for its skilled workforce. GAO’s “Culture &

⁹² In accordance with GAO’s “People Values” Campaign:

“Valued” means the Agency should:

- (1) See everyone as an individual; and
- (2) Tap into everyone’s skills, talents, and life experiences.

“Respected” means the Agency should:

- (1) Listen, hear, and acknowledge everyone’s viewpoints;
- (2) Keep an open mind; and
- (3) Embrace differences.

“Treated fairly” means the Agency should:

- (1) Act with honesty and integrity;
- (2) Treat all equitably;
- (3) Check bias[es];
- (4) Support equal access to opportunities; and
- (5) Trust others to do their part.

See GAO Web, “People Values” at https://intranet.gao.gov/home/gao-wide_programs/employee_engagement/people_values; see also *Management News*, Vol. 46, No. 4 (Nov. 26-Dec. 7, 2018) at 1 (noting demonstration of people values in GAO’s workplace from the Learning Center; Forensic Audits & Investigative Services; Homeland Security & Justice; Contracting & National Security Acquisitions; and Strategic Planning & External Liaison).

⁹³ See GAO Web, “Culture and Connectedness” at https://intranet.gao.gov/home/gao-wide_programs/employee_engagement/culture_and_connectedness.

Connectedness” initiative stresses the importance of relationship-building to enhance a shared sense of purpose among Agency staff. GAO’s “People Values” Campaign, as well as its “Culture & Connectedness” initiative, are intended to enhance communication at the Agency that all employees, including people with disabilities, should receive fair and equal access to employment opportunity at GAO, including provision of reasonable accommodation when appropriate. The Board also recognizes GAO’s goal to continue to strengthen efforts to build a workplace that promotes inclusion and commitment to “People Values.”⁹⁴

C. Orders

GAO Orders play an important role with respect to enforceable employment rights at the Agency. The following Orders are most germane to the employment of people with disabilities at the Agency, including providing reasonable accommodation, as legally appropriate:

Order 2213.1: *Positions Covered by Non-Competitive Appointments* (July 31, 2018);

Order 2306.1: *Employment of Individuals with Disabilities* (Mar. 27, 2006);

Order 2713.1: *Opportunity and Inclusiveness in the Government Accountability Office* (Mar. 23, 2005);

Order 2713.2: *Discrimination Complaint Resolution Process* (Dec. 9, 2009); and

Order 2713.3: *GAO Equal Opportunity Recruitment Program* (Oct. 14, 2004).

⁹⁴ *DE&I Plan* at 57.

A brief review of the currently published edition of each of these Orders⁹⁵ follows:

Order 2213.1: *Positions Covered by Non-Competitive Appointments*

Order 2213.1 on *Positions Covered by Non-Competitive Appointments* was issued on July 31, 2018. It regulates noncompetitive appointments at the Agency and explains that, while “[i]ndividuals with disabilities are generally employed through regular competitive procedures[,] GAO may use the Category A non-competitive appointing authority to hire persons with intellectual disabilities, psychiatric disabilities, or severe physical disabilities”⁹⁶

Order 2306.1: *Employment of Individuals with Disabilities*

Order 2306.1 on *Employment of Individuals with Disabilities* was issued on March 27, 2006. The Board notes that the Agency has taken steps toward revision of this Order. The Agency circulated proposed revisions to Order 2306.1 on May 15, 2017 and January 7, 2019. The comment periods for the proposed revisions closed on June 20, 2017 and February 8, 2019 respectively. However, the final version has not been issued yet, and the 2006 version of Order 2306.1 remains in effect to date.

The current version of Order 2306.1 covers the framework for employment of people with disabilities at GAO, and aims to align the Agency’s policy with the ADA. The Order states that it is GAO’s policy to safeguard the legal rights and benefits of employees and applicants with

⁹⁵ The Board recognizes that additional Orders may be relevant, on a case-by-case basis, to the experiences of people with disabilities at the Agency as they relate to applicant and employee requests for reasonable accommodation in accordance with the ADA, as amended. When consulted in the processing of a request for reasonable accommodation, the Agency should interpret the terms of these Orders in accordance with the ADA, as amended, and add clarifying references to the protections offered by the ADAAA where needed.

⁹⁶ Order 2213.1 at ¶ 7.a(3) (2018).

disabilities,⁹⁷ and the Agency “is committed to accommodating the reasonable requests of individuals with disabilities.”⁹⁸ This Order establishes roles for GAO’s Reasonable Accommodation Coordinator (RAC)⁹⁹ and the Accommodation Committee,¹⁰⁰ and indicates that GAO’s Office of the General Counsel provides legal advice to the RAC, the Accommodation Committee, and GAO management on reasonable accommodation for qualified persons with a disability.¹⁰¹

Order 2306.1 sets forth the Agency’s definition of an individual with a disability as one who:

- has a physical or mental impairment that substantially limits one or more of his or her major life activities;
- has a record of such impairment; or
- is regarded as having such impairment.¹⁰²

Order 2306.1 further discusses “qualified” individuals with disabilities as those who satisfy “the requisite skill, experience, education, or other job[-]related requirements of [an] employment position[,] ... and who, with or without reasonable accommodation, can perform

⁹⁷ Order 2306.1 at Ch. 1, ¶ 4.b.

⁹⁸ *Id.* at ¶ 4.a.

⁹⁹ One of the responsibilities of the RAC is to organize Agency efforts to increase hiring of employees with disabilities and to lead GAO’s efforts toward broader accessibility at the Agency. Order 2306.1 at Ch. 2, ¶ 1.a(1); *see also Workforce Diversity Plan* at 18 (2012).

¹⁰⁰ Order 2306.1 at Ch. 2, ¶ 1.a(2). GAO’s Accommodation Committee reviews periodic reports from the RAC on requests for reasonable accommodation, and the Accommodation Committee is responsible for reviewing requests for reasonable accommodation beyond the RAC’s authority to approve. *See Workforce Diversity Plan* (2011) at 29.

¹⁰¹ Order 2306.1 at Ch. 2, ¶ 1.c. The Board suggests the Agency consider adding a representative from the Office of General Counsel to the membership of the Accommodation Committee.

¹⁰² *Id.* at Ch. 1, ¶ 5.a. The Board notes that GAO’s definition of an individual with a disability, as stated in Order 2306.1, aligns with the definition of an individual with a disability in the ADA (and the ADAAA).

the essential functions of such position.”¹⁰³ This Order defines “[e]ssential functions” as “the fundamental job duties of the employment position ... not includ[ing] marginal functions.”¹⁰⁴

Order 2306.1 defines the Agency’s interpretation of “reasonable accommodation” as a change to the work environment or the way things are customarily done to enable a person with a disability to enjoy equal employment opportunities, such as:

- Ensuring equal opportunity in the employment process so that a qualified applicant with a disability may be considered for a position that he or she desires;
- Enabling a qualified individual with a disability to perform the essential functions of a position;
- Enabling an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by other similarly situated employees without disabilities, without creating undue hardship on the Agency.¹⁰⁵

Order 2306.1 explains that “reasonable accommodation” can include:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- Job restructuring; part-time or modified work schedules; acquisition or modifications of equipment or devices; appropriate modifications of examinations, training materials, or policies; providing qualified readers or interpreters; and other similar accommodations for individuals with disabilities; or
- Reassignment, which will be considered only if it has been determined that there are no other effective accommodations that will enable the employee to perform the essential functions of [the individual’s] position.¹⁰⁶

¹⁰³ *Id.* at Ch. 1, ¶ 5.b.

¹⁰⁴ *Id.* at Ch. 1, ¶ 5.c.

¹⁰⁵ *Id.* at Ch. 1, ¶ 5.d.

¹⁰⁶ *Id.* at Ch. 1, ¶ 5.d(2).

Additionally, Order 2306.1 defines the Agency’s interpretation of “undue hardship,” with respect to providing an accommodation for a person with a disability, as “an action requiring significant difficulty or expense to GAO.”¹⁰⁷ Factors to be considered when making a determination of “undue hardship” include: (1) “nature and net cost of the accommodation”; (2) “GAO’s financial resources”; (3) “type of work performed”; and (4) “impact of the accommodation upon the operation of the [employee’s] team, unit, or office, including ... impact on the ability of other employees to perform their duties.”¹⁰⁸

Order 2306.1, however, does not clarify for the benefit of GAO applicants and employees that ***under the ADA, as amended by the ADAAA, the analysis for an individual to qualify for disability protections under law must focus on whether the individual experiences discrimination*** on account of a disability, rather than on whether the Agency believes the nature of a person’s condition rises to the level of substantially limiting the individual in a major life activity.¹⁰⁹ This is an important distinction following enactment of the ADAAA. It is a distinction that allows more people with disabilities to fall within the protections of the ADA, as amended. If clearly and noticeably communicated to GAO applicants and employees, it could increase the number of applicants and employees with disabilities at GAO who consider themselves eligible to seek effective reasonable accommodation for a disability, when needed to complete the application process or perform their work.

¹⁰⁷ *Id.* at Ch. 1, ¶ 5.e.

¹⁰⁸ *Id.*

¹⁰⁹ For example, Order 2306.1 at Ch. 3, ¶ 1.b states that “[o]nce an employee or applicant has made a request for reasonable accommodation, the RAC will first determine whether the individual has a disability within the meaning of the ADA.” Per the ADA, as amended by the ADAAA, the determination of disability should not require extensive analysis and the focus should be on the accommodation process and whether the individual has experienced discrimination. ADAAA § 2(b)(5); Questions and Answers: EEOC Final Rule on Implementing the ADAAA , ¶ 9 at *supra* n.71.

The Board recognizes that the Agency is taking steps to revise Order 2306.1 to emphasize GAO's commitment to a diverse workforce that is inclusive of employees with disabilities. Nevertheless, revisions to Order 2306.1 have not been finalized, leaving the current published version of Order 2306.1 in place. With an issuance date preceding the 2008 enactment of the ADAAA, the current published version of Order 2306.1 has not acknowledged the expanded reach of protections for people with disabilities under the ADA, as amended by the ADAAA, for over a decade.

The Board encourages prompt issuance of revisions to Order 2306.1 to reflect the change in legal analysis following enactment of the ADAAA, amending the ADA, by which Congress lowered the threshold for a person to be entitled under law to protection against disability discrimination, including modifications through an agency's reasonable accommodation program as appropriate. Revisions would make GAO's practices regarding the employment of people with disabilities more consistent with the ADA, as amended. The Agency's acknowledgement and support of the same will better inform people with disabilities of the full extent of their protections under the law. In addition, it will increase awareness among GAO employees of the Agency's equal employment opportunity efforts with respect to people with disabilities.

Order 2713.1: *Opportunity and Inclusiveness in the Government Accountability Office*

Order 2713.1 on *Opportunity and Inclusiveness in the Government Accountability Office* was issued on March 23, 2005. It states the Agency's goals for a fair, unbiased, and inclusive work environment in which personnel operations are conducted without regard to a person's race, color, religion, sex (including pregnancy), national origin, age (40 or over), nondisqualifying disability, genetic information, sexual orientation, or gender identity.¹¹⁰ This Order indicates that Managing

¹¹⁰ Order 2713.1 at Ch. 1, ¶ 1.a (2005).

Directors at the Agency are responsible for carrying out equal opportunity policies, programs, and procedures in their respective units. This includes making legally required reasonable accommodation “for the needs of qualified employees and applicants with disabilities, when such accommodations can be accomplished without undue hardships on the [A]gency.”¹¹¹

The Board notes that the Agency has taken steps to revise Order 2713.1, with the comment period for revisions to this Order having closed on September 5, 2017. The revised Order has not yet been issued, and the current published version of Order 2713.1 remains in place. This version was issued over a decade ago, before the ADAAA’s enactment, and therefore does not reference the ADAAA’s changes to the ADA.¹¹² The Agency must finalize revisions to Order 2713.1 promptly, and include reference to the ADA, as amended by the ADAAA, and the expanded protections it affords people with disabilities.

Order 2713.2: *Discrimination Complaint Resolution Process*

Order 2713.2 on the *Discrimination Complaint Resolution Process* was issued on December 9, 2009. It outlines the procedures by which individuals or classes of people can pursue discrimination complaints based on race, color, religion, sex (including pregnancy), national origin, age (40 or over), disability, genetic information, sexual orientation, gender identity, or retaliation for protected activities, within GAO and through appeals to the Personnel Appeals Board.¹¹³ These procedures also apply to qualified people with a disability who are visitors or guests of GAO.¹¹⁴

¹¹¹ *Id.* at Ch. 2, ¶ 2.c.

¹¹² *Id.* at Ch. 1, ¶ 3.f.

¹¹³ Order 2713.2 at Ch. 1, ¶ 1.

The Board notes that the Agency has taken steps to revise Order 2713.2, with the comment period for revisions to this Order having closed on September 5, 2017. The revised Order has not yet been issued, and the current published version of Order 2713.2 remains in place. The current published version of Order 2713.2 (issued approximately one year after enactment of the ADAAA) does not reference the ADAAA.¹¹⁵ The Board recommends that the Agency finalize revisions to Order 2713.2 promptly in order to include reference to the changes to the ADA, as amended by the ADAAA, and the increased protections it affords people with disabilities.

Order 2713.3: GAO Equal Opportunity Recruitment Program

Order 2713.3 on the *GAO Equal Opportunity Recruitment Program* was issued on October 14, 2004. It sets forth GAO's equal opportunity recruitment policy "to provide a fair and merit-based recruitment program designed to attract a diverse pool of highly qualified candidates to the [A]gency."¹¹⁶ The Order places specific responsibilities for recruitment on the Chief Human Capital Officer, Managing Director of O&I, and the heads of teams and offices.¹¹⁷

D. Diversity, Equity, and Inclusion Strategic Implementation Plan, 2019-2023

The Board reviewed the Agency's recently published *Diversity, Equity, and Inclusion Strategic Plan, 2019-2023 (DE&I Plan)* to ascertain the level of emphasis GAO currently places on inclusion of people with disabilities in its workforce and prevention of prejudice or discrimination on

¹¹⁴ *Id.*

¹¹⁵ *Id.* at Ch. 1, ¶ 4.e.

¹¹⁶ Order 2713.3 at ¶¶ 1 & 5 (2004).

¹¹⁷ *Id.* at ¶ 6.

the basis of disability.¹¹⁸ The Agency recognizes people with disabilities are an important part of its diversity efforts. The Agency also has goals to enhance awareness of working with people with disabilities and to maintain an accessible workplace inclusive of employees with disabilities.¹¹⁹

The *DE&I Plan* notes that of GAO's present workforce numbering about 3,100 employees, people with self-identified disabilities made up 5 percent in fiscal year 2018 and the first half of fiscal year 2019.¹²⁰ The *DE&I Plan* also reports that the Agency has "steadily increased the number of permanent employees hired with self-identified disabilities" from 6% in fiscal year 2014 to 11% in fiscal year 2018."¹²¹ Finally, the *DE&I Plan* indicates that a priority area of focus for the Agency is to continue to recruit and hire employees "with self-identified disabilities who are underrepresented in GAO's workforce,"¹²² and it is an Agency goal to develop a plan to hire a diverse workforce with increased representation of people with disabilities.¹²³

Moreover, the *DE&I Plan* indicates that "GAO provides reasonable accommodations in compliance with the Americans with Disabilities Act. Reasonable accommodations can apply to the

¹¹⁸ *DE&I Plan* at 7 n.4 (GAO employees referenced in this report include "permanent" employees defined as "individuals who are appointed to a full-time, full-time temporary, or part-time position").

¹¹⁹ *Id.* at 58.

¹²⁰ *Id.* at 35 (The *DE&I Plan* reports that the 5% figure of employees with a self-identified disability within GAO's workforce between fiscal years 2018 and the first half of fiscal year 2019 is an increase from prior fiscal years: FY2014 (4%); FY2015 (4%); FY2016 (4%); and FY2017 (4%)).

¹²¹ *Id.* at 20 (The *DE&I Plan* reports the Agency's recent hiring efforts have resulted in the following percentages of newly hired permanent employees with self-identified disabilities: 6% of 317 new hires in FY2014; 7% of 195 new hires in FY2015; 7% of 221 new hires in FY2016; 9% of 175 new hires in FY2017; 11% of 222 new hires in FY2018; and 11% of 171 new hires for the first half of FY2019).

¹²² *Id.* at 10.

¹²³ *Id.* at 57-58.

duties of the job, where and how job tasks are performed, or both.”¹²⁴ The *DE&I Plan* indicates that from “fiscal years 2014 to 2018, GAO processed 1,628 new and reopened cases for reasonable accommodations. The outcome of processing these requests led to granting 910 requests.”¹²⁵ The *DE&I Plan* also indicates that GAO intends to enhance technology and infrastructure to support employment and retention of individuals with disabilities.¹²⁶

E. *Workforce Diversity Plans*

Prior to the publication of the *DE&I Plan*, the Agency had issued *Workforce Diversity Plans* from 2009 through 2016. The Agency’s *Workforce Diversity Plans* include reports on its efforts: (1) to recruit, hire, retain, and advance qualified people with disabilities, as well as targeted disabilities, and (2) to provide legally required reasonable accommodation, when appropriate, to allow for employees with disabilities to most effectively perform their jobs.¹²⁷ The Board reviewed the Agency’s *Workforce Diversity Plans* for recruitment, hiring, and retention; performance appraisals and awards; enhancements to the reasonable accommodation program (including the establishment of a RAC); and continuing education training programs. The Board notes that GAO’s *Workforce*

¹²⁴ *Id.* at 55.

¹²⁵ *Id.* at 55 & n.14 (The *DE&I Plan* reports that reopened cases “include those where the original accommodation provided is no longer functioning or meeting the employee’s needs.” The *DE&I Plan* also depicts the number of requests granted/processed as: FY2014: 178/295; FY2015: 183/329; FY2016: 150/282; FY2017: 179/306; and FY2018: 220/416).

¹²⁶ *Id.* at 58.

¹²⁷ *Workforce Diversity Plans* are a valuable resource and provide important information for the fiscal years issued. The 2008-2016 *Workforce Diversity Plans* can be obtained at https://intranet.gao.gov/oi/opportunity_and_inclusiveness/overview/workforce_diversity. The Comptroller General’s introduction to the *DE&I Plan* states that the Agency delayed issuing a *Workforce Diversity Plan* until the *DE&I Plan* was in place. *DE&I Plan* at 7. GAO’s Office of Opportunity and Inclusiveness was responsible for *Workforce Diversity Plans* through the issuance of the 2016 report. Comments from O&I indicate that responsibility for *Workforce Diversity Plans* now rests with GAO’s Office of the Special Assistant to the Comptroller General for Diversity and Inclusion. See Appendix M.

Diversity Plans also reflect the Agency’s efforts to work toward increasing employment opportunities for applicants and employees with disabilities and to provide a reasonable accommodation program, allowing for legally required reasonable accommodation for people with disabilities following amendments to the ADA by the ADAAA.¹²⁸

Recruitment, Hiring, and Retention

GAO has taken steps to improve its recruitment, hiring, and retention of people with disabilities. The Agency’s *Workforce Diversity Plans* indicate that, following enactment of the ADAAA of 2008, amending the ADA, the Agency:

- Sent representatives to career fairs at Gallaudet University and attended a Department of Labor conference on “Perspectives on Employment of Persons with Disabilities”,¹²⁹
- Introduced a “fillable” version of OPM’s form SF-256 entitled “Self-Identification of Disability,” available electronically for employees to update their disability status at any time, making it easier for people to self-report and update changes to their disability status, while improving the recording of numbers of people with disabilities employed at the Agency,¹³⁰
- Added a question to its employee survey designed to gather information on the disability status of GAO employees;¹³¹ and

¹²⁸ *Workforce Diversity Plan* at 43 (2016).

¹²⁹ *Workforce Diversity Plan* at 3 (2010).

¹³⁰ *See Workforce Diversity Plan* at 4, 20 (2009).

¹³¹ *Id.* at 21.

- Recognized the Advisory Council for Persons with Disabilities' (ACPD) celebration of National Disability Employment Awareness Month for GAO employees, including welcoming speakers to the Agency on disability related topics.¹³²

The Board recognizes the Agency's efforts in this regard, with credit for organizational efforts to employee groups such as the ACPD, and it encourages the Agency to continue efforts focusing on recruitment, hiring, retention, and advancement of qualified people with disabilities.¹³³ The Board also recognizes the Agency's reaffirmance of its continued focus to enhance outreach to underrepresented groups.¹³⁴

Performance Appraisals and Awards

GAO's 2013-2014 and 2016 *Workforce Diversity Plans* report that the results of Agency-wide reviews of the 2013 and 2015 performance appraisal cycles found no statistically significant differences in employee appraisal data for disability status across all pay plans.¹³⁵ They also report that selections of staff members for GAO recognition and awards in 2013 and 2015 were made in

¹³² *Workforce Diversity Plan* at 33, 38 (2010); *Workforce Diversity Plan* at 21 (2013-2014); see also *Advisory Council for People with Disabilities Celebrates National Disability Employment Awareness Month* (Oct. 2019) at: <https://notices.gao.gov/2019/10/advisory-council-for-people-with-disabilities-celebrates-national-disability-employment-awareness-month>.

¹³³ In addition to recruiting at Gallaudet University (Washington, DC), the Agency also may consider targeting recruiting activities at schools that specialize in services for students with disabilities such as: National Technical Institute for the Deaf (Rochester, NY); University of Alaska (Anchorage, AK); Diablo Valley College (Pleasant Hill, CA); De Paul University (Chicago, IL); Anderson University (Anderson, IN); Iowa State University (Ames, IA); Baylor University (Waco, TX); Samford University (Birmingham, AL); and Alfred University (Alfred, NY). The Board notes GAO has previously considered recruiting from the following universities that support people with disabilities: University of Wisconsin-Madison; University of North Carolina-Chapel Hill; and Mississippi State University. See *Recruitment: Reaching a Diverse Group of Candidates (Management Improvement Initiative Vd)* at 11 (Nov. 2009).

¹³⁴ *DE&I Plan* at 58.

¹³⁵ *Workforce Diversity Plan* at 9 (2013-2014); *Workforce Diversity Plan* at 16 (2016).

proportion to their representation by disability status within the groups of eligible recipients.¹³⁶

However, GAO's 2012 *Workforce Diversity Plan* indicates statistically significant differences in annual performance appraisal averages did appear for employees with a disability versus those who did not have a disability at the Band I and IIA levels in 2011.¹³⁷ This shows that GAO is tracking Agency data relating to performance appraisals and awards of employees with disabilities. Going forward, the Board suggests that the Agency analyze any disparities relating to disability appearing in relation to appraisals or awards. Attention to potential disparities could help enhance the Agency's retention of people with disabilities and targeted disabilities.

Establishment of Reasonable Accommodation Coordinator

The Agency's *Workforce Diversity Plans* indicate that, following amendments to the ADA, from enactment of the ADAAA of 2008, GAO created a full-time position for a Reasonable Accommodation Coordinator (RAC) to assist with processing and tracking of reasonable accommodation requests, and with educating GAO management and staff about disabilities and the reasonable accommodation process.¹³⁸ The RAC is assisted by a Reasonable Accommodation Specialist.¹³⁹

¹³⁶ *Workforce Diversity Plan* at 20 (2016); *Workforce Diversity Plan* at 12-13 (2013-2014).

¹³⁷ *Workforce Diversity Plan* at 10 (2012).

¹³⁸ *Workforce Diversity Plan* at 29 (2011); *Workforce Diversity Plan* at 18 (2012). See also Order 2306.1 at Ch. 2, ¶ 1.a(1).

¹³⁹ *Workforce Diversity Plan* at 29 (2011).

Per GAO's *Workforce Diversity Plan*, the RAC:

- Manages reasonable accommodation request processing at the Agency;
- Maintains a formal reasonable accommodation tracking system to manage requests for reasonable accommodation and track timeliness and results; and
- Reports quarterly to GAO's Accommodation Committee, through *Reports on Reasonable Accommodation*, on requests for reasonable accommodation (including the number of requests processed, the number of employees requesting reasonable accommodation, the number of cases closed and opened each quarter, as well as the time taken to address each request by type of request and disability code).¹⁴⁰

The Agency's 2011 *Workforce Diversity Plan* reported that GAO established "regular meetings of the Accommodation Committee to address those matters in which the [RAC] and the employee could not reach an accord on the reasonable accommodation."¹⁴¹ According to the Agency's 2012 *Workforce Diversity Plan*, GAO's RAC "coordinates efforts to increase hiring of employees with disabilities, and leads GAO's efforts to ensure broader accessibility of our facilities and electronic information."¹⁴²

¹⁴⁰ See Appendix M (Comments from GAO Chief Human Capital Officer adding that "quarterly updates on the disposition of reasonable accommodation requests at GAO" are also provided to the GAO Executive Committee, and GAO "post[s] this information on the GAO intranet so it is available to employees").

¹⁴¹ *Workforce Diversity Plan* at 29 (2011). See also *infra* n.227 (regarding frequency of Accommodation Committee meetings).

¹⁴² *Workforce Diversity Plan* at 18 (2012).

Reasonable Accommodation Program Enhancements

GAO's *Workforce Diversity Plans* also outline modifications that have been offered within the Agency's reasonable accommodation program for people with disabilities employed at the Agency, including:

- Communication Access Real-time Translation (CART) captioning services;¹⁴³
- Hearing aid compatible desk phones, screen readers, and voice recognition software for employees with disabilities;¹⁴⁴ and
- Human Capital Office visits to GAO workgroups to discuss Agency policies and practices related to reasonable accommodation.¹⁴⁵

Additional enhancements provided within the Agency's reasonable accommodation program include:

- Revision to the process for requesting and receiving reasonable accommodation;¹⁴⁶
- Development of a briefing for managers on the ADA and GAO's reasonable accommodation process,¹⁴⁷ as well as an Office of Opportunity and Inclusiveness training for managers and supervisors to clarify actions that can be taken in response to requests for reasonable accommodation from employees;¹⁴⁸

¹⁴³ *Workforce Diversity Plan* at 16 (2013-14). See Appendix M (Comments from the ACPD noting employee interest in increased availability of CART services beyond the level the Agency provides).

¹⁴⁴ See *Workforce Diversity Plan* at 23 (2012).

¹⁴⁵ *Id.* at 32; *Workforce Diversity Plan* at 49 (2016).

¹⁴⁶ *Workforce Diversity Plan* at 20 (2009).

¹⁴⁷ *Id.*

¹⁴⁸ *Workforce Diversity Plan* at 29 (2011).

- Establishment of a central reasonable accommodation budget to expedite funding for certain items and services;¹⁴⁹ and
- Streamlining the process for providing raised desks and dual (standing and sitting) work stations, ergonomic assessments, and chair exchanges for Headquarters staff.¹⁵⁰

¹⁴⁹ *Workforce Diversity Plan* at 16 (2013-2014). Reasonable accommodation previously was funded from the budget of the home unit of an employee requesting reasonable accommodation. Because the purchase of items and GAO services affected the employee's unit budget, Reasonable Accommodation staff previously had to prepare justification for expenditure for a reasonable accommodation in the employee's unit in order to get the funding approved. Establishment of a central reasonable accommodation budget eliminated the need for this action by the Reasonable Accommodation staff.

GAO previously reported that a centralized budget for reasonable accommodation was important to the hiring and retention of employees with disabilities. *Id.* (citing *Highlights of a Forum: Participant-Identified Leading Practices That Could Increase the Employment of Individuals with Disabilities in the Federal Workforce*, GAO-11-81SP (Oct. 10, 2010)). A centralized budget for reasonable accommodation also was called for in Executive Order No. 13548, *Increasing Federal Employment of Individuals with Disabilities*, *supra* n.22, and in a 2012 Department of Labor, Office of Disability Employment Policy report, *Federal Agency Employment Strategies: A Framework for Disability Inclusion*, Office of Disability Employment Policy, Department of Labor at 1 (Sept. 2012).

With the centralized budget, GAO's Reasonable Accommodation staff now has responsibility for approving reasonable accommodation requests, which helps maintain the confidentiality of the requester and removes reasonable accommodation budgetary concerns from the responsibility of unit heads. The centralized budget for reasonable accommodation has paid for items and services such as training on assistive technology and additional travel expenses for GAO employees. *Workforce Diversity Plan* at 16 (2013-2014).

¹⁵⁰ *Workforce Diversity Plan* at 15-16 (2013-2014). In meeting a request for reasonable accommodation, GAO provides items and services such as adjustable desks, ergonomic keyboards and mice, assistive technology (e.g., screen readers, voice recognition software, voice or sound amplification devices, and text magnification software), telework arrangements, and parking. GAO also provides sign-language interpreting and Communication Access Real-time Translation captioning services. In addition to providing reasonable accommodation to qualified people with disabilities as defined by the ADA, as a matter of policy, GAO's RAC also provides modifications to employees who have temporary or permanent conditions affecting their ability to perform their jobs. *Id.* at 15.

GAO's 2016 *Workforce Diversity Plan* further notes the Agency's continued efforts to enhance the availability of legally required reasonable accommodation by:

- Improving the Agency's outreach to employees by creating user guides for assistive technologies and a comprehensive intranet page to facilitate access to reasonable accommodation services,¹⁵¹ and
- Instituting monthly meetings between the Reasonable Accommodation Office and the Advisory Council for Persons with Disabilities, which facilitates employee participation with management in addressing matters important to employees with disabilities and their colleagues.¹⁵²

The Agency has been making ongoing changes to enhance its reasonable accommodation program.

Continuing Education Training Courses

GAO's *Workforce Diversity Plans* indicate the Agency has continued to develop and implement Agency-wide training¹⁵³ on the reasonable accommodation process, including incorporating diversity and inclusion-related concepts and principles into Learning Center classes involving leadership and teamwork.¹⁵⁴ GAO has developed a training course entitled "The

¹⁵¹ *Workforce Diversity Plan* at 24 (2016). GAO's Accessibility of Electronic Information Workgroup (comprised of employees from various units across the Agency; the ACPD; and the Union) helped improve efforts in these areas. GAO's Coordination Working Group (comprised of participants from Information Systems and Technology Services; the Human Capital Office; the Office of General Counsel; the Chief Administrative Office; the Learning Center; Workforce Relations; Reasonable Accommodations; and representation from some mission teams) helped improve accessibility in these areas as well. *Workforce Diversity Plan* at 22, 47 (2013-2014).

¹⁵² *Workforce Diversity Plan* at 23-24 (2016). The ACPD additionally worked with field office staff to help ensure that people with disabilities were acknowledged and that appropriate reasonable accommodation was made as GAO's enhanced telework pilot was rolled out in the various field offices. The ACPD also has identified some concerns involving the comfort and accessibility of areas reserved for working with classified and tax documents in headquarters and field offices and worked with the RAC and Facilities Management to address these concerns. *Workforce Diversity Plan* at 21-24 (2013-2014).

¹⁵³ See Appendix L for a list of applicable GAO training courses reviewed for this study.

¹⁵⁴ *Workforce Diversity Plan* at 23-24 (2013-2014).

Americans with Disabilities Act and Reasonable Accommodation for Managers”¹⁵⁵ that addresses recognizing requests for reasonable accommodation and the manager’s role in responding to requests, including when a manager can immediately grant a request, and when manager communication with GAO’s RAC is required.¹⁵⁶ The Accommodation Committee briefs Professional Development Program Advisors and the Professional Development Program Managing Director on reasonable accommodation, the ADA, and the ADAAA annually.¹⁵⁷ In addition, the RA Team attends the ADA for Managers course annually.¹⁵⁸ Moreover, GAO’s RAC offers an annual voluntary information session on reasonable accommodation in conjunction with National Disability Employment Awareness Month.¹⁵⁹

The Agency also offers training programs related to disability and reasonable accommodation, including: (1) Diversity and Inclusion: Continuing Forward; (2) The Power of Unconscious Bias; and (3) Notification and Federal Employee Antidiscrimination and Retaliation (No-FEAR) Act training.¹⁶⁰ GAO has indicated that it plans to offer additional

¹⁵⁵ This course is conducted annually as part of the Agency’s New Manager Promotion Transition Seminar. It complements the SES “Developing People” performance standard, defined as: “Attract, develop, utilize, and retain an ethical, skilled, motivated, and diverse workforce and promote a non-discriminatory environment.” To meet expectations under this standard, managers are to “Identif[y] human capital requirements and [develop] a diverse pool of qualified candidates to fill vacancies through effective succession planning, workforce planning, and mentoring.” See *General Expectations and Performance Standards for Team SES Members, Staff Office SES Members, and General Counsel SES Members* (2019).

¹⁵⁶ *Workforce Diversity Plan* at 44 (2013-2014).

¹⁵⁷ *Workforce Diversity Plan* at 43 (2016).

¹⁵⁸ *Id.*

¹⁵⁹ See *The Reasonable Accommodation Process at GAO*, GAO Presentation (Oct. 23, 2017) available at: https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/gao_reasonable_accommodation.

¹⁶⁰ Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Pub. L. No. 107-174.

training courses to raise awareness of its reasonable accommodation program.¹⁶¹ Keeping records of the utilization of the training courses offered could assist the Agency in monitoring the impact and results of its training on its reasonable accommodation program.

F. *Reasonable Accommodation Reports*

The Board also reviewed data presented in GAO's *Reasonable Accommodation Reports* from January 2011-September 2017.¹⁶² The *Reasonable Accommodation Reports* track the number of requests for reasonable accommodation made at the Agency and the processing of such requests, including the number of: (1) requests processed; (2) employees requesting accommodation; and (3) cases closed and opened.¹⁶³ The Board notes that, since the ADAAA's enactment, amending the ADA, the Comptroller General has reported to Congress on GAO's advancements in the processing, tracking, and reporting of reasonable accommodation requests for people with disabilities from data in these reports.¹⁶⁴ GAO uses this data to monitor Agency progress in providing effective reasonable accommodation for employees with disabilities when modifications can be made. The Agency's *Reasonable Accommodation Reports* are an important tool to track the Agency's progress in making modifications for people with disabilities, and to provide reasonable accommodation when appropriate, to allow all employees the opportunity to perform their job responsibilities at their full potential.

¹⁶¹ *Workforce Diversity Plan* at 6, 43 (2016).

¹⁶² See Appendix L for a list of the *Reasonable Accommodation Reports* reviewed for this study.

¹⁶³ *Workforce Diversity Plan* at 53 (2012).

¹⁶⁴ *Id.* at 1-2.

G. Additional GAO Resources

The Board reviewed GAO's *Diversity Recruitment Report* (2009) and *Diversity and Inclusion Strategic Plans* (2012-2016 and 2012-2014 Progress Report). The Board also reviewed invited speakers, panel discussions, additional training programs, and applicable GAO intranet postings.¹⁶⁵

The Board notes that *GAO's Diversity and Inclusion Strategic Plan: 2012-2014 Progress* indicates the representation of all GAO staff with disabilities across 2012-2014 to be 4%¹⁶⁶ (with representation of people with disabilities in management at 3%), with no statistically significant difference in analyst and specialist ratings for those with a disability.¹⁶⁷ *GAO's Diversity and Inclusion Strategic Plan 2012-2016* further indicates that "GAO should continually review efforts to further improve the work environment for staff with disabilities and monitor data on the reasonable accommodation process."¹⁶⁸ To work toward this goal, GAO's Diversity & Inclusion Community of Practice held a community-wide "Checking-In," in which they met with GAO employees to discuss what is working well and where the Agency is having success, as well as challenges and areas where the Agency has more work to do.¹⁶⁹

¹⁶⁵ See Appendix L for a list of applicable GAO invited speakers and panel discussions reviewed for this study.

¹⁶⁶ *GAO's Diversity and Inclusion Strategic Plan: 2012-2014 Progress*, at 15, does not identify how the percentages of staff and management with disabilities were calculated. Therefore, these calculations may not be directly comparable to those in this study, which aims to capture every person at GAO who is associated with having a disability, no matter when they worked during the fiscal year. See *infra* n.240.

¹⁶⁷ *Diversity & Inclusion Strategic Plan: 2012-2014 Progress* at 9 (Table 7) and 15 (Table 1 and Table 2) at https://intranet.gao.gov/home/gao-wide_programs/diversity_and_inclusion/policies_and_related.

¹⁶⁸ *Diversity & Inclusion Strategic Plan* at 11 (2012-2016).

¹⁶⁹ GAO Diversity & Inclusion Community of Practice, *Checking-In* (Aug. 28, 2018).

Summary

Overall, the Board's study reveals that the ADAAA, amending the ADA, is reflected in some GAO policies, procedures, and practices, but that several relevant GAO Orders have not been updated to include reference to amendments to the law. The Agency should promptly update GAO Orders 2306.1, 2713.1, and 2713.2 to reflect the current state of the law. This should include the broadened definition of disability, allowing more people to fall under the definition, and thereby increasing eligibility for protection against disability-based discrimination. This process should clarify protections under the law offered to applicants and employees at GAO. It also may encourage more people with disabilities at the Agency to consider requesting reasonable accommodation to facilitate job performance.

The Board's study offers recommendations to enhance compliance with the ADA, as amended, in Agency policies, procedures, and practices in order to strengthen the Agency's commitment to attract, hire, and retain employees with disabilities. The recommended steps should enhance the work environment at GAO to be further inclusive of all employees, regardless of disability status, and foster the development and utilization of talent and potential of employees with disabilities, which the ADA, as amended by the ADAAA, supports.

CHAPTER V

ANALYSIS OF REASONABLE ACCOMMODATION PROCESSING AT GAO

In this Chapter, the Board examines GAO’s reasonable accommodation program, including the process for requesting reasonable accommodation,¹⁷⁰ in light of the broadened scope of protections for people with disabilities under the ADA, as amended. While not all people with disabilities request reasonable accommodation, GAO’s reasonable accommodation program has provided modifications for applicants and employees who can benefit from a change in the way things are customarily done in the work environment.¹⁷¹ The Board recognizes that GAO’s reasonable accommodation program is available not only to employees and applicants with disabilities, but also to those with conditions that are not disabilities, such as broken bones or post-surgery recovery.¹⁷²

¹⁷⁰ As part of its review, the Board examined the following:

- Orders 2213.1, 2306.1, 2713.1, 2713.2, and 2713.3;
- *Reasonable Accommodation Requests—Actions Managers Can Take* (May 2, 2011) at http://notices.gao.gov/notices/archives/2011/05/clarifying_guid_1.html;
- *Reasonable Accommodation Process at GAO*, a presentation offered both in-person and on GAOTV by the RAC, with available slides, as part of National Disability Employment Awareness Month, *supra* n.159;
- *Reasonable Accommodation Reports* (2011-2017) at https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/quarterly_reports_on_reasonable_accommodation_1;
- *Reasonable Accommodation at GAO* at https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/gao_reasonable_accommodation; and
- Submissions from the Agency in response to the Board’s document requests.

¹⁷¹ Two commenters (the Union and the ACPD) note their members’ concerns regarding the extent to which reasonable accommodation requests are fulfilled. See Appendix M.

¹⁷² While GAO offers the opportunity to request reasonable accommodation to all applicants and employees (with or without disabilities), the ADA, as amended, does not require that reasonable accommodation be provided to individuals who do not have a condition that falls within the meaning of the definition of “disability.”

For applicants with disabilities, offering reasonable accommodation aims to provide equal opportunity in the application process. For employees with disabilities, providing reasonable accommodation may enable them to perform the essential functions of a position more efficiently and can provide an opportunity to enjoy the benefits and privileges of employment equal to those available to employees without disabilities.¹⁷³

A. Examples of Reasonable Accommodation

As discussed below, modifications through GAO's reasonable accommodation program could involve adjustment to the duties of the job, or to where or how job tasks are performed. Types of reasonable accommodation that GAO has provided in the past include, but are not limited to: modifications for vision-related disabilities, hearing-related or communication-related disabilities, mobility or manual disabilities, and cognitive and developmental-related disabilities.

Vision-related Disabilities

GAO offers workplace reasonable accommodation for people with vision-related disabilities. Reasonable accommodation for vision-related disabilities includes: provision of screen readers and other assistive technology; accessible computer equipment and other software; publications and training materials in accessible formats (such as large print, computer disk, or Braille); and use of service animals. Additional examples include: large button phones, Hot Keys, screen readers, screen magnifiers, people serving as readers, computer monitors, assistive equipment in training classes, digital recorders, and reading pens. GAO also provides accommodation to ensure employees with vision-related disabilities are prepared for emergencies including evacuation assistants, audible fire alarms, and a Public Address system. Finally, the Agency offers meeting protocols to allow people

¹⁷³ Order 2306.1 at Ch. 1, ¶ 4.a (GAO "is committed to accommodating the reasonable requests of individuals with disabilities and believes such action to be mutually beneficial to management and employees").

with vision-related disabilities to participate more fully in meetings and offers on-demand playing of GAOTV Programming.¹⁷⁴

Hearing-related and Communication-related Disabilities

GAO offers reasonable accommodation for people with hearing-related disabilities or communication-related disabilities. Reasonable accommodation for hearing-related disabilities or communication-related disabilities includes: provision of auxiliary aids and services to facilitate communication; telecommunication devices (such as captioned telephones or videophones designed for disabilities); provision of sign language interpreters; captioning for training courses and GAOTV; Communication Access Real-time Translation for meetings; sound amplification handsets; and Avaya Bluetooth telephones. GAO also provides accommodation to ensure employees with hearing-related disabilities are prepared for emergencies including evacuation assistants, text message boards, and desktop alerts.¹⁷⁵

Mobility, Manual, and Cognitive and Developmental-related Disabilities

GAO offers reasonable accommodation for people with mobility or manual disabilities and cognitive or developmental-related disabilities. Reasonable accommodation for mobility or manual disabilities includes: adaptive office equipment such as a raised desk; voice recognition systems; and alternative keypad and keyboard access. Reasonable accommodation for cognitive or developmental-

¹⁷⁴ See *Reasonable Accommodation Process at GAO*, *supra* n.159; see also *Accommodations Available for Employees Who Have Vision Impairments*, at https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/gao_reasonable_accommodation.

¹⁷⁵ See *Accommodations Available for Employees Who Are Deaf or Hard of Hearing*, at https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/gao_reasonable_accommodation.

related disabilities at the Agency includes: flexible work schedules to allow for medical appointments during the day; extended leave; and visual barriers between workspaces (to aid concentration).¹⁷⁶

Additional Reasonable Accommodation Available

GAO also offers additional types of reasonable accommodation including: telework, flexible or modified work schedules, leave, lighting changes, noise cancellation machines or headsets, rest breaks, travel assistance, and reassignments to vacant positions.¹⁷⁷ Receiving personal assistance, modifying job duties, restructuring work sites, providing flexible work sites, and providing accessible technology or other workplace adaptive equipment are also types of possible reasonable accommodation at the Agency.¹⁷⁸

B. Process for Requesting Reasonable Accommodation

Requests for reasonable accommodation generally should be made to GAO's RAC (or the Reasonable Accommodation Specialist), who serves as the central point of contact for reasonable accommodation requests at the Agency.¹⁷⁹ The governing Order states that any applicant or employee may request reasonable accommodation.¹⁸⁰ One method for requesting reasonable accommodation is to complete a formal *Employee Request for Reasonable Accommodation*,¹⁸¹ but this form is not required. Requests for reasonable accommodation can be in any form (written, oral, in person, or over the telephone) and do not need to include special words (such as

¹⁷⁶ *Id.*

¹⁷⁷ See *Reasonable Accommodation Process at GAO*, *supra* n.159.

¹⁷⁸ *Reasonable Accommodation at GAO*, *supra* n.170.

¹⁷⁹ *Id.*

¹⁸⁰ Order 2306.1 at Ch. 2, ¶ 2.

¹⁸¹ Form GAO-494A.

“reasonable accommodation,” “disability,” or “ADA”).¹⁸² The Order specifies that the RAC may request medical documentation of the individual’s disability and need for accommodation.¹⁸³

1. Applicants

To begin the process, applicants for employment at GAO should submit a request for reasonable accommodation directly to the RAC, GAO recruiter, or management official.¹⁸⁴ Any requests for reasonable accommodation from applicants that are not submitted in this manner will be forwarded to the RAC.¹⁸⁵

Category A

While GAO indicates that it generally employs people with disabilities through regular competitive procedures, the Agency also may utilize “Category A,”¹⁸⁶ a noncompetitive appointing authority to hire people with intellectual disabilities, psychiatric disabilities, or severe physical disabilities on a permanent, time-limited, or temporary basis.¹⁸⁷ Veterans with 30% or more service-related disability also can be appointed at GAO without competition to any job for which they qualify, with an initial appointment to a nonpermanent position and

¹⁸² Order 2306.1 at Ch. 2, ¶¶ 2.a-b; Agency Response to Board’s Document Request at 4.

¹⁸³ Order 2306.1 at Ch. 3, ¶ 1.b(1).

¹⁸⁴ Order 2306.1 at Ch. 2, ¶¶ 2.a-b.

¹⁸⁵ See Order 2306.1 at Ch. 2, ¶ 1.b.

¹⁸⁶ Order 2213.1 (2018) at ¶ 7.a(3).

¹⁸⁷ *Id.* (Under Category A, GAO can make: (1) excepted or excepted-conditional permanent appointments; (2) time-limited appointments of more than 1 but not more than 4 years with the possibility of noncompetitive conversion to a permanent position; and (3) temporary appointments of up to 1 year. Such applicants must submit proof of disability to GAO). See also *Workforce Diversity Plan* (2016) at 9 (noting HCO may use noncompetitive appointment authority to hire qualified staff with disabilities and regularly search databases that serve people with disabilities).

conversion eligibility to a permanent position.¹⁸⁸ This procedure at GAO is similar, though not identical to, “Schedule A” noncompetitive appointments in the Executive Branch.¹⁸⁹

Vacancy Announcements

GAO offers open positions through vacancy announcements that welcome applicants who would be eligible for hire under the Executive Branch’s Schedule A hiring authority, as well as veterans with a service-related disability eligible under authorities for noncompetitive appointment in alignment with Executive Orders 13163 and 13548.¹⁹⁰ GAO vacancy announcements, which are listed on OPM’s USAJOBS website, also include the following Equal Employment Opportunity policy statement:

The United States Government does not discriminate in employment on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.

GAO’s job announcements also include OPM’s Reasonable Accommodation Policy,¹⁹¹ and a link

¹⁸⁸ Order 2213.1 at ¶ 7.a(2).

¹⁸⁹ See OPM, “Disability Employment Hiring: Schedule A Hiring Authority,” at <https://www.opm.gov/policy-data-oversight/disability-employment/hiring/#url=Schedule-A-Hiring-Authority> (“Schedule A” hiring does not apply to GAO as an agency in the Legislative Branch of the federal government). An in-depth review of the details of the Agency’s use of its Category A hiring authority in training, recruiting, and hiring is beyond the scope of the Board’s study. The Board has recommended that the Agency clarify to applicants its noncompetitive appointment process with respect to its Category A hiring authority.

¹⁹⁰ See Order 2213.1, which regulates noncompetitive appointments and positions at GAO, including noncompetitive appointments for individuals with severe disabilities.

¹⁹¹ The Reasonable Accommodation Policy states:

Federal agencies must provide reasonable accommodation to applicants with disabilities where appropriate. Applicants requiring reasonable accommodation for any part of the application process should follow the instructions in the job opportunity announcement. For any part of the remaining hiring process, applicants should contact the hiring agency directly. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

to OPM’s Disability Employment Reasonable Accommodations internet page.¹⁹² Finally, OPM includes a link on the USAJOBS website to EEOC for guidance for federal employees and job applicants, which GAO applicants can explore during the job application process.¹⁹³ The Agency should consider adding a link to its vacancy announcements to provide a direct contact to a GAO representative who can serve as a resource for applicants who have questions relating to GAO’s reasonable accommodation policy and resources.

2. Employees

To begin the reasonable accommodation process, GAO employees should request reasonable accommodation from the RAC (or Reasonable Accommodation Specialist). Employees can also request reasonable accommodation from their managers, who can grant provisional accommodation if the employee’s request involves a simple matter that the manager

A reasonable accommodation is any change to a job, the work environment, or the way things are usually done that enables an individual with a disability to apply for a job, perform job duties or receive equal access to job benefits.

Under the Rehabilitation Act of 1973, federal agencies must provide reasonable accommodation when:

- An applicant with a disability needs an accommodation to have an equal opportunity to apply for a job.
- An employee with a disability needs an accommodation to perform the essential job duties or to gain access to the workplace.
- An employee with a disability needs an accommodation to receive equal access to benefits, such as details, training, and office-sponsored events.

You can request a reasonable accommodation at any time during the application or hiring process or while on the job. Requests are considered on a case-by-case basis.

¹⁹² See OPM, *Disability Employment: Reasonable Accommodations* at <https://www.opm.gov/policy-data-oversight/disability-employment/reasonable-accommodations>.

¹⁹³ See EEOC, *Federal Employees & Job Applicants* at https://www.eeoc.gov/federal/fed_employees/index.cfm.

has the authority to grant to any employee under existing GAO policy.¹⁹⁴ If a manager does not know if the request can be approved under GAO policy, the manager should contact the Reasonable Accommodation Office for a determination as soon as possible following the date of the request for reasonable accommodation.¹⁹⁵ If reasonable accommodation arrangements become ongoing, recurring, or last more than 30 days, GAO managers also are to inform the RAC of the arrangements.¹⁹⁶ GAO managers are not authorized to deny reasonable accommodation requests, nor are GAO managers authorized to rescind any accommodation in place without consulting the RAC.¹⁹⁷

¹⁹⁴ *Reasonable Accommodation Requests – Actions Managers Can Take*, *supra* n.170. Under this policy, managers can grant provisional accommodation consistent with guidance from the EEOC “encourag[ing] agency flexibility and expeditious action when responding to a request for reasonable accommodation.” For example, “if an employee requests to modify his or her work schedule to accommodate medical appointments, a manager may grant this request under GAO’s Maxiflex policy”; “if an employee requests a change in his or her telework days or flexibility in determining which days to telework, a manager may grant this request under GAO’s existing telework policy”; and “if an employee has a medical condition and requests telework for a week to adjust to a new medication, the manager may grant the request under an episodic or short-term telework agreement.” Managers unsure whether an accommodation requested is within their decision-making authority should contact the RAC.

¹⁹⁵ *See id.*

¹⁹⁶ *Id.* (This enables GAO to: “(1) determine if additional steps are needed to accommodate the employee’s health condition or disability, (2) ensure that the employee continues to be accommodated if there is a change in manager, and (3) accurately assess the extent to which GAO employees with disabilities are being accommodated).” *See also* Order 2306.1 at Ch. 2, ¶ 1.

¹⁹⁷ *See Reasonable Accommodation Process at GAO*, *supra* n.159; *see also Reasonable Accommodation Requests – Actions Managers Can Take*, *supra* n.170. Comments from the Union and the ACPD challenge the consistency of application of this policy among managers. *See* Appendix M.

Requests for reasonable accommodation presented to the RAC should be acknowledged within a week of the request,¹⁹⁸ after which information is gathered from the employee, and from any relevant management officials, to evaluate the request and determine any appropriate accommodation. This request triggers the interactive process which continues while the request is being considered and decided, and can be extended through the time the reasonable accommodation is provided.¹⁹⁹ Depending on the type of reasonable accommodation request, the RAC is permitted to consult with the requester's managers to obtain information pertinent to the request, such as the feasibility of a particular action. Should a manager need to know about the accommodation in order for the reasonable accommodation request to be implemented, the RAC may disclose an employee's request to the management official in the processing of the request. The RAC also has the option to consult with other GAO units (such as information technology) to determine types of reasonable accommodation that could be helpful.²⁰⁰

GAO considers a request for reasonable accommodation that is prospective in nature if a condition could interfere with an ability to perform one's job, before job performance is impacted.²⁰¹ In addition, if an employee mentions to a manager that the employee has a condition affecting the

¹⁹⁸ In submissions from the Agency in response to the Board's document requests, the Agency represented that "[t]he RA Team should acknowledge receipt of all requests for reasonable accommodation in writing." Agency Response to Board Document Request at 5. However, GAO Order 2306.1, *Employment of Individuals with Disabilities*, states that "[w]hen the RAC receives a request for reasonable accommodation, [the RAC] will acknowledge receipt of the request within one week." The Order does not require a written acknowledgment. See Order 2306.1 at Ch. 3, ¶ 1.a.

¹⁹⁹ See *Reasonable Accommodation Forum Panel Discussion* (Mar. 8, 2017), at <https://intranet.gao.gov/home/gaotv/1085>. See also *Gray v. GAO*, PAB Docket No. 17-02 (Oct. 30, 2017) at 17, *aff'd en banc* (Mar. 28, 2018).

²⁰⁰ See *Reasonable Accommodation Process at GAO*, *supra* n.159; see also Order 2306.1 at Ch. 3, ¶ 1.

²⁰¹ *Reasonable Accommodation Process at GAO*, *supra* n.159.

ability to perform at work, the GAO manager should advise the employee to consult the RAC to explore the possibility of receiving reasonable accommodation.²⁰² Moreover, under GAO policy, a third party (e.g., a manager, family member, health professional, or other representative) may request reasonable accommodation on behalf of a GAO applicant or employee.²⁰³

C. Disability Determination

GAO has a process in place for individuals to request reasonable accommodation based on their current situation.²⁰⁴ The ADA, as amended by the ADAAA, now provides broader coverage due to the expansion of the definition of “disability.” Thus the number of people with disabilities eligible for reasonable accommodation under the Act has increased.

In reviewing reasonable accommodation requests, GAO considers a person with a disability to be one who:

- has a physical or mental impairment that substantially limits one or more major life activities; or
- has a record of such an impairment; or
- is regarded as having such an impairment.²⁰⁵

²⁰² See *id.*

²⁰³ Order 2306.1, Ch. 2, ¶ 2.a.

²⁰⁴ Employees whose disability situations have changed since their initial hiring may update their self-identified disability status by revisiting their Standard Form 256–*Self-Identification of Disability* in their personnel file. The Board encourages the Agency to educate employees about the importance of this self-identification data. See Appendix M (Comments from the Union noting that not all employees may be aware of the SF-256 and of their ability to update the form).

²⁰⁵ Order 2306.1 at Ch. 1, ¶ 5.a.; see also *Reasonable Accommodation Process at GAO*, *supra* n.159. This is the same definition of disability found in the original ADA, and the law as amended by the ADAAA. See 42 U.S.C. §§ 12102 (1994); ADAAA § 4(a) (amending 42 U.S.C. § 12102(1)); see also Congressional Accountability Act of 1995 § 201(c)(3), 42 U.S.C. § 12209 (2000).

When considering a “physical or mental impairment that substantially limits one or more major life activities,” GAO examines life activities such as caring for oneself, walking, seeing, hearing, breathing, communicating, thinking, and major bodily functions (such as digestive, immune, and neurological systems), without regard to ameliorative effects of mitigating measures. When interpreting a “record of impairment,” GAO considers whether a history of a “physical or mental impairment substantially limits one or more major life activities” of an individual, including episodic disabilities or those in remission if the condition would substantially limit a major life activity while active (*e.g.*, leukemia). As required by the ADA, GAO also considers “being regarded as” having a “physical or mental impairment that substantially limits one or more major life activities” as a disability for the purpose of prohibiting discrimination.²⁰⁶ Accordingly, GAO’s policy for interpreting the definition of disability is consistent with the definition of disability under the ADA, but GAO Orders need to be updated to specifically reference interpretation of the ADA, as amended by the ADAAA.

D. Approvals

The Agency determines requests for reasonable accommodation on a case-by-case basis. All information about a request is considered confidential and is required to be safeguarded against inappropriate disclosure. The Reasonable Accommodation Office indicates that it only discloses information about a request necessary to decide and implement the reasonable accommodation.²⁰⁷

Once an applicant or employee has made a request for reasonable accommodation, the RAC acts as the focal point for the request: the RAC receives the request, clarifies the request, and keeps

²⁰⁶ See *Reasonable Accommodation Process at GAO*, *supra* n.159; see also Order 2306.1 at Ch. 1, ¶ 5.a(1).

²⁰⁷ See *Reasonable Accommodation Process at GAO*, *supra* n.159.

the applicant or employee informed of the status; the RAC consults with management, the Office of General Counsel, and others as appropriate, to expedite the request; and the RAC maintains a record of all requests and outcomes, provides advice and technical guidance as needed, and either grants requests or refers requests with relevant information to the Accommodation Committee.²⁰⁸

The RAC makes the first determination as to whether an individual requesting an accommodation has a disability, within the meaning of the ADA, as amended.²⁰⁹ The determination of whether a person's "impairment" "substantially limits a major life activity" requires an individualized assessment, including the individual's job description and consideration of how the person is experiencing limitations.²¹⁰ Ameliorative effects of mitigating measures, such as medication, are not considered in determining whether a condition substantially limits a major life activity.²¹¹ In some cases, however, it may be necessary to provide "sufficient medical documentation" of a disability and need for reasonable accommodation before a request is granted.²¹² Nevertheless, the Agency indicates that it is not Agency policy to engage in extensive analysis when making a disability determination.²¹³

²⁰⁸ Order 2306.1 at Ch. 2, ¶ 1.a.

²⁰⁹ Order 2306.1 at Ch. 3 ¶ 1.b.

²¹⁰ *Reasonable Accommodation Process at GAO, supra* n.159.

²¹¹ *See id.* (noting there are some impairments that virtually always constitute a disability "including epilepsy, autism, diabetes, cancer, deafness, blindness, missing limbs, HIV infection, multiple sclerosis, muscular dystrophy, cerebral palsy, major depressive disorder, and bipolar disorder"; however, vision conditions, which can be corrected with ordinary eyeglasses or contact lenses, are specifically excluded from the definition of disability in the ADA, as amended).

²¹² Order 2306.1 at Ch. 3, ¶ 1.b(1)(a)-(b). *See* Appendix M (Comments from Union noting employee concerns regarding how sufficient medical documentation is determined).

If the RAC determines that an individual has a disability afforded protection under law, an interactive process takes into consideration a person's specific limitations, the essential duties of the position at issue, and any relevant costs to the Agency.²¹⁴ The Agency also considers the impact of the requested accommodation on the operation of the individual's office when determining whether an accommodation is reasonable. This includes the impact on the ability of other employees to perform their duties, and the impact on the Agency to conduct business and "perform its mission."²¹⁵

When a request for reasonable accommodation is granted, GAO's RAC works with other GAO units, including Infrastructure Operations (which orders furniture, makes facility modifications, and provides parking and other services), Information Systems and Technology Services (which provides computer hardware and software), and the employee's work unit (which implements schedule or duty modifications, leave, and telework arrangements), to implement the accommodation and to ensure its effectiveness.²¹⁶ An employee making a request for a recurring reasonable accommodation, such as a sign language interpreter or note-taker, only needs to request the accommodation once.²¹⁷ Once approved, an individual can make the necessary arrangements for the accommodation directly with the GAO unit providing the service.²¹⁸

²¹³ Agency Response to Board's Document Request at 2. *See also* Appendix M (Comments from GAO Chief Human Capital Officer noting that GAO does "not engage in an extensive disability analysis in the reasonable accommodation decision process").

²¹⁴ *See* Order 2306.1 at Ch. 1, ¶¶ 5.c. & e; Ch. 3, ¶ 1.d.

²¹⁵ *See Reasonable Accommodation Process at GAO, supra* n.159.

²¹⁶ *Id.*

²¹⁷ Agency Response to Board's Document Request at 4.

²¹⁸ *Id.*

Expedited processing of reasonable accommodation requests also is available for certain circumstances, such as for an upcoming conference or a training program.²¹⁹

After an approved accommodation has been provided, the Reasonable Accommodation Office is expected to consult with managers from responsible GAO units to ensure that the accommodation has been received. The Reasonable Accommodation Office also is expected to contact employees who have received modifications to determine if the accommodation was provided and effective.²²⁰

In addition, the RAC prepares GAO's quarterly *Reports on Reasonable Accommodation*. These reports document requests received for reasonable accommodation and the steps the Agency has taken to provide accommodation in response to those requests.²²¹ GAO's *Reasonable Accommodation Reports* are available on the Agency's intranet website to GAO employees seeking further information about the number and types of reasonable accommodation requests the Agency has approved.²²² Data in these reports also indicate that the Reasonable Accommodation Office

²¹⁹ *Id.*

²²⁰ See *Reasonable Accommodation Process at GAO*, *supra* n.159.

²²¹ GAO began issuing its *Reasonable Accommodation Report*, published quarterly, in fiscal year 2011.

²²² *GAO Reports on Reasonable Accommodation* at https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/quarterly_reports_on_reasonable_accommodation_1. Data in these quarterly reports are pulled from Excel spreadsheets that the Reasonable Accommodation Office uses to track requests for reasonable accommodation by fiscal year, which are maintained in GAO's electronic Document Management system. These files include records on all reasonable accommodation requests, including: (1) the number of requests for reasonable accommodation that have been made during the application process and whether each such request was granted or denied; (2) the types or nature of reasonable accommodation that have been requested by each applicant or employee; (3) the number of requests for reasonable accommodation that have been approved (in whole or in part), denied (in whole or in part), withdrawn, or were concluded as administrative closures; (4) the reasons for the denial of any reasonable accommodation requests; and (5) the sources of technical assistance that the Agency has consulted in attempting to identify possible reasonable accommodation. *E.g.*, *Reasonable Accommodation Report*, July 1, 2016 to September 30, 2016 at 6.

offers modifications to the working environment for employees who can benefit from accommodation, but whose conditions are determined not to constitute a disability under the ADA, as amended.²²³

The Reasonable Accommodation Office has the authority to approve, *but not to deny*, requests for reasonable accommodation.²²⁴ In some cases, the Reasonable Accommodation Office cannot approve a reasonable accommodation until the RAC receives agreement from management.²²⁵ If the Reasonable Accommodation Office does not have enough information to approve a request for reasonable accommodation, the matter will be referred to the Accommodation Committee for a final decision.²²⁶

E. Elevation of Requests to the Accommodation Committee

Under GAO's governing Order, if the RAC has not found a basis to approve a request for reasonable accommodation, the RAC is expected to notify the applicant or employee and elevate the request to GAO's Accommodation Committee for review.²²⁷ GAO's Accommodation Committee is comprised of: (1) the Chief Human Capital Officer; (2) a senior staff member of the

²²³ *E.g., Reasonable Accommodation Report*, July 1, 2016 to September 30, 2016 at 2 n.b.

²²⁴ Order 2306.1 at Ch. 3, ¶ 1.i; *see also Gray v. GAO*, PAB Docket No. 17-02 at 22 (Oct. 30, 2017) (indicating that the RAC does not have the authority to deny a request for reasonable accommodation).

²²⁵ *See Reasonable Accommodation Process at GAO*, *supra* n.159.

²²⁶ Order 2306.1 at Ch. 3, ¶ 1.i.

²²⁷ *Id.*; *see also Reasonable Accommodation Process at GAO*, *supra* n.159. The Union raised questions in their comments about the frequency of Accommodation Committee meetings and employee participation in the same. *See Appendix M*; *see also supra* n.141. GAO may want to investigate the frequency of these meetings, which are required under Order 2306.1, Chapter 3, as part of the Agency's implementation of the statutory duty to provide reasonable accommodation. The ADA, as amended, does not specifically mandate such meetings. GAO also may clarify that recourse to due process is available through additional avenues of appeal.

Office of Opportunity and Inclusiveness; and (3) the Controller.²²⁸ Additionally, under the Order, GAO's Office of the General Counsel provides legal advice to the RAC, the Accommodation Committee, and GAO Management on reasonable accommodation for qualified persons with a disability.²²⁹

The Accommodation Committee is responsible for reviewing elevated requests, consulting with necessary parties, and reaching unanimous decisions on the determinations of elevated reasonable accommodation requests. If the Accommodation Committee cannot reach a unanimous decision, the RAC is required to submit the request to the Chief Administrative Officer for a final decision.²³⁰ The RAC is required to document all decisions of the Accommodation Committee in writing.²³¹

F. Dispute Resolution and Appeal to Personnel Appeals Board

GAO affords a requester the right to file a discrimination complaint arising out of a decision on a reasonable accommodation request with GAO's Office of Opportunity and Inclusiveness.²³² This office provides informal resolution or mediation and processes complaints from applicants or employees alleging discrimination based on disability.²³³ Complaints filed as a

²²⁸ Order 2306.1 at Ch. 2, ¶ 1.a(2).

²²⁹ Order 2306.1 at Ch. 2, ¶ 1.c.

²³⁰ Order 2306.1 at Ch. 3, ¶ 1.i-j.

²³¹ Order 2306.1 at Ch. 3, ¶ 1.k.

²³² *Id.* at Ch. 3, ¶ 2.

²³³ *Id.*; see also GAO's *No-FEAR Reports* (2005-2016) (From 2005-2016, 19 disability complaints were filed with GAO's Office of Opportunity and Inclusiveness, with 3 of the 19 resulting in a final decision by the Personnel Appeals Board. The remaining complaints were settled, withdrawn, dismissed, or are in the investigative stage.) The Board does not have access to further information relating to these complaints.

result of decisions by the Accommodation Committee²³⁴ are processed in the same manner as other discrimination complaints identified in GAO Order 2713.2.²³⁵ The requester must submit a complaint within 45 days of receiving the final decision.²³⁶ Depending on the circumstances, the requester can appeal the final decision to the Personnel Appeals Board or may file a civil action in federal district court.²³⁷ Bargaining unit employees may have alternative options for recourse under provisions in the current collective bargaining agreement.²³⁸

Summary

Based on the above, the Board finds that a structure is in place for the processing of requests for reasonable accommodation at the Agency, which is an important step in compliance with the ADA, as amended. GAO's interpretation of the definition of disability is consistent with the broadened interpretation of disability under the ADA, as amended, even though GAO Orders need to be updated to reference the ADAAA. The Agency can make more clear, however, that its

²³⁴ Data provided in response to the Board's information request shows denials that have occurred across several fiscal years of requests made by people with disabilities. *See* Appendix H (detailing numbers of denials of reasonable accommodation requests); *see also* Appendix M (Comments from the ACPD regarding interest in Accommodation Committee data relating to requests considered, approvals, denials, and length of time for decisions).

²³⁵ Order 2306.1 at Ch. 3, ¶ 2.

²³⁶ Order 2713.2 at Ch. 3, ¶ 1.

²³⁷ *Id.* at Ch. 6, ¶ 1. From 2005-2017, the Personnel Appeals Board Office of General Counsel received at least 8 disability discrimination inquiries and 6 reasonable accommodation inquiries; received at least 8 disability discrimination charges and 1 reasonable accommodation charge; filed 3 disability discrimination petitions before the Board and 4 disability and reasonable accommodation petitions before the Board; and brought 4 disability discrimination requests for *Ex Parte* Stay before the Board, and 4 disability and reasonable accommodation requests for *Ex Parte* stay before the Board. *See Personnel Appeals Board Annual Reports (2005-2017)*.

²³⁸ *See* Order 2713.2 at Ch. 5.

focus is on providing reasonable accommodation to avert discrimination based on disability, rather than on analysis of a disability itself, while also giving appropriate weight to avoiding undue impact on cost to Agency operations.

CHAPTER VI

ANALYSIS OF GAO PERSONNEL DATA

Chapter VI analyzes GAO disability-related personnel data on applicants, new hires and employees (including separating employees).²³⁹ The Board conducted a comparative analysis of data that the Agency submitted to the Board for consideration,²⁴⁰ with available statistics on new hires and employees in the federal civilian workforce, across similar fiscal years obtained from the Office of Personnel Management.²⁴¹ The Board also examined the extent to which various disabilities are represented in the GAO workforce.²⁴²

²³⁹ Disability-related personnel data for GAO applicants are available for fiscal years 2010-2015. (Applicant data are not available for the federal civilian workforce).

²⁴⁰ See Appendix E for data on “Applicants for Employment with Disabilities at GAO”; Appendix F for data on “Employees with Disabilities at GAO”; and Appendix K for data on “Separated Employees with Disabilities at GAO.” Data on GAO applicants, new hires, and employees (including separating employees), are from Excel spreadsheets the Agency provided to the Board. The Board collected data for “all disabilities” and “targeted disabilities” from: (1) employee markings on Standard Form 256; (2) statutory hiring authority for veterans with service-related disabilities; and (3) designations of disability associated with an individual as marked by GAO’s Reasonable Accommodation Office. The data in the Appendices listed above reflect **a full headcount of all individuals in pay status at any time during the fiscal year noted**, as recorded in the Agency’s Excel spreadsheets. The Board’s count specifically attempts to capture **every individual with a disability** at the Agency as reported to the Board for the fiscal years under review. This attempt to capture and report on every individual with a disability in the fiscal years under review aims to be more inclusive than the approaches employed by GAO and OPM in reporting individuals with disabilities; thus, exact point-to-point comparisons across GAO and OPM data reported in this study is not possible.

²⁴¹ See Appendix D for data on “Employees with Disabilities in the Federal Civilian Workforce” (Comparative federal civilian workforce data on applicants and separating employees were not available for this study). Data on new hires and employees in the federal civilian workforce were obtained from OPM’s *Report on Employment of Individuals with Disabilities in the Federal Executive Branch* (2015), which includes data from the Enterprise Human Resources Integration – Statistical Data Mart. OPM collects data for “all disabilities” and “targeted disabilities” from: (1) employee markings on Standard Form 256; and (2) statutory hiring authority for veterans with 30% or more service-related disability. See 5 U.S.C. § 3112; 5 C.F.R §§ 316.302, 316.402, and 315.707. OPM’s data are compiled from **a modified headcount of on-board federal employees in pay status at the end of September of the fiscal year noted**. This modified headcount, also utilized by the Partnership for Public Service, **necessarily excludes some seasonal employees**, such as tax season professionals or summer interns. Thus, exact point-to-point comparisons between GAO and OPM data as reported in this study are not possible.

During the fiscal years covered in this study, the federal civilian workforce goal for inclusion of qualified people with disabilities in employment was 12% and for targeted disabilities was 2%.²⁴³ Employment data for the fiscal years under review shows that the percentage of people with disabilities employed in the federal civilian workforce was 11.87% (for fiscal years 2010-2015) and in GAO's workforce was 7.82% (for fiscal years 2010-2016).²⁴⁴ For the same period, the percentage of people with targeted disabilities employed in the federal civilian workforce was 0.99% (for fiscal years 2010-2015), and in GAO's workforce the percentage was 1.10% (for fiscal years 2010-2016).²⁴⁵ For the fiscal years under review, this study shows GAO's percentage of employment of people with disabilities of 7.82% is markedly lower than both the federal civilian workforce goal of 12% and the percentage of employment of people with disabilities in the federal civilian workforce of 11.87%. For the same period, GAO's percentage of employment of people with targeted disabilities of 1.10% is lower than the federal civilian workforce goal of 2%, but higher than the federal civilian workforce percentage of employment of people with targeted disabilities of 0.99%. The discussion and graphs

²⁴² See Appendix G for data on "Disabilities of Employees at GAO."

²⁴³ See *supra* n.28 (EEOC's *Final Rule* notes federal goals of 12% for employment of individuals with disabilities and 2% for individuals with targeted disabilities); see also Appendix D for data on "Employees with Disabilities in the Federal Civilian Workforce," and Appendix F for data on "Employees with Disabilities at GAO."

²⁴⁴ The 7.82% figure aims to capture every person at GAO who is associated with having a disability, no matter when they worked during the fiscal year. (This calculation captures more individuals with disabilities than one which only considers individuals with disabilities on staff on the last day of a fiscal year). Compare with *supra* n.241. See Appendices D & F.

²⁴⁵ See Appendices D & F.

that follow provide a detailed analysis of data and statistical information in support of these and other findings.²⁴⁶

A. Applicants

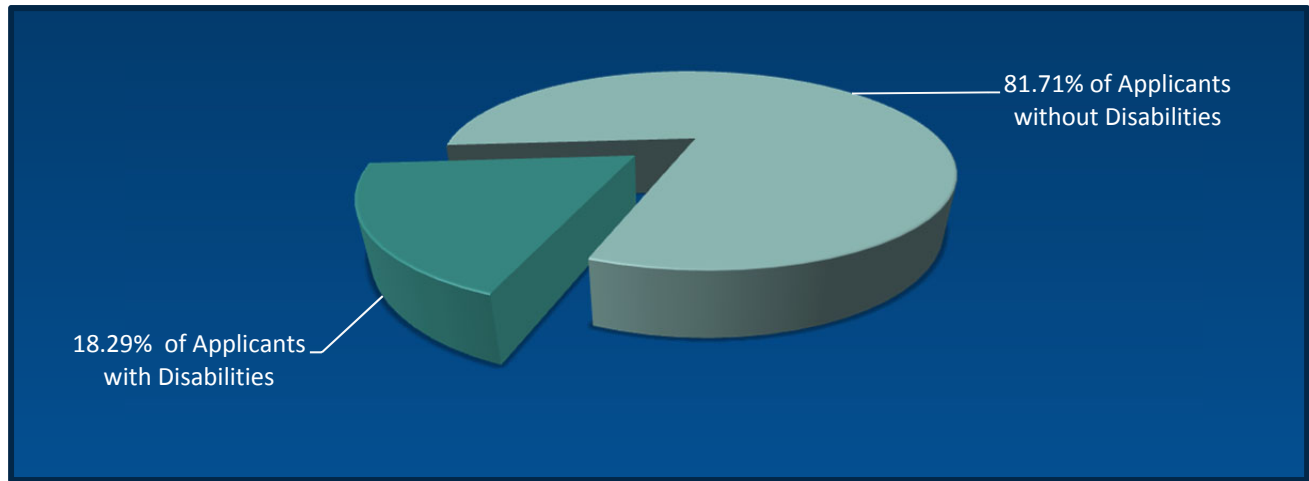
With respect to applicants for employment, Board analysis of available data indicates that, for fiscal years 2010-2015, GAO had 82,382 applicants. Of this total, 18.29% (15,070) were applicants with disabilities, and 81.71% (67,312) were applicants without disabilities.²⁴⁷ The Board notes that the average percentage of applicants for employment with disabilities at GAO for fiscal years 2010-2015 of 18.29% is higher than the Executive Branch's goal for inclusion of qualified people with disabilities in employment at 12%. This suggests that higher levels of inclusion for people with disabilities could be possible at GAO.²⁴⁸

²⁴⁶ When considering new hires only, GAO's average percentage of new hires with disabilities for fiscal years 2010-2016 was 9.54%. This figure falls well below the average percentage of new hires with disabilities in the federal civilian workforce for fiscal years 2010-2015 of 12.99%. The average percentage of new hires with targeted disabilities at GAO for fiscal years 2010-2016 was 0.94%. This figure is near the average percentage of new hires with targeted disabilities in the federal civilian workforce for 2010-2015 of 0.95%. *See id.*

²⁴⁷ *See* Appendix E for data on "Applicants for Employment with Disabilities at GAO." (Data on applicants for employment at GAO with targeted disabilities were not available for this study.)

²⁴⁸ The Board did not have access to comparable data on applicants in the federal civilian workforce for this study.

**AVERAGE PERCENTAGE OF APPLICANTS WITH DISABILITIES AT GAO
(Fiscal Years 2010-2015)**

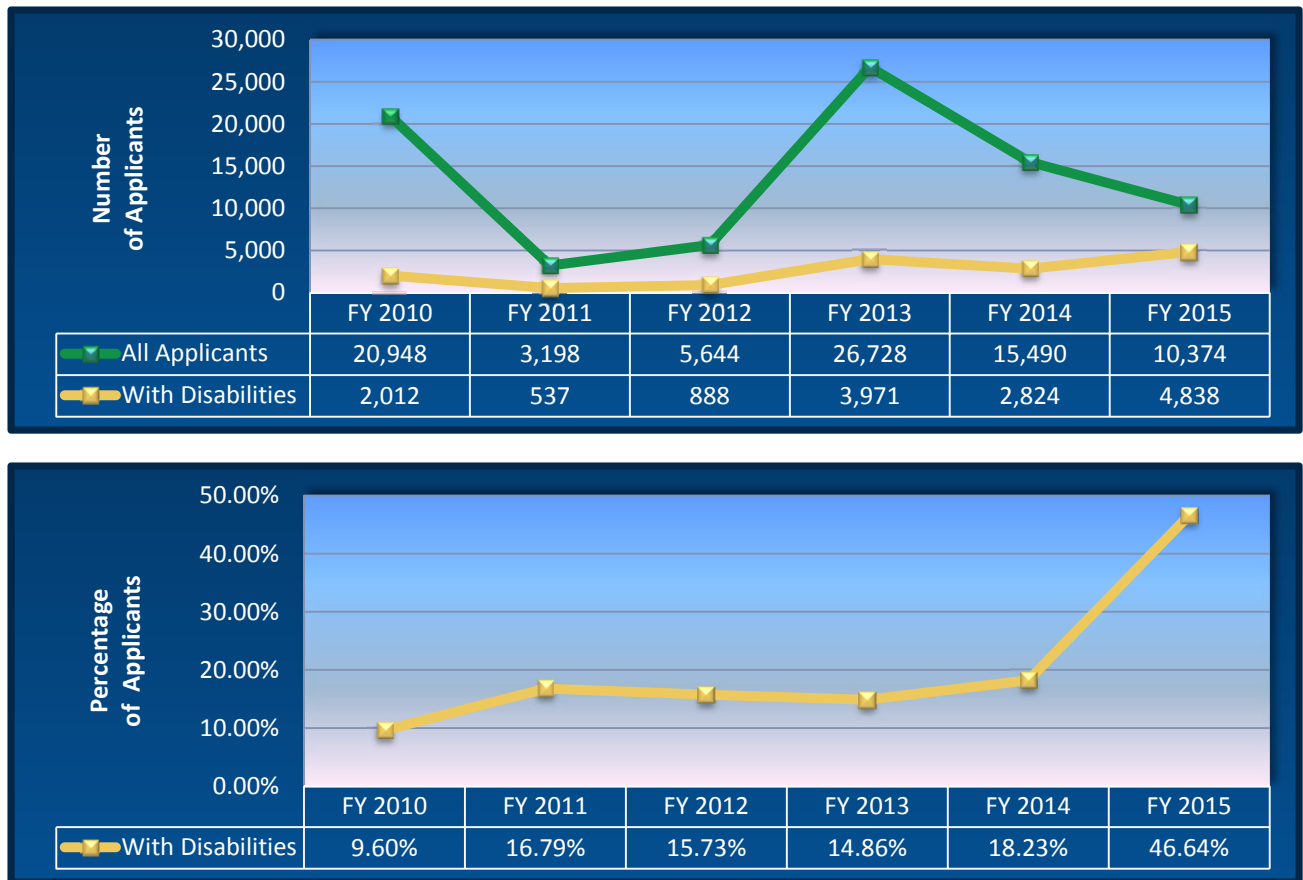


Source: Board Analysis of GAO Personnel Data on Nonemployee Applicants (Fiscal Years 2010-2015)

The graph above illustrates the average percentage of applicants with disabilities at GAO for the fiscal year period under review. GAO experienced its highest number of applications (26,728) for employment between fiscal years 2010-2015 in fiscal year 2013. GAO’s lowest number of applications for employment (3,198) during this time occurred in fiscal year 2011. The percentage of applicants with disabilities at GAO generally rose across fiscal years 2010-2015, ranging from 9.60% (2,012 out of 20,948) in fiscal year 2010 to 46.64% (4,838 out of 10,374) in fiscal year 2015. These details are illustrated in the graphs on the next page.

NUMBER AND PERCENTAGE OF APPLICANTS WITH DISABILITIES AT GAO

(Fiscal Years 2010-2015)



Source: Board Analysis of GAO Personnel Data on Nonemployee Applicants (Fiscal Years 2010-2015)

The increase in percentage of applicants with disabilities at the Agency for the fiscal years under review in this study does not appear to have a consistent correlation to an increase or decrease in the overall number of applications GAO received in a fiscal year. For example, in fiscal year 2013, when the number of applications was the highest, 14.86% (3,971 out of 26,728) of applicants were people with disabilities. In fiscal year 2011, when the number of applications was the lowest, 16.79% (537 out of 3,198) were people with disabilities.

Beginning in fiscal year 2011, and continuing through fiscal year 2015, the percentage of applicants for employment with disabilities at GAO ranged from 14.86% to 46.64%. This indicates that the Agency's applicant pool included available candidates who could have helped GAO meet the federal goal of 12% inclusion in employment for qualified people with disabilities had such people been selected for employment. If the percentage of applicants with disabilities at GAO continues to rise, the Agency should be able to increase its percentage of qualified employees with disabilities and move closer to the federal government's 12% workforce goal in future fiscal years.

B. New Hires

The Board reviewed available GAO personnel data on new hires for fiscal years 2010-2016, and compared this data to information available on new hires in the federal civilian workforce for fiscal years 2010-2015.²⁴⁹ GAO's average percentage of new hires with disabilities for fiscal years 2010-2016 of 9.54% is comparatively lower than the average percentage of new hires with disabilities in the federal civilian workforce of 12.99% for fiscal years 2010-2015. The average percentage of new hires with targeted disabilities at GAO for fiscal years 2010-2016 of 0.94% is slightly less than the average percentage of new hires with targeted disabilities in the federal civilian workforce of 0.95% for fiscal years 2010-2015.

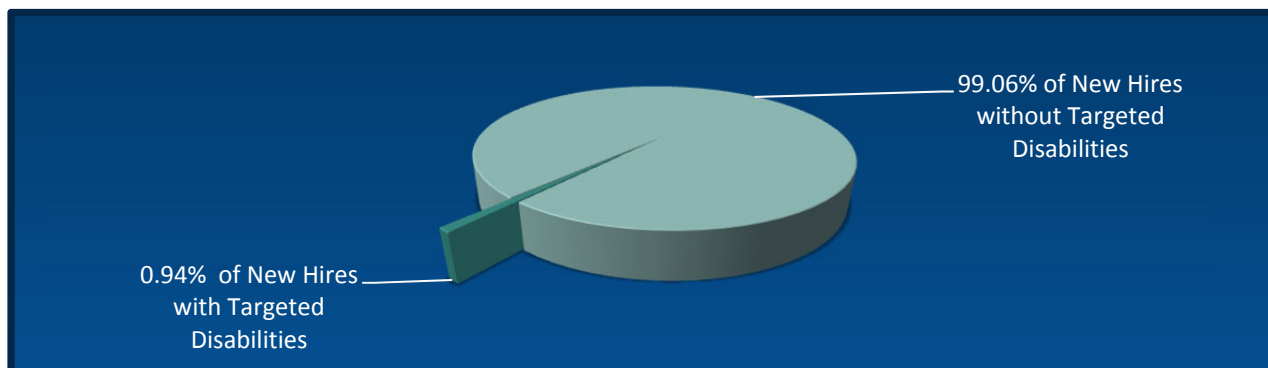
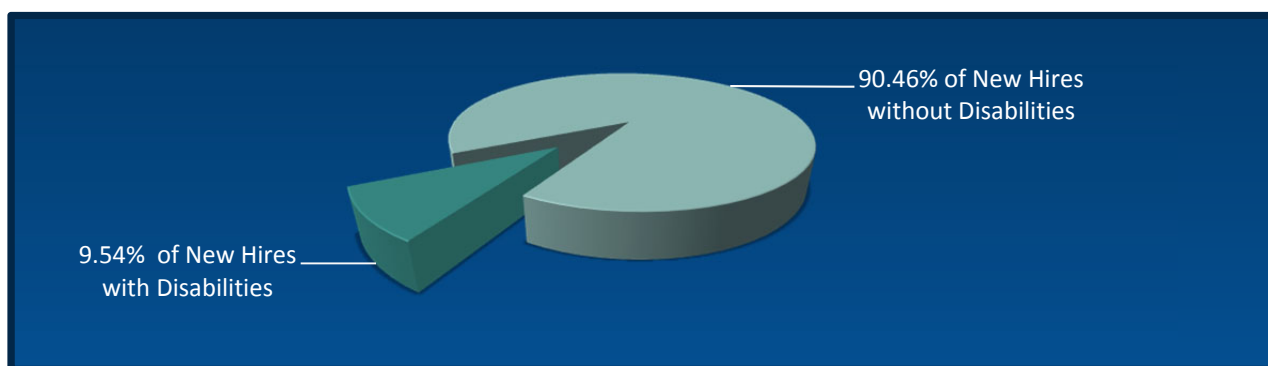
²⁴⁹ Federal civilian workforce data for fiscal year 2016 were not available to the Board for this study.

1. New Hires at GAO

The Board’s analysis of GAO data on new hires for fiscal years 2010-2016 indicates that 9.54% (192 out of 2,012) were new hires with disabilities and 90.46% (1,820 out of 2,012) were new hires without disabilities. The Board’s analysis further indicates that for fiscal years 2010-2016, 0.94% (19 out of 2,012) were new hires at GAO with targeted disabilities and 99.06% (1,993 out of 2,012) were new hires without targeted disabilities.²⁵⁰

AVERAGE PERCENTAGES OF NEW HIRES WITH DISABILITIES AT GAO

(Fiscal Years 2010-2016)



Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2010-2016)

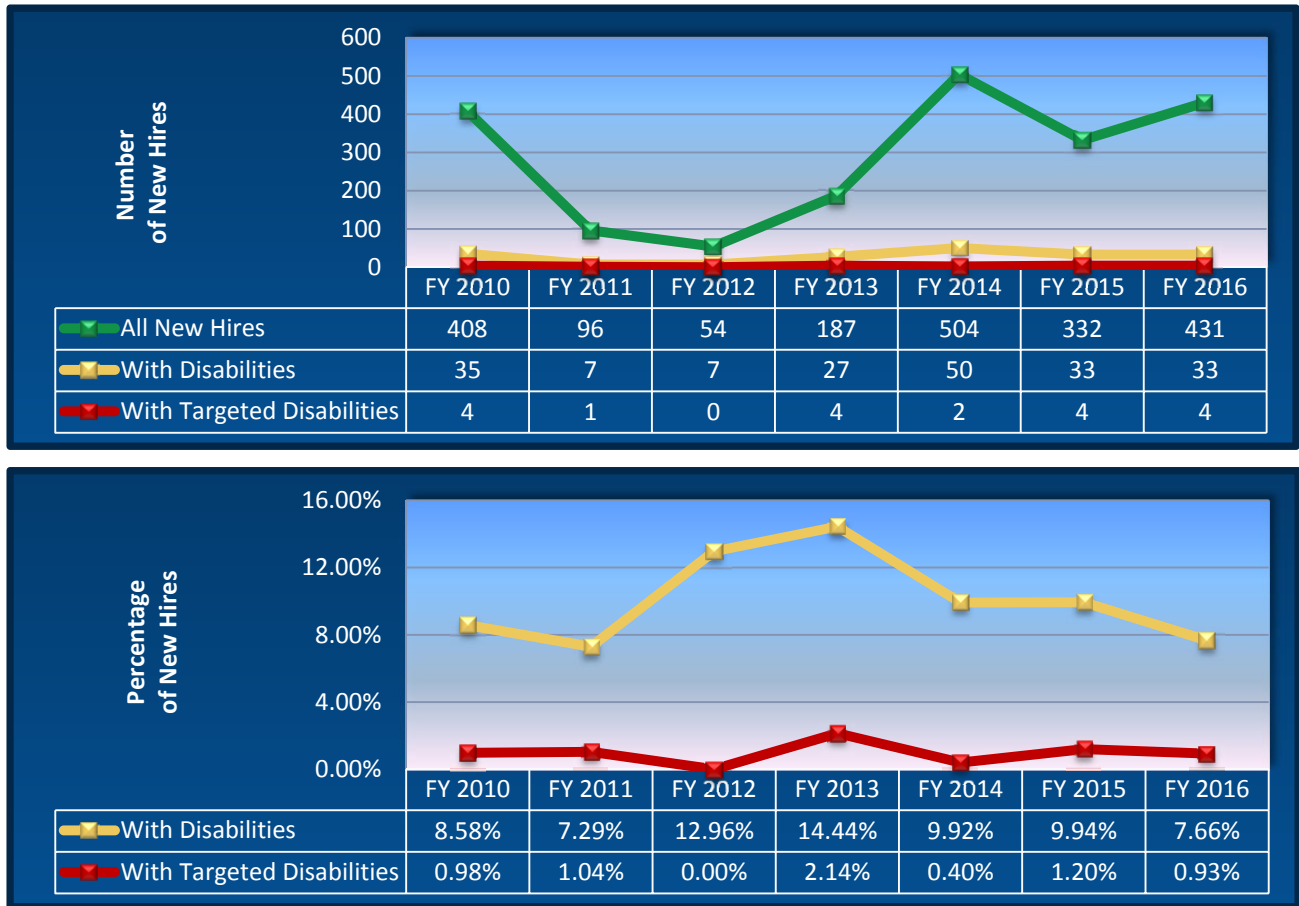
²⁵⁰ See Appendix F for data on “Employees with Disabilities at GAO.” This includes people who self-report their disabilities, people who claim veterans’ preference codes indicating a disability, and people with disabilities identified by GAO’s Reasonable Accommodation Team.

The graphs on the previous page illustrate the average percentages of new hires with disabilities and targeted disabilities at GAO for the fiscal year period under review. The highest number of new hires at GAO (504) occurred in fiscal year 2014, and the lowest number (54) occurred in fiscal year 2012. The highest percentage of new hires at GAO with a disability (27 out of 187) occurred in fiscal year 2013 at 14.44%. The highest percentage of new hires with a targeted disability (4 out of 187) occurred in fiscal year 2013 at 2.14%. The lowest percentage of new hires with a disability (7 out of 96) occurred in fiscal year 2011 at 7.29%, and the lowest percentage of new hires with a targeted disability (0 out of 54) occurred in fiscal year 2012 at 0.00%.²⁵¹ The graphs on the next page set forth this data.

²⁵¹ See Appendix F for data on “Employees with Disabilities at GAO.”

NUMBER AND PERCENTAGE OF NEW HIRES WITH DISABILITIES AT GAO

(Fiscal Years 2010-2016)



Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2010-2016)

The Board’s analysis indicates that GAO’s percentages of new hires with disabilities of 12.96% in fiscal year 2012 and 14.44% in fiscal year 2013 surpassed the federal goal of 12%. In all of the other years under study, GAO’s percentages of new hires with disabilities were below 12%. GAO’s percentage of new hires with targeted disabilities in fiscal year 2013 of 2.14% surpassed the federal

goal of 2%.²⁵² In all other years under study, GAO did not reach the federal goal of 2% targeted disability hiring.²⁵³

There does not appear to be a consistent correlation between an increase or decrease in the percentage of new hires with disabilities or targeted disabilities at the Agency and the number of Agency new hires per fiscal year. The increases in GAO's percentages of new hires with disabilities and targeted disabilities in fiscal year 2013 follow a low count of new hires at GAO for fiscal years 2011-2012. When the number of new hires at GAO continued to increase across fiscal years 2014-2016, the percentages of new hires with disabilities and targeted disabilities did not also increase, but instead declined across the same time period.

The Board notes that GAO's average percentages of new hires with disabilities of 9.54%, and the subset with targeted disabilities of 0.94%, for fiscal years 2010-2016, are lower than federal goals for inclusion in employment for qualified people with disabilities (12%) and with targeted disabilities (2%). The average representation of applicants with disabilities at GAO for fiscal years 2010-2015 was 18.29%, which suggests that the applicant pool may support increasing levels of new

²⁵² *Id.*

²⁵³ The Congressional Research Service has noted that it is important to keep in mind that statistics on the federal civilian workforce vary based on how such statistics are compiled. *See* Congressional Research Service, *Federal Workforce Statistics Sources: OPM and OMB* (Oct. 24, 2019) at 1. The Board computed data obtained from the Agency's Excel spreadsheets using a full headcount of individuals in pay status at any time of the fiscal year to capture every person with a disability as reported by the Agency to the Board. *See supra* n.240.

Using a different method of headcount compilation, GAO has published figures for new hires at the Agency reflecting a trend similar to that appearing in the Board's graphs, but the Agency's published figures differ in numerical value from the Board's figures for new hires at the Agency. For GAO's figures see *Management News* (May 14-25, 2018) at 2 (noting GAO reported "staff hires" for the following fiscal years: 2013 (117); 2014 (317); 2015 (195); 2016 (221); 2017 (175); and 2018 (230) (projected)).

Full-time equivalent (FTE) data are another method of computing federal data (not used in this study). "FTE is the number of hours that a [full-time] employee is expected to work in a year and it varies from headcount because the numbers of hours staff work are constantly changing due to leave, attrition, hiring and part-time." *Management News* at 2 (May 14-25, 2018).

hires with disabilities and targeted disabilities, which could bring the Agency’s new hiring levels closer to federal goals.

To aid GAO’s efforts to increase its numbers of qualified new hires with disabilities and targeted disabilities, the Board has compiled the table below of the most common disabilities, including targeted disabilities, among new hires in the GAO workforce across fiscal years 2010-2016.²⁵⁴

MOST COMMON DISABILITIES IDENTIFIED AMONG NEW HIRES AT GAO	
Disability*	Number of New Hires with Named Disability
Nonparalytic orthopedic	30
Hearing impairment (partial)	16
Pulmonary or respiratory condition	11
Diabetes	10
Partial Paralysis (nontargeted)	8
Gastrointestinal disorder	6
Visual impairments	6
Cancer	5
Epilepsy/seizure disorder	5
Learning disability or ADD/ADHD	5
Significant psychiatric disorder	5

Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2010-2016)
 *Description of disabilities relating to OPM, Standard Form 256 – *Self-Identification of Disability*

²⁵⁴ See Appendix G for data on “Disabilities of Employees at GAO.”

As noted in the table on the previous page, “nonparalytic orthopedic,” “hearing impairment (partial),” and “pulmonary or respiratory condition” are the most frequently occurring disabilities in GAO’s new hire population. Additionally, of the disabilities noted in the table on the previous page, “epilepsy/seizure disorder” (5 new hires) and “significant psychiatric disorder” (5 new hires) are targeted disabilities. This insight into the disabilities that most often occur among GAO new hires may be helpful to the Agency in tailoring its recruitment efforts to increase the numbers of people with disabilities and targeted disabilities in its workforce.

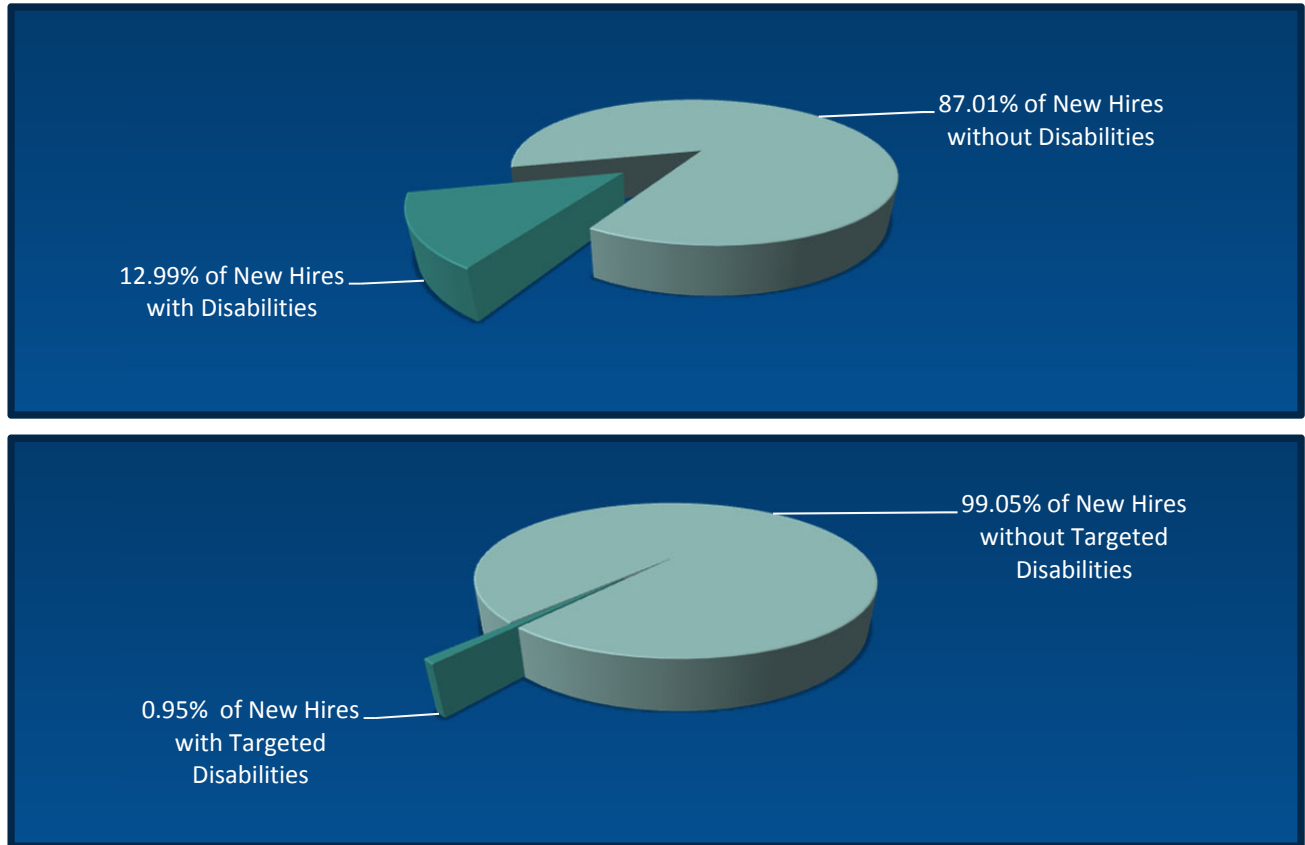
2. New Hires in the Federal Civilian Workforce

Board analysis of federal civilian workforce data on new hires for fiscal years 2010-2015 indicates that 12.99% of new hires (184,566 out of 1,420,699) were new hires with disabilities and 87.01% (1,236,133 out of 1,420,699) were new hires without disabilities. The Board’s analysis further indicates that for fiscal years 2010-2015, 0.95% of new hires (13,549 out of 1,420,699) had targeted disabilities and 99.05% (1,407,150 out of 1,420,699) were new hires who did not have targeted disabilities.²⁵⁵

²⁵⁵ See Appendix D for data on “Employees with Disabilities in the Federal Civilian Workforce.”

**AVERAGE PERCENTAGES OF NEW HIRES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE**

(Fiscal Years 2010-2015)

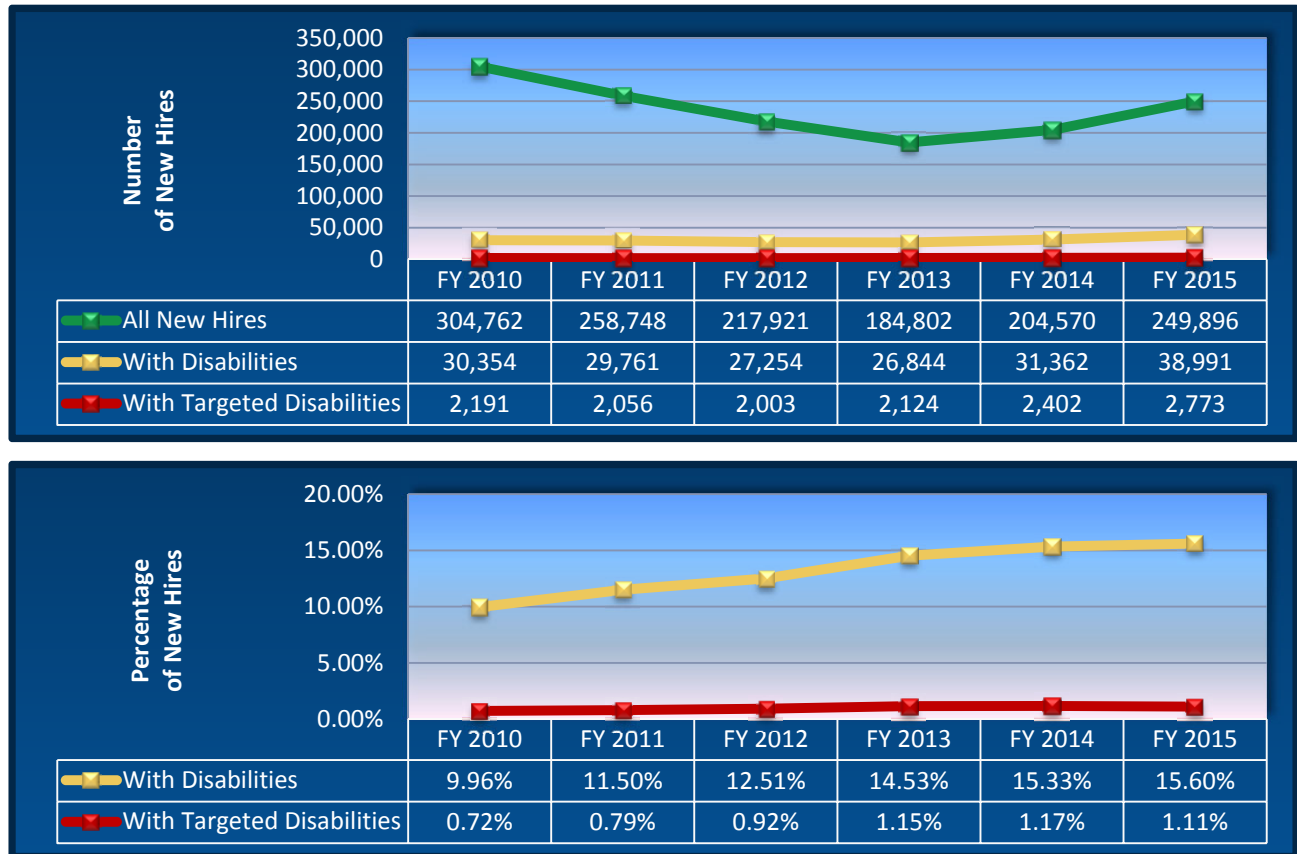


Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration – Statistical Data Mart

The graphs above illustrate the average percentages of new hires with disabilities in the federal civilian workforce for the fiscal year period under review. These details are illustrated in the graphs on the next page.

**NUMBER AND PERCENTAGE OF NEW HIRES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE**

(Fiscal Years 2010-2015)



Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration – Statistical Data Mart

The highest number of new hires in the federal civilian workforce (304,762) occurred in fiscal year 2010, and the lowest number (184,802) occurred in fiscal year 2013. The highest number of new hires in the federal civilian workforce with a disability (38,991 out of 249,896) occurred in fiscal year 2015 at 15.60%. The highest number of new hires with a targeted disability (2,773 out of 249,896) also occurred in fiscal year 2015 at 1.11%. The lowest number of new hires in the federal civilian

workforce with a disability (26,844 out of 184,802) occurred in fiscal year 2013 at 14.53%. The lowest number of new hires with a targeted disability (2,003 out of 217,921) occurred in fiscal year 2012 at 0.92%.

The Board's analysis indicates the percentages of new hires with disabilities in the federal civilian workforce of 9.96% and 11.50% for fiscal years 2010–2011 were below the federal goal of 12% and rose to 12.51%–15.60% for fiscal years 2012–2015. The range of percentages of new hires with targeted disabilities in the federal civilian workforce of 0.72%–1.17% for fiscal years 2010–2015 remained below the federal goal of 2%.²⁵⁶

There does not appear to be a consistent correlation between the percentage of new hires with disabilities or targeted disabilities and the number of new hires per fiscal year in the federal civilian workforce. The Board's analysis indicates that while the number of new hires in the federal civilian workforce declined for fiscal years 2010-2013, the percentage of new hires with disabilities, as well as targeted disabilities, generally increased for the same time period. When the number of new hires in the federal civilian workforce increased for fiscal years 2013-2015, the percentage of new hires with disabilities, as well as targeted disabilities, in the federal civilian workforce also increased.

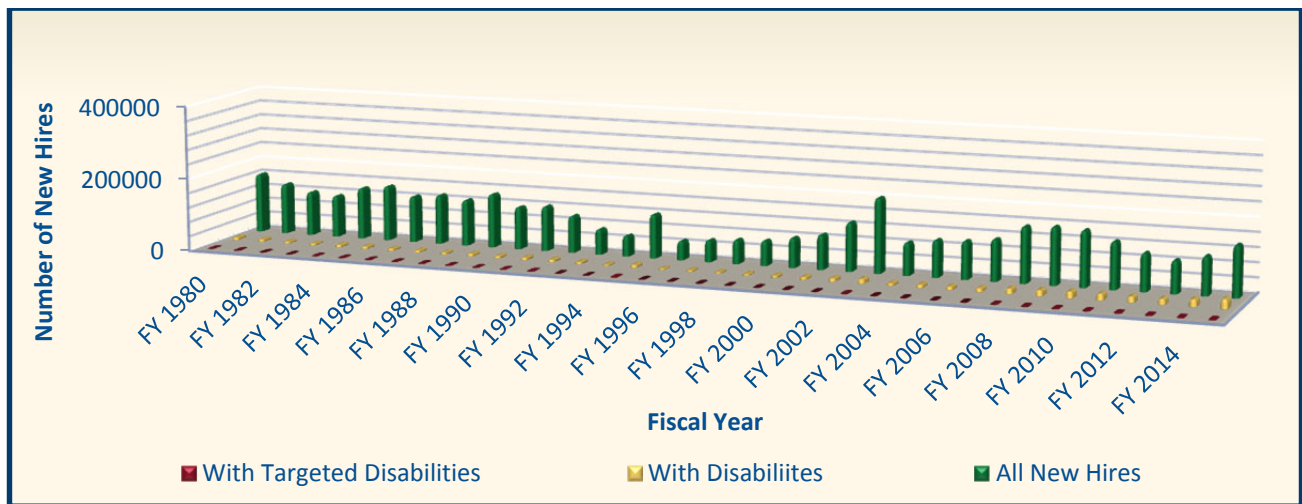
The Board notes that the average percentage of new hires with disabilities in the federal civilian workforce of 12.99% for fiscal years 2010-2015 is higher than the federal goal of 12% for inclusion in employment of qualified people with disabilities. The Board further notes, however, that the percentage of the federal civilian workforce of new hires with targeted disabilities is 0.95%, which

²⁵⁶ See *supra* n.253 (noting that statistics on the federal civilian workforce vary based on their method of compilation). The data on the federal civilian workforce analyzed in this study are compiled from a subset of data including all temporary and career employees, including transfers, interns, seasonal workers, and employees hired on a part-time basis. This is a smaller subset than the full headcount of individuals in pay status at any time of the fiscal year that was used to compile GAO data (to capture every individual with a disability the Agency has reported to the Board).

is well below the federal goal of 2% for people with targeted disabilities. While the percentage of new hires with targeted disabilities in the federal civilian workforce has been below the 2% goal for every year of the study, the federal civilian workforce has demonstrated an increasing percentage of hires above the federal goal of 12% inclusion in employment for people with disabilities in fiscal years 2012 (12.51%), 2013 (14.53%), 2014 (15.33%), and 2015 (15.60%).

Additional information relating to *historical* data²⁵⁷ on new hires with disabilities and targeted disabilities in the federal civilian workforce is available and appears in the following graphs:

**HISTORICAL DATA ON NEW HIRES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 1980-2015)**

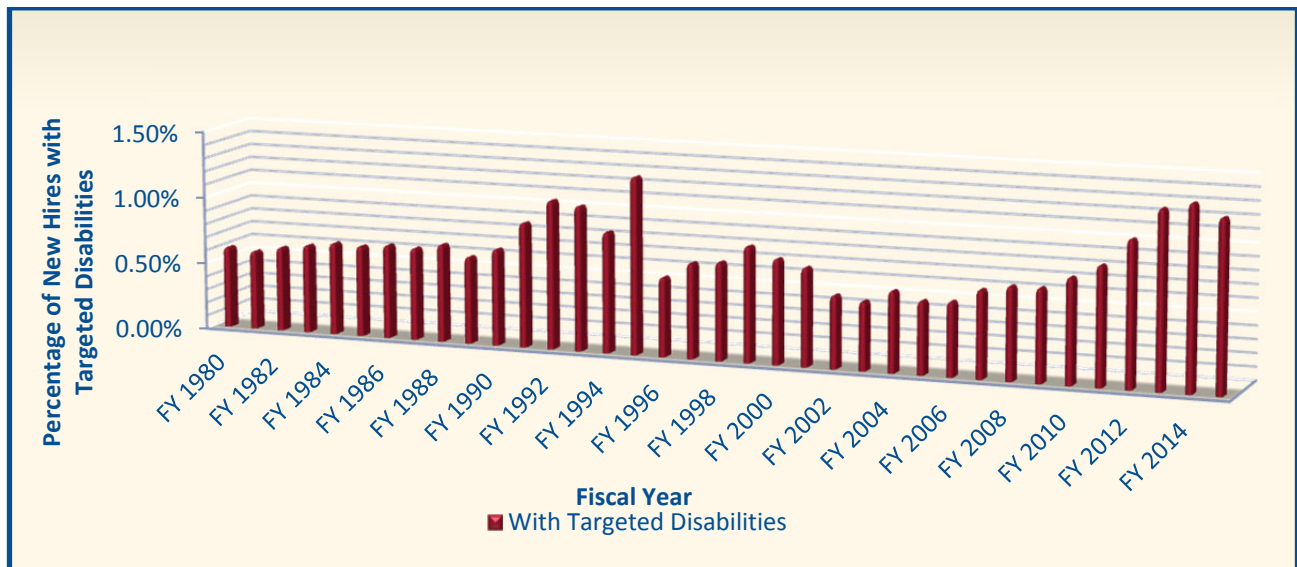
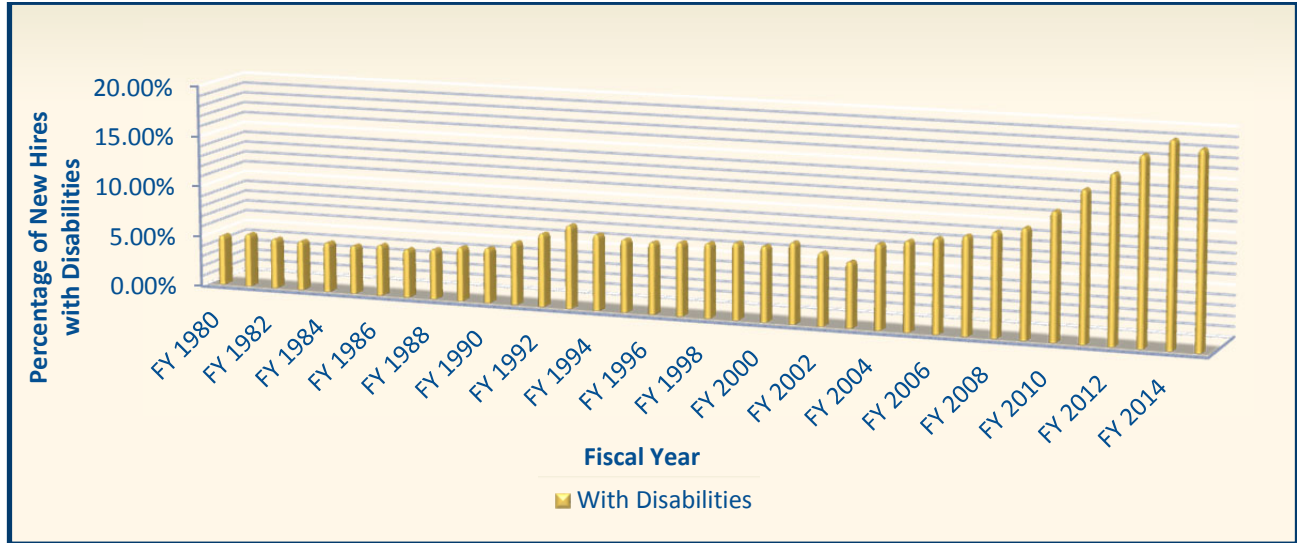


Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration – Statistical Data Mart

²⁵⁷ See Appendix D for *historical* data on “Employees with Disabilities in the Federal Civilian Workforce.” See also *supra* n.253 (for discussion of methods of compilation affecting federal civilian workforce statistics). Historical federal civilian workforce data, as represented in these graphs, are comprised only of nonseasonal full-time career new hires, including transfers. This is a smaller subset of data than all temporary and career employees, including transfers, interns, seasonal workers, and employees hired on a part-time basis that was used to calculate new hires data for the federal civilian workforce represented in graphs of nonhistorical data. The subset of data used to compute historical federal civilian workforce data also is less inclusive than the full headcount of individuals at GAO in pay status at any time of the fiscal year (designed to capture every individual with a disability that the Agency reported to the Board) which was used in calculating GAO data as presented in this study.

**HISTORICAL DATA ON NEW HIRES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE**

(Fiscal Years 1980-2015)



Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration – Statistical Data Mart

Available *historical* data on new hires in the federal civilian workforce indicate that the federal government has made great strides in raising the percentages of new hires with disabilities and targeted disabilities within its ranks since fiscal year 1980, when persons with disabilities comprised

4.93% (8,079 out of 163,827), and those with targeted disabilities comprised 0.61% (994 out of 163,827) of the new hires in the federal civilian workforce. This *historical* data indicate that, despite several dips in the overall number of new hires across fiscal years 1980-2015, *historical* levels of new hires with disabilities in the federal civilian workforce steadily have increased overall to 19.02% (26,466 out of 139,159) in fiscal year 2015. *Historical* levels of targeted disabilities among new hires in the federal civilian workforce also have increased to 1.27% (1,768 out of 139,159) in fiscal year 2015.

When compared to *historical* data from the federal civilian workforce, GAO's most recently available percentage of new hires with disabilities of 7.66% (33 out of 431) from fiscal year 2016 approximates the same percentage of new hires with disabilities represented in the federal civilian workforce at 7.50% (5,112 out of 68,129) in fiscal year 1999. The *historical* data on new hires in the federal civilian workforce also indicate that GAO's most recently available percentage of new hires with targeted disabilities of 0.93% (4 out of 431) from fiscal year 2016 compares to approximately the same percentage of new hires with targeted disabilities represented in the federal civilian workforce at 0.88%–1.08% between fiscal years 2011 (1,122 out of 127,487) and 2012 (1,101 out of 102,093).

The Board notes that GAO repeatedly receives recognition from the Partnership for Public Service as one of the best places to work in the federal government. It also ranks first in the Partnership's category for "Support for Diversity."²⁵⁸ With this recognition in mind, the Agency should continue its work toward matching or surpassing the progress of the federal civilian workforce in reaching the federal goals of inclusion in employment for qualified people with disabilities (12% for disabilities, and 2% for targeted disabilities).

²⁵⁸ See *supra* n.5 for a discussion of GAO's Partnership for Public Service rankings.

C. Employees

The Board reviewed available GAO personnel data on employees for fiscal years 2010-2016, and compared this data to information available on employees in the federal civilian workforce for fiscal years 2010-2015. GAO's average percentage of employees with disabilities of 7.82% for fiscal years 2010-2016 is comparatively lower than the average percentage of employees with disabilities in the federal civilian workforce of 11.87% for fiscal years 2010-2015. However, GAO's average percentage of employees with targeted disabilities of 1.10% for fiscal years 2010-2016 is slightly higher than the average percentage of employees with targeted disabilities in the federal civilian workforce of 0.99% for fiscal years 2010-2015.

1. Employees at GAO

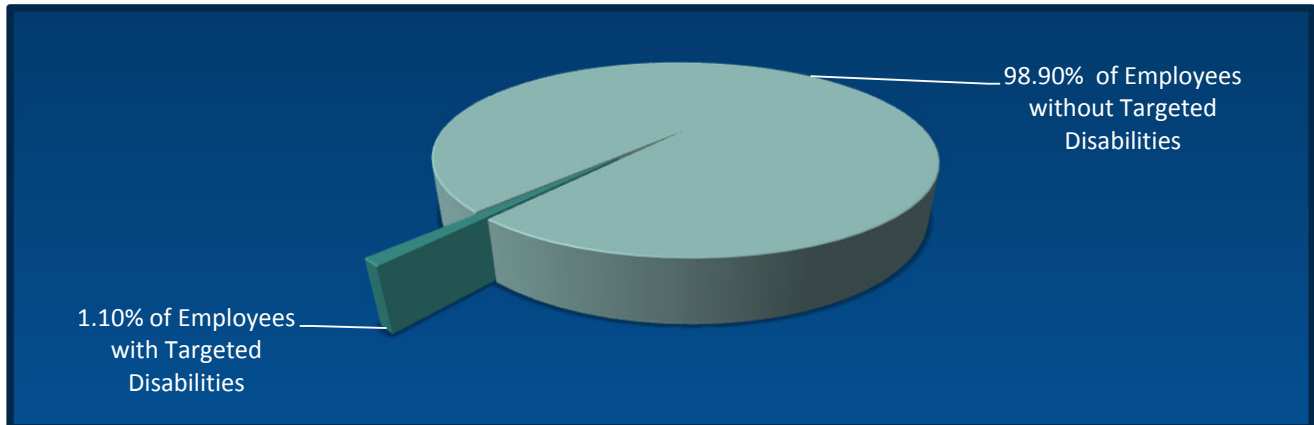
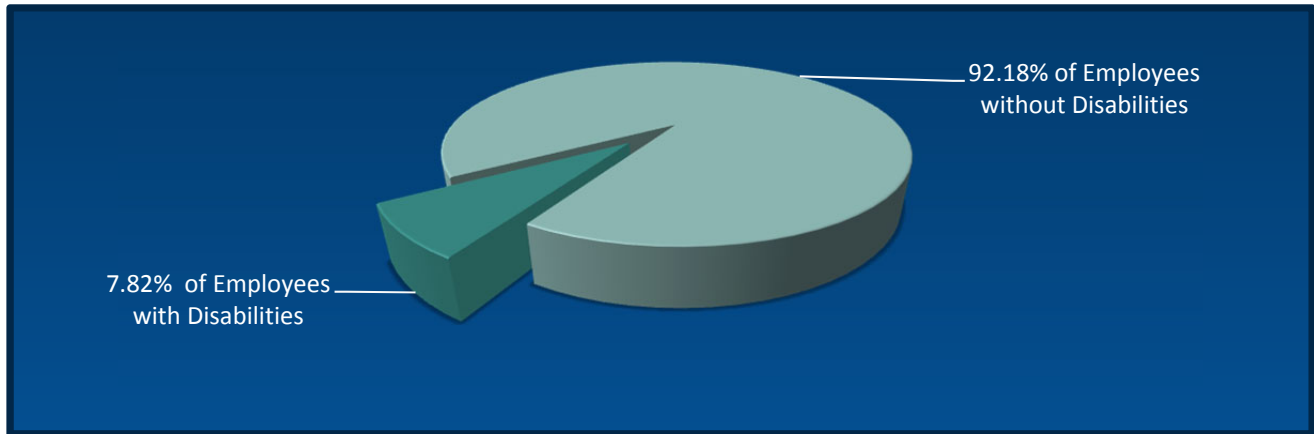
Board analysis of GAO employee data for fiscal years 2010-2016 indicates that 7.82% (approximately 271 out of 3,466) were employees with disabilities, and 92.18% (approximately 3,195 out of 3,466) were employees without disabilities.²⁵⁹ Board analysis further indicates that for fiscal years 2010-2016, 1.10% (approximately 38 out of 3,466) of Agency employees had targeted disabilities and 98.90% (approximately 3,428 out of 3,466) did not have targeted disabilities.²⁶⁰

²⁵⁹ See *supra* n.253 (noting statistics are affected by data compilation methods) and *supra* n.166 (supporting a reported 4% participation of employees with disabilities in GAO's workforce, without notation of the underlying values used to compute the 4%). See also *supra* n.240.

²⁶⁰ See Appendix F for data on "Employees with Disabilities at GAO."

AVERAGE PERCENTAGES OF EMPLOYEES WITH DISABILITIES AT GAO

(Fiscal Years 2010-2016)

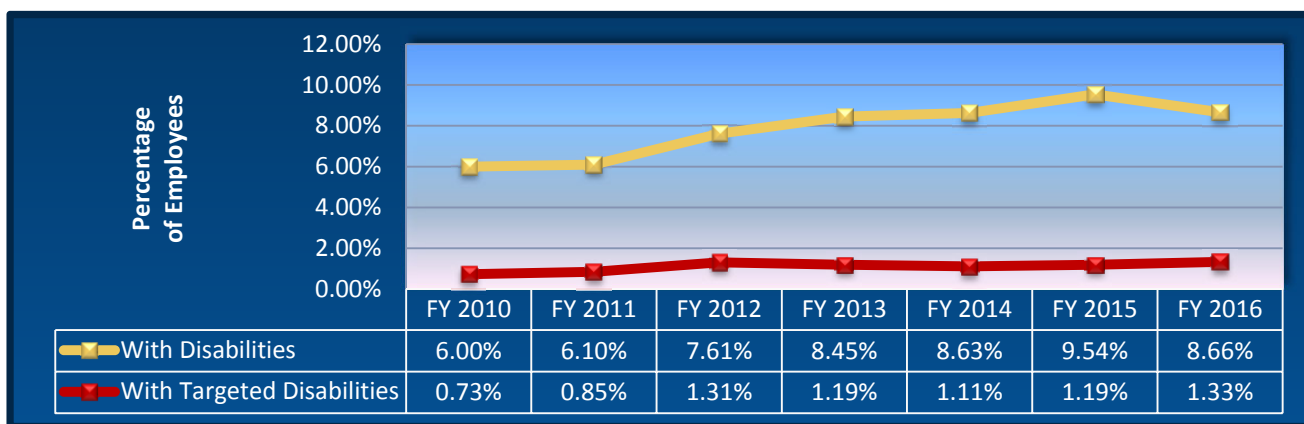
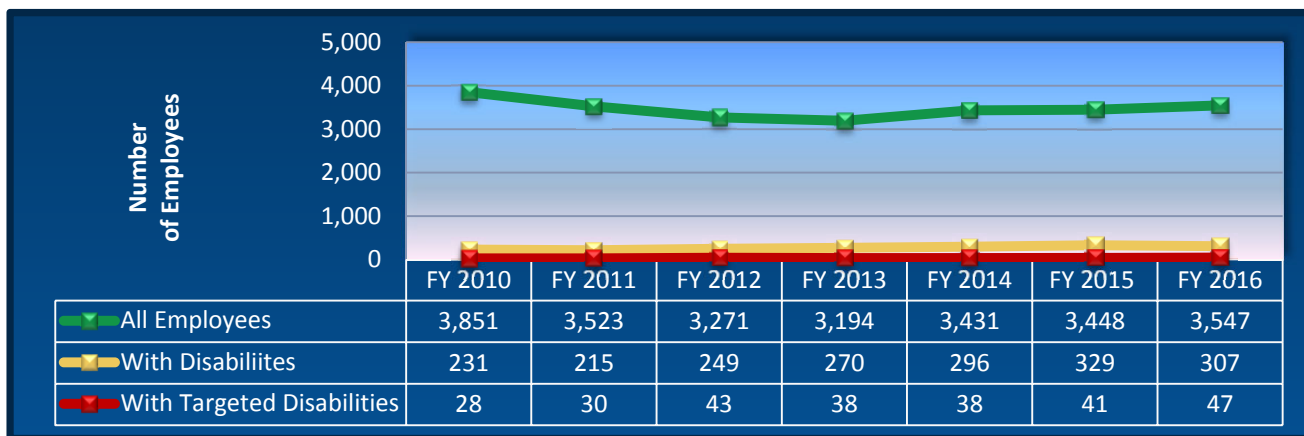


Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

The graphs above illustrate the average percentages of employees with disabilities at GAO for the period under review. The Agency experienced its highest number of employees (3,851) in fiscal year 2010 and its lowest number of employees (3,194) in fiscal year 2013. The highest number of employees at GAO with a disability (329 out of 3,448) occurred in fiscal year 2015 at 9.54%. The highest number of employees with a targeted disability (47 out of 3,547) occurred in

fiscal year 2016 at 1.33%. The lowest number of employees with a disability (215 out of 3,523) occurred in fiscal year 2011 at 6.10%. The lowest number of employees with a targeted disability (28 out of 3,851) occurred in fiscal year 2010 at 0.73%.²⁶¹ The graphs below illustrate this data.

**NUMBER AND PERCENTAGE OF EMPLOYEES WITH DISABILITIES AT GAO
(Fiscal Years 2010-2016)**



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

²⁶¹ See Appendix F for data on “Employees with Disabilities at GAO.”

The Board's analysis indicates that both the percentages of GAO employees with disabilities and with targeted disabilities generally increased for fiscal years 2010-2016. The data in the graphs on the previous page indicate the percentage of employees with disabilities increased from 6.00% in fiscal year 2010 to 8.66% in fiscal year 2016 (hitting 9.54% in fiscal year 2015). The percentage of employees with targeted disabilities also increased from 0.73% in fiscal year 2010 to 1.33% in fiscal year 2016. Despite this progress, for all fiscal years under study, GAO did not meet the federal goals for inclusion in employment of 12% for people with disabilities and 2% for people with targeted disabilities among its employee ranks.²⁶²

There does not appear to be a consistent correlation between an increase or decrease in the percentage of employees with disabilities or targeted disabilities at the Agency and the number of employees at the Agency per fiscal year. The increase in the percentages of employees with disabilities and targeted disabilities appears during both the decline in the number of employees at the Agency for fiscal years 2010-2013 and the increase in the number of employees at the Agency for fiscal years 2014-2015.

²⁶² The Board computed data obtained from Excel spreadsheets that the Agency provided to the Board using a full headcount of individuals in pay status at any time of the fiscal year noted to capture every individual with a disability for that fiscal year.

Using a different method of compilation, GAO has published figures on employees with disabilities at the Agency for similar fiscal years reflecting a similar trend to that appearing in the Board's graphs, but the Agency's published figures differ in numerical values from the Board's figures. See *Management News* at 2 (May 14-25, 2018) (noting GAO's reported workforce capacity headcount for the following fiscal years: 2013 (2,869); 2014 (3,011); 2015 (3,024); 2016 (3,031); 2017 (3,027); and 2018 (3,077) (projected). GAO also has reported similarly computed workforce capacity headcount numbers to the Partnership for Public Service for the following fiscal years: 2009 (3,303); 2010 (3,350); 2011 (3,134); 2012 (2,957); 2013 (2,869); 2014 (3,011); 2015 (3,024); and 2016 (3,031); see also *GAO Workforce Size and Demographics from 2001-2016* at <https://bestplacestowork.org/BPTW/rankings/detail/GA00> (GAO's reported numbers do not contain as large a set of employees as used in the Board's computations. For example, GAO summer interns who leave the Agency before the close of the fiscal year are not reported in GAO's numbers, but would be captured in the Board's numbers used in this study).

To aid GAO’s efforts to increase its numbers of qualified employees with disabilities and targeted disabilities, the Board has compiled the table below of the most common disabilities, including targeted disabilities, among employees in the GAO workforce across fiscal years 2010-2016. This chart below indicates the exact head count of people with the most common disabilities employed at GAO across fiscal years 2010-2016, rather than mean value calculations, associated with the disabilities.²⁶³

MOST COMMON DISABILITIES IDENTIFIED AMONG EMPLOYEES AT GAO	
Disability*	Number of Employees with Named Disability
Nonparalytic orthopedic	171
Significant psychiatric disorder	62
Pulmonary or respiratory condition	46
Hearing impairment (partial)	37
Diabetes	27
Significant mobility impairment	25
Cancer	23
Learning disability or ADD/ADHD	18
Visual impairments	16
Epilepsy/seizure disorder	9
Speech impairment	7
Total deafness (both ears)	7

Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)
 (Disability data includes both self-recorded or RAC assigned codes at any time during the fiscal years)
 *Description of disabilities relating to OPM, Standard Form 256 – *Self-Identification of Disability*

²⁶³ See Appendix G for data on “Disabilities of Employees at GAO,” including mean value calculations.

As noted in the table on the previous page, “nonparalytic orthopedic,” “significant psychiatric disorder,” “pulmonary or respiratory condition,” and “hearing impairment (partial)” are frequently listed as disabilities in GAO’s workforce. Additionally, of the disabilities noted in the table on the previous page, “significant psychiatric disorder” (62 employees), “epilepsy/seizure disorder” (9 employees), and “total deafness (both ears)” (7 employees) are targeted disabilities. This ranking of the most common disabilities and targeted disabilities in the GAO workforce should be useful to the Agency in tailoring its recruitment efforts to increase numbers of people with disabilities and targeted disabilities included in employment at the Agency.

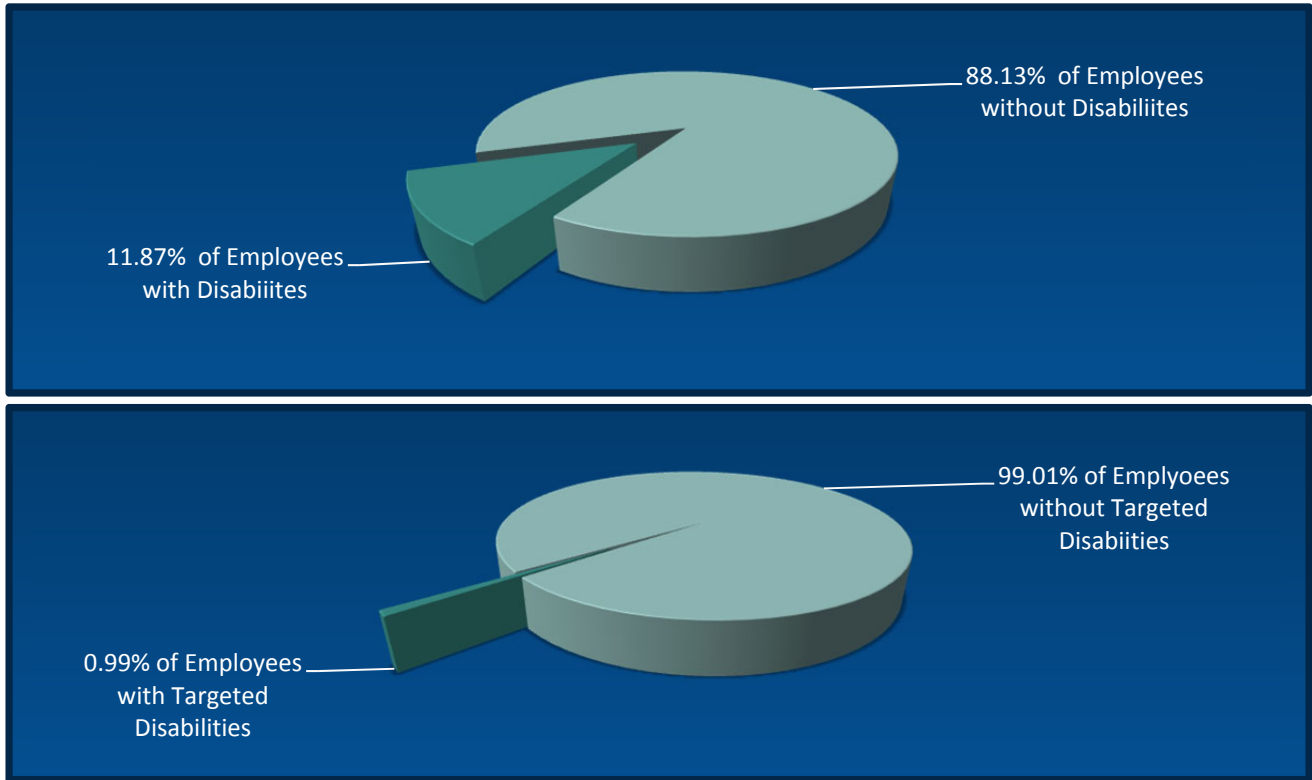
2. Employees in the Federal Civilian Workforce

The Board’s analysis of federal civilian workforce data for fiscal years 2010-2015 indicates that 11.87% (247,807 out of 2,087,602) were employees with disabilities and 88.13% (1,839,795 out of 2,087,602) were employees without disabilities. The Board’s analysis further indicates that for fiscal years 2010-2015, 0.99% (20,738 out of 2,087,602) were employees in the federal civilian workforce with targeted disabilities and 99.01% (2,066,864 out of 2,087,602) were employees without targeted disabilities.²⁶⁴

²⁶⁴ See Appendix D for data on “Employees with Disabilities in the Federal Civilian Workforce.”

**AVERAGE PERCENTAGES OF EMPLOYEES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE**

(Fiscal Years 2010-2015)

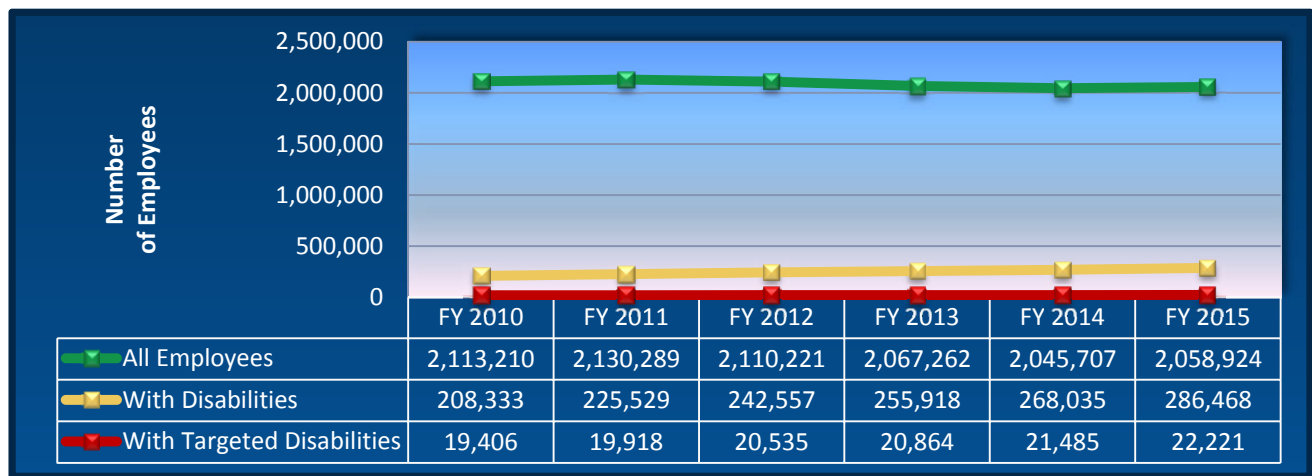


Source: *Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)*
OPM Enterprise Human Resources Integration – Statistical Data Mart

The graphs above illustrate the average percentages of employees with disabilities in the federal civilian workforce for the fiscal year period under review. The highest number of employees in the federal civilian workforce (2,130,289 employees) occurred in fiscal year 2011, and the lowest number (2,045,707 employees) occurred in fiscal year 2014. The highest number of employees in this group with a disability (286,468 out of 2,058,924) occurred in fiscal year 2015 at 13.91%. The highest number of employees with a targeted disability (22,221 out of 2,058,924) also occurred in fiscal year 2015 at 1.08%. The lowest number of employees in the

federal civilian workforce with a disability (208,333 out of 2,113,210) occurred in fiscal year 2010 at 9.86%. The lowest number of employees with a targeted disability (19,406 out of 2,113,210) also occurred in fiscal year 2010 at 0.92%. These details are illustrated in the graph below and in the graph on the next page.

**NUMBER OF EMPLOYEES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 2010-2015)**



Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration – Statistical Data Mart

**PERCENTAGES OF EMPLOYEES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 2010-2015)**



Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration – Statistical Data Mart

The graph above shows the percentage of employees with disabilities in the federal civilian workforce was below the federal goal of 12% for fiscal years 2010-2012 (9.86%-11.49%). The percentage rose above the 12% goal for fiscal years 2013-2015 (12.38%-13.91%). The percentage of employees with targeted disabilities in the federal civilian workforce fell below the goal of 2% for fiscal years 2010-2015 (0.92%-1.08%).²⁶⁵

For the federal civilian workforce, there appears to be a connection between a decrease in the number of individuals employed in a fiscal year, and an increase in the number of individuals with disabilities and targeted disabilities for the same fiscal year. The Board’s analysis indicates that while the number of employees in the federal civilian workforce generally declined across fiscal years 2011-2015, the percentage of new hires with disabilities, as well as targeted disabilities, generally increased for the same period.

²⁶⁵ See Appendix D for data on “Employees with Disabilities in the Federal Civilian Workforce.” See also *supra* n.253 (for a discussion of methods of compilation affecting federal civilian workforce statistics).

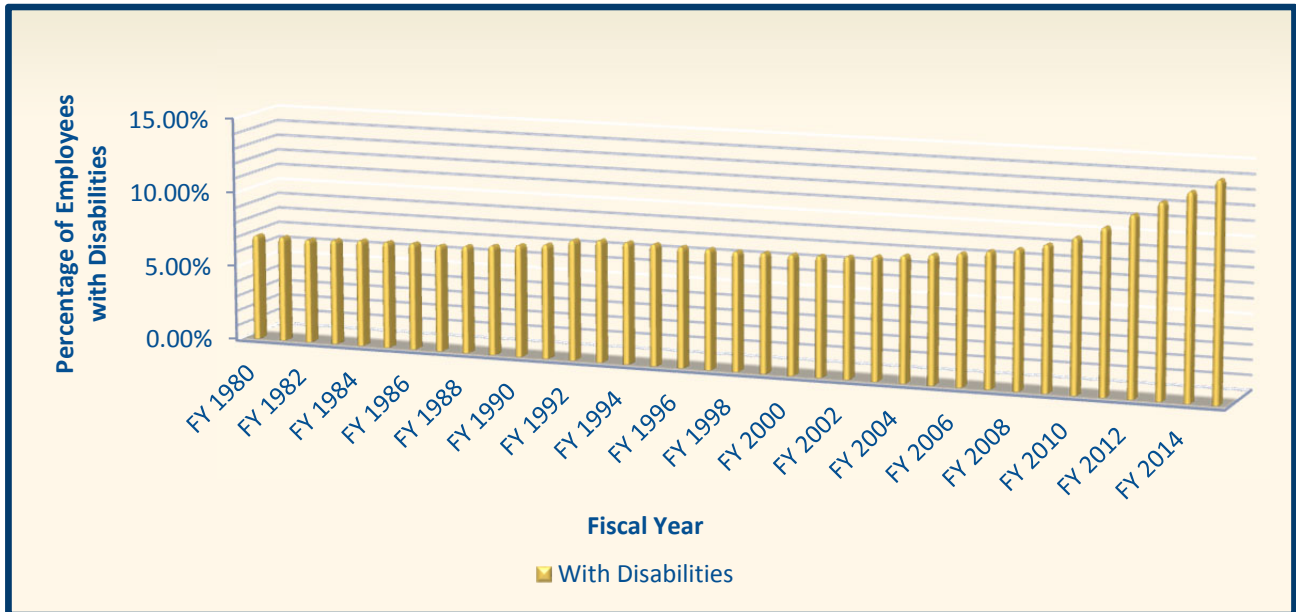
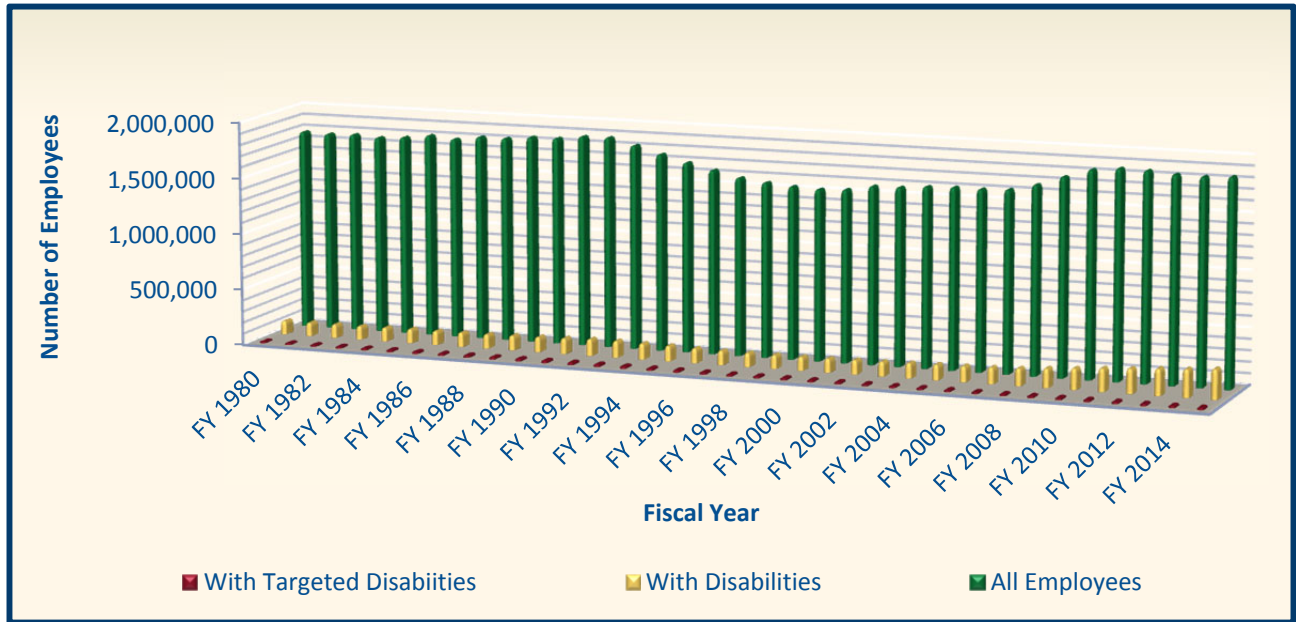
The Board notes that the average percentage of employees with disabilities in the federal civilian workforce of 11.87% for fiscal years 2010-2015 is almost at the federal goal of 12% for inclusion of people with disabilities in employment. The Board additionally notes, however, that the percentage of employees with targeted disabilities in the federal civilian workforce of 0.99% remains well below the federal goal of 2% for inclusion of people with targeted disabilities in employment. While the percentage of employees with targeted disabilities in the federal civilian workforce has been below the 2% goal for every year of the study, the federal civilian workforce has demonstrated an increasing trend of inclusion in employment of qualified people with disabilities above the federal goal of 12% in fiscal years 2013 (12.38%), 2014 (13.10%), and 2015 (13.91%).

Additional information relating to *historical* data²⁶⁶ on employees with disabilities and targeted disabilities²⁶⁷ in the federal civilian workforce is presented in the following graphs:

²⁶⁶ See Appendix D for *historical* data on “Employees with Disabilities in the Federal Civilian Workforce”; see also *supra* n.257 (for a discussion of methods of compilation of *historical* federal civilian workforce statistics).

²⁶⁷ It should be noted that, following the enactment of the ADAAA, amending the ADA, the expansive change in the definition of disability in 2008 could have caused incumbent employees to receive disability status from 2008 onward, which they did not qualify for prior to the enactment of the ADAAA. Periodic revisions to OPM’s Standard Form 256, *Self-Identification of Disability*, also could have a similar effect of changing the representation of an employee’s disability status. See Appendix C for 2016 revisions to OPM’s Standard Form 256.

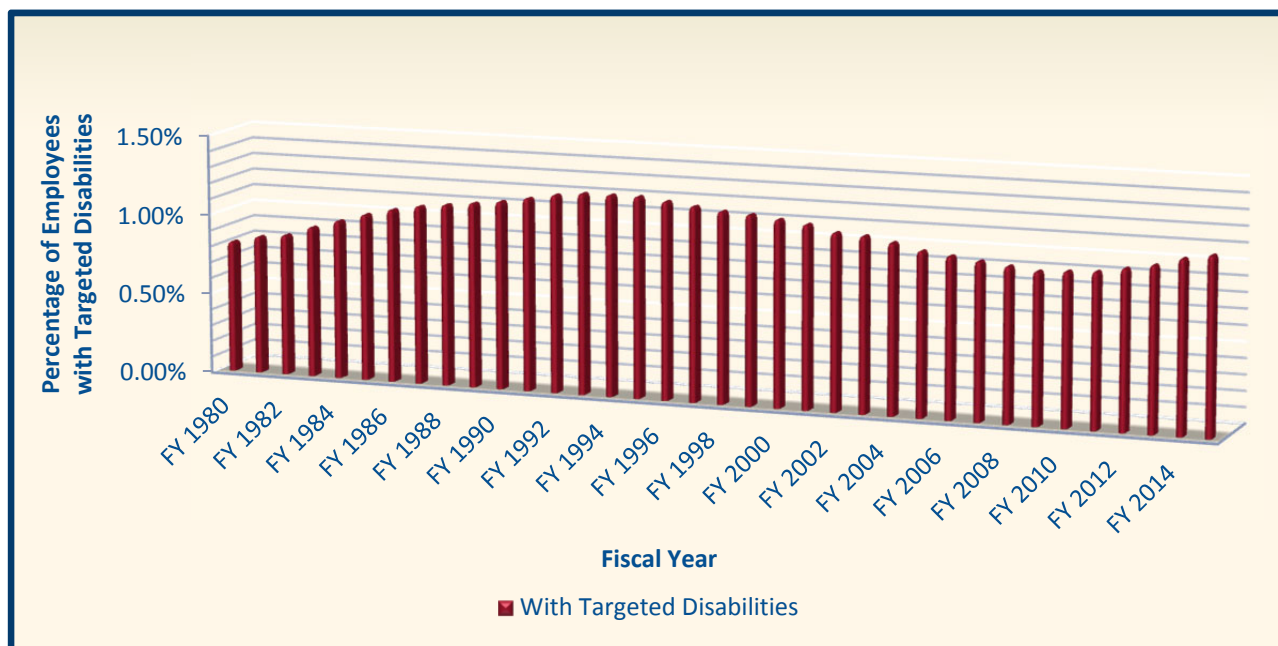
**HISTORICAL DATA ON EMPLOYEES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 1980-2015)**



Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration - Statistical Data Mart

**HISTORICAL DATA ON EMPLOYEES WITH DISABILITIES
IN THE FEDERAL CIVILIAN WORKFORCE**

(Fiscal Years 1980-2015)



Source: OPM Report on Employment of Individuals with Disabilities in the Federal Executive Branch (2015)
OPM Enterprise Human Resources Integration - Statistical Data Mart

Available *historical* data on employees in the federal civilian workforce indicate that the federal government has made great strides in improving the representation of employees with disabilities and targeted disabilities since fiscal year 1980, when employees with disabilities comprised 7.03% (125,067 out of 1,779,834) of the federal civilian workforce, and employees with targeted disabilities comprised 0.82% (14,624 out of 1,779,834) of the federal civilian workforce. The *historical* data indicate that, despite a dip in the number of employees in the federal civilian workforce between fiscal years 1994-2009, *historical* levels of employees with disabilities in the federal civilian workforce continued to increase during the same time period. The data also show that the level of employees with disabilities in the federal civilian workforce increased to 14.41% (264,844 out of 1,838,352) in fiscal year 2015.

In contrast, *historical* levels of employees with targeted disabilities dropped for fiscal years 1994-2009 from 1.25% (21,989 out of 1,755,221) to 0.94% (16,560 out of 1,757,105), but rose again by fiscal year 2015 to 1.10% (20,274 out of 1,838,352). The graphs on the previous two pages indicate that, in recent years, the federal civilian workforce consistently has been increasing its level of qualified individuals with disabilities in the workforce, while there has been less of an upward trend in the level of qualified individuals with targeted disabilities.

When compared to *historical* data on employees in the federal civilian workforce, GAO's most recently available percentage of employees with disabilities of 8.66% (307 out of 3,547) from fiscal year 2016 is at approximately the same percentage of employees with disabilities represented in the federal civilian workforce at 8.54% (137,578 out of 1,611,400) in fiscal year 2005 and 8.74% (140,622 out of 1,608,157) in fiscal year 2006. The *historical* data on employees in the federal civilian workforce also indicate that GAO's most recently available percentage of employees with targeted disabilities of 1.33% (47 out of 3,547) from fiscal year 2016 is higher than all *historical* percentages of employees with targeted disabilities in the federal civilian workforce for fiscal years 1980-2015, which peaked at 1.25% (21,245 out of 1,693,177) in fiscal year 1995.

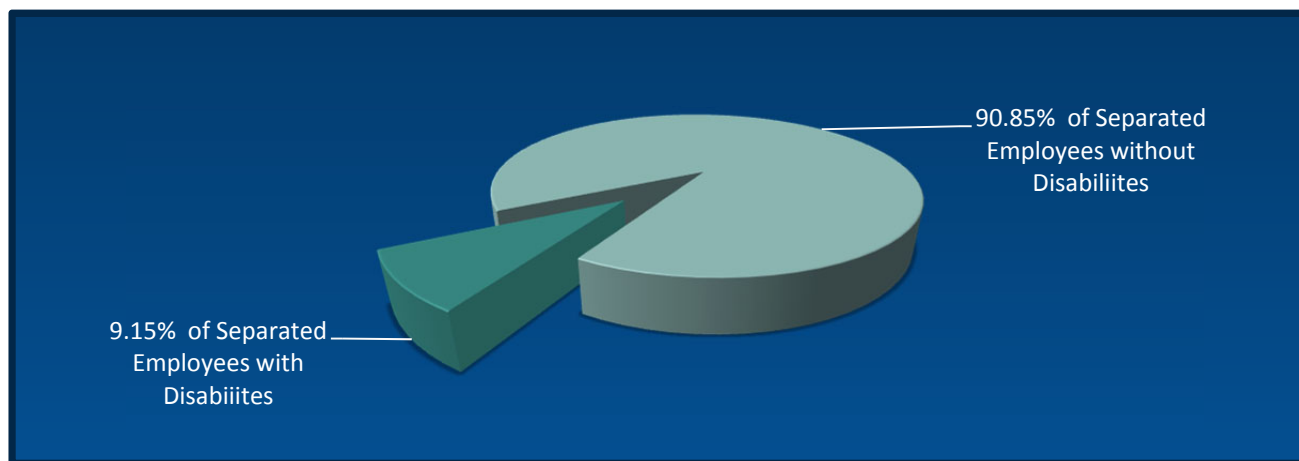
The Board notes that GAO employed qualified individuals with targeted disabilities in fiscal year 2016 at the highest recorded percentage of 1.33% during the fiscal years under review for this study. However, regarding employment of qualified individuals with disabilities generally, the most recent data available for this study indicate that employees with disabilities comprise over 13% of the federal civilian workforce, and this is outpacing GAO's employment of individuals with disabilities at below 8%. The Board urges GAO to make greater strides toward matching or surpassing the progress of the federal civilian workforce in reaching the federal goals for

employment of individuals with disabilities (12%) and with targeted disabilities (2%). This effort would enhance GAO’s reputation as one of the best places to work in the federal government, particularly one that ranks first in the Partnership for Public Service’s category regarding “Support for Diversity.”²⁶⁸

D. Separated Employees – GAO

The Board’s analysis of GAO data on separated employees with disabilities for fiscal years 2010-2016 indicates that 9.15% (210 out of 2,295) of employees who left the Agency were employees with disabilities and 90.85% (2,085 out of 2,295) were employees without disabilities. The Board’s analysis also indicates that 1.22% (28 out of 2,295) were employees with targeted disabilities and 98.78% (2,267 out of 2,295) were employees without targeted disabilities.²⁶⁹

**AVERAGE PERCENTAGE OF SEPARATED EMPLOYEES WITH DISABILITIES AT GAO
(Fiscal Years 2010-2016)**



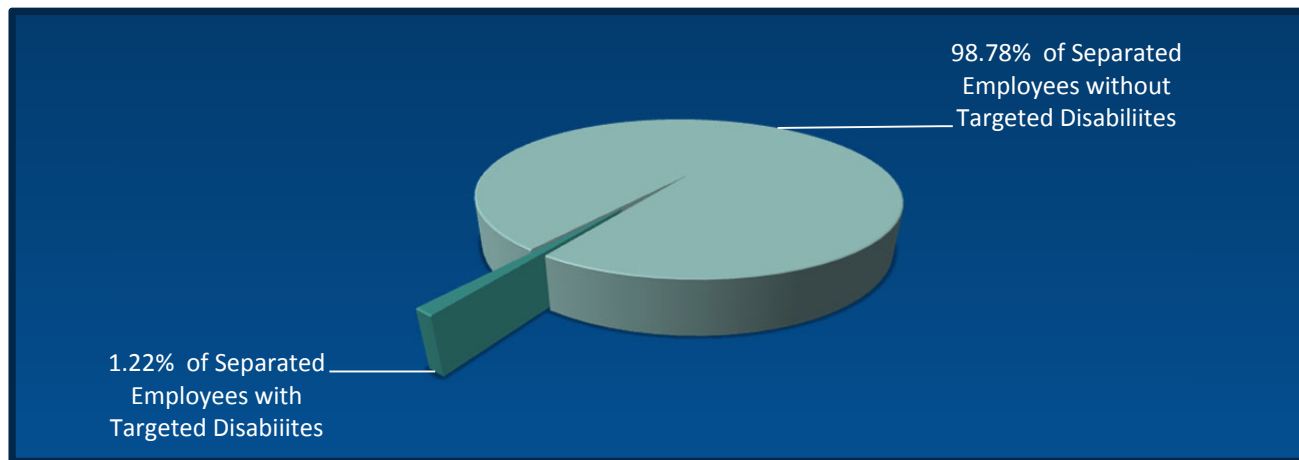
Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

²⁶⁸ See *supra* n.5 for a discussion of GAO’s Partnership for Public Service rankings.

²⁶⁹ See Appendix K for data on “Separated Employees with Disabilities at GAO.”

AVERAGE PERCENTAGE OF SEPARATED EMPLOYEES WITH TARGETED DISABILITIES AT GAO

(Fiscal Years 2010-2016)



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

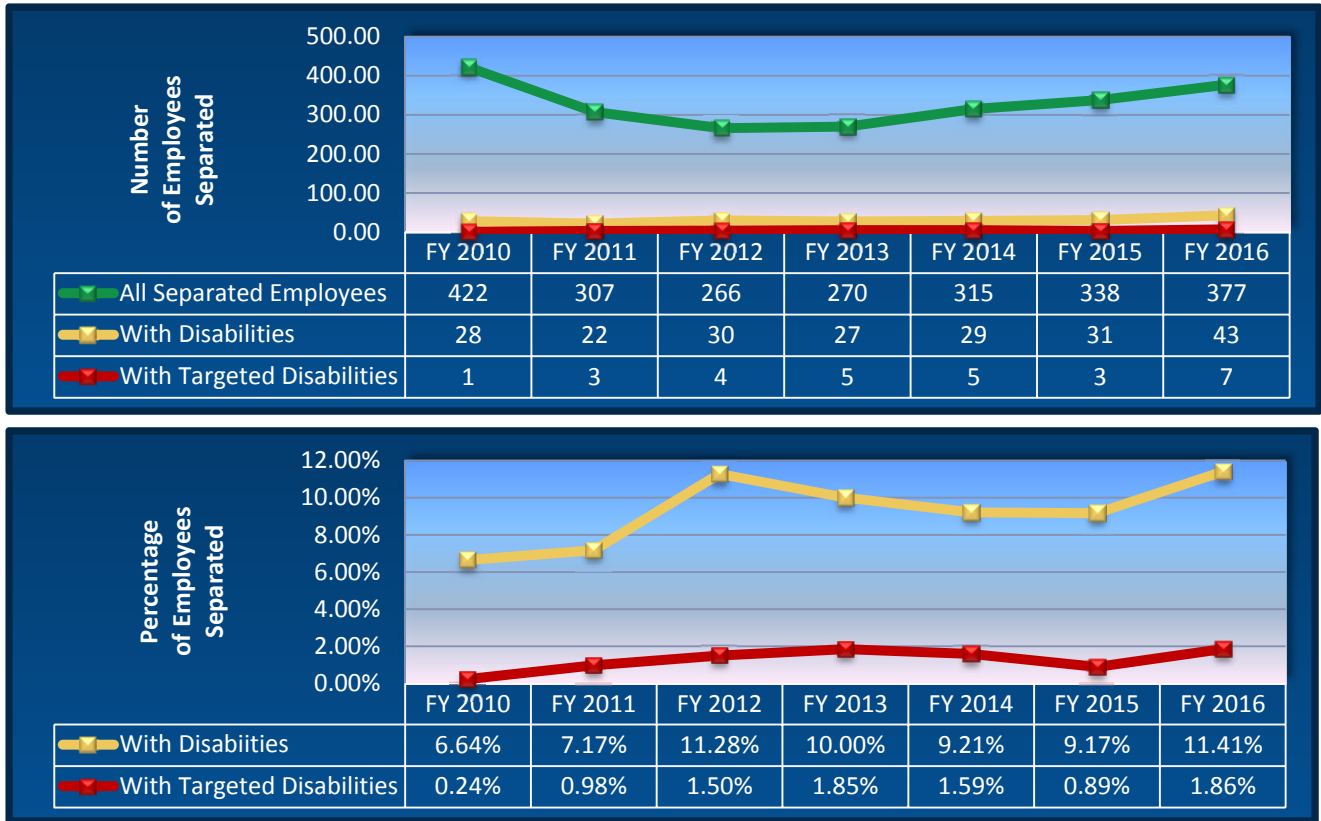
The graph on the previous page and the graph above illustrate the average percentages of separated employees with disabilities at GAO for the fiscal years reviewed. The highest number of employees separating from the Agency (422) occurred in fiscal year 2010 and the lowest number (266) occurred in fiscal year 2012. The highest number of separated employees with a disability (43 out of 377) occurred in fiscal year 2016 at 11.41%; the highest number of separated employees with a targeted disability (7 out of 377) also occurred in fiscal year 2016 at 1.86%. The lowest number of separated employees with a disability (22 out of 307) occurred in fiscal year 2011 at 7.17%, while the lowest number of separated employees with a targeted disability (1 out of 422) occurred in fiscal year 2010 at 0.24%.²⁷⁰ These details are illustrated in the graphs on the following page.

²⁷⁰ See also *supra* n.253 (for a discussion of variance in workforce statistics based on their method of compilation).

For this section on GAO’s separating employees, the Board computed data obtained from Excel spreadsheets the Agency provided to the Board using a full headcount of individuals in pay status at any time of the noted fiscal year prior to separation to capture every individual with a disability. (Footnote continued on next page)

NUMBER AND PERCENTAGES OF SEPARATED EMPLOYEES WITH DISABILITIES AT GAO

(Fiscal Years 2010-2016)



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

(Footnote continued from previous page) Using a different method of compilation, GAO has published figures on separated employees with disabilities at the Agency that reflect different numerical values from the Board’s figures. *See Management News* at 2 (May 14-25, 2018) (noting GAO reported “staff separations” for the following fiscal years: 2013 (205); 2014 (175); 2015 (182); 2016 (214); 2017 (179); and 2018 (180) (projected)). The trajectory created by GAO’s reported numbers aligns with the trajectory created by the Board’s computed numbers beginning in fiscal year 2014 (but not in fiscal year 2013).

See also Workforce Diversity Plan at 22 (2016) (noting employees with disabilities separating from GAO comprise 6-7% of separations at the Agency for fiscal years 2013-2015, without notation of the underlying values used to compute the 6-7%).

There does not appear to be a direct relationship between the percentage of separated employees with disabilities or targeted disabilities at the Agency and the overall number of employees separating from the Agency per fiscal year. The Board's analysis indicates that the number of separating employees at the Agency decreased from fiscal years 2010 through 2012 and increased thereafter. When the overall number of employees separating from the Agency decreased, the number of employees with disabilities who separated did not decrease proportionally, but rather the percentages of employees with disabilities and targeted disabilities separating from GAO generally increased across fiscal years 2010-2016. The percentage of separated employees with a disability rose steadily from 6.64% (28 out of 422) in fiscal year 2010 to 11.41% (43 out of 377) in fiscal year 2016. The percentage of separated employees with a targeted disability rose from 0.24% (1 out of 422) in fiscal year 2010 to 1.86% (7 out of 377) in fiscal year 2016.

The Board notes, however, that for fiscal years 2010-2016, the Agency's average rates of separated employees with disabilities of 9.15% and targeted disabilities of 1.22% are higher than the Agency's overall inclusion rates for people with disabilities of 7.82% and targeted disabilities of 1.10% in employment across the same set of fiscal years. GAO also reports that the results of an Agency-wide review of the 2015 fiscal year performance appraisal cycle found no statistically significant difference in employee appraisal data for disability status across all pay plans.²⁷¹ According to this GAO report, people with disabilities do not appear to be leaving the Agency because of issues relating to their performance.

²⁷¹ *Workforce Diversity Plan* at 16 (2016). *But see Workforce Diversity Plan* at 10 (2012) (noting "statistically significant differences" in the performance appraisals of employees with a disability at the Band I and Band IIA levels).

While comparative federal civilian workforce data on separations of employees with disabilities are not available for review in this study, data on employees with disabilities in the federal civilian workforce do indicate that federal civilian workforce averages, as a whole, reflect a higher percentage of employees with disabilities at 11.87% (approximately 247,807 out of 2,087,602) than average employment rates for people with disabilities at GAO at 7.82% (approximately 271 out of 3,466). In the Board's view, as an Agency *ranked first* for its "Support for Diversity" in the Partnership for Public Service's rankings since 2011,²⁷² GAO's ability to attract and retain people with disabilities in its workforce should not be outpaced by the percentage at which the federal civilian workforce is attracting and retaining such individuals.

The Board's review indicates that GAO has room to enhance its efforts to bring on board new hires with disabilities and targeted disabilities. The Board suggests the Agency consider whether it could more quickly approach the federal goals for inclusion of people with disabilities (12%) and inclusion of people with targeted disabilities (2%) in employment by increasing applicant and employee awareness of: (1) Agency efforts for hiring and retaining people with disabilities (and targeted disabilities); and (2) the availability of the Agency's reasonable accommodation program intended for utilization by people with disabilities. The Agency may also want to consider conducting its own employee feedback survey that allows for narrative comments, to examine whether people with disabilities experience subtle forms of discrimination that could be impacting job performance or employee satisfaction and retention. These efforts could help bring

²⁷² See *supra* n.5 for a discussion of GAO's Partnership for Public Service rankings.

the Agency's representation of people with disabilities and targeted disabilities closer to federal goals for the civilian workforce and help to prevent discrimination against people with disabilities in its workplace.

Summary

Overall, the Board's study reveals that GAO's employment of people with disabilities falls below federal goals and percentages for the civilian workforce for the fiscal years under review. The Agency should review and analyze the content of its policies, procedures, and practices to identify ways in which it can be more competitive with agencies which are closer to meeting federal goals for inclusion for qualified people with disabilities (12%) and targeted disabilities (2%) in employment.

CHAPTER VII

ANALYSIS OF REQUESTS FOR REASONABLE ACCOMMODATION AT GAO

Chapter VII assesses GAO data on reasonable accommodation requests by applicants, new hires, and employees (including separating employees). The Board examined extensive data it received from the Agency relating to reasonable accommodation requests from applicants, new hires, and employees across the fiscal years covered in this study. The Board also examined disabilities reported by individuals making requests for accommodation, and the types of reasonable accommodation provided to GAO employees making such requests.²⁷³

A. Applicants

For fiscal years 2010-2015, out of 82,382 applicants for employment, the Agency received a total of 9 requests for reasonable accommodation, each of which was submitted by applicants with disabilities.²⁷⁴ Every applicant request for accommodation received 100% approval (with no requests approved in part).²⁷⁵ The graph on the following page offers more insight into applicant use of GAO's reasonable accommodation program.

²⁷³ To better understand the scope of reasonable accommodation offered at GAO, the Board also looked at the extent the Agency offers accommodation to individuals determined by the Agency to have conditions that are not considered disabilities (such as post-surgery recovery or a broken wrist). *See Reasonable Accommodation Process at GAO, supra* n.159.

²⁷⁴ *See* Appendix E for data on "Applicants for Employment with Disabilities at GAO" and Appendix H for data on "Reasonable Accommodation Requests at GAO."

²⁷⁵ *See* Appendix H for data on "Reasonable Accommodation Requests at GAO."

**REASONABLE ACCOMMODATION REQUESTS
BY APPLICANTS WITH DISABILITIES AT GAO**

(Fiscal Years 2010-2015)



Source: Board Analysis of GAO Personnel Data on Nonemployee Applicants (Fiscal Years 2009-2015)

This graph reveals that few applicants made use of the Agency’s reasonable accommodation program for the fiscal years under review (with the Agency receiving no reported applicant requests for reasonable accommodation until fiscal year 2012).²⁷⁶ The highest number of applicant requests for reasonable accommodation (4) occurred in fiscal year 2014 (when the Agency had 15,490 applicants of which 2,824 or 18.23% were applicants with disabilities).²⁷⁷ Applicant requests declined thereafter. Increasing applicant awareness of GAO’s reasonable accommodation program could assist the Agency in recruiting qualified applicants with disabilities who can contribute to the Agency’s mission and add to the level of diversity at the Agency.

²⁷⁶ No applicant requests for reasonable accommodation were reported from individuals without disabilities for the fiscal years under review.

²⁷⁷ See Appendix E for data on “Applicants for Employment with Disabilities at GAO,” and Appendix H for data on “Reasonable Accommodation Requests at GAO” (more than one request could be made by the same individual).

B. New Hires

For fiscal years 2009-2016, new hires²⁷⁸ at GAO made a total of 113 requests for reasonable accommodation, with the subset of new hires with disabilities making 84 or 74.34% of these requests.²⁷⁹ For fiscal years 2010-2016, the Agency welcomed 2,012 new hires, 192 or 9.54% of whom had disabilities.²⁸⁰ For fiscal years 2009-2016, the Agency approved 52 out of 84 reasonable accommodation requests from new hires with disabilities (with no requests approved in part)—an approval rate of 61.90%—and approved 23 of 29 reasonable accommodation requests from new hires without disabilities (with no requests approved in part)—an approval rate of 79.31%. The Board also notes that new hires with disabilities at GAO received 100% approval on their requests for reasonable accommodation in fiscal year 2012.²⁸¹ The remaining fiscal years under review produced lower approval rates for reasonable accommodation requests by new hires at the Agency.²⁸²

²⁷⁸ A “new hire” is an employee within their first year of employment at the Agency.

²⁷⁹ New hires without disabilities made 29 or 25.66% of these requests. *See* Appendix H for data on “Reasonable Accommodation Requests at GAO.”

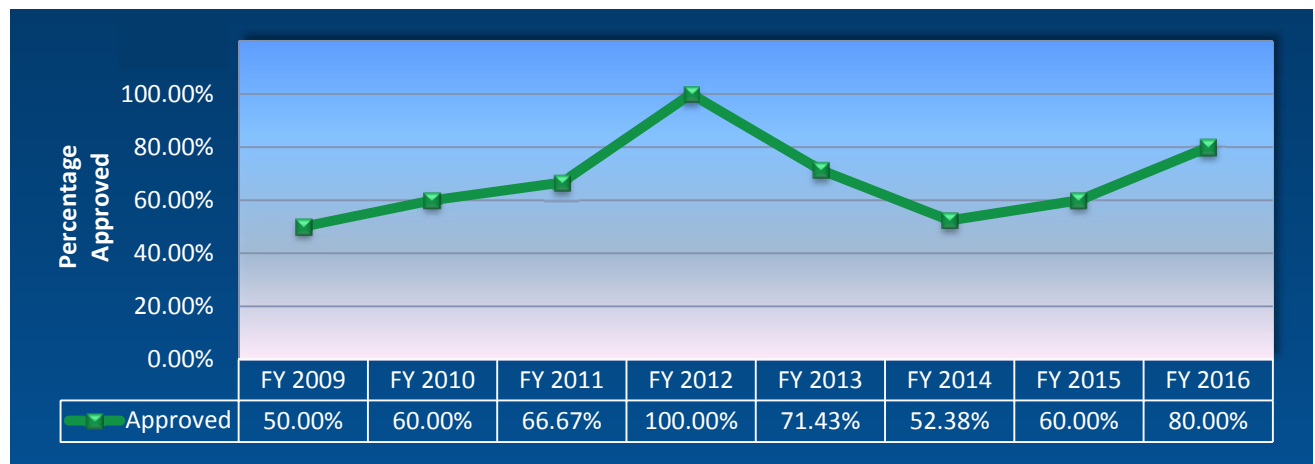
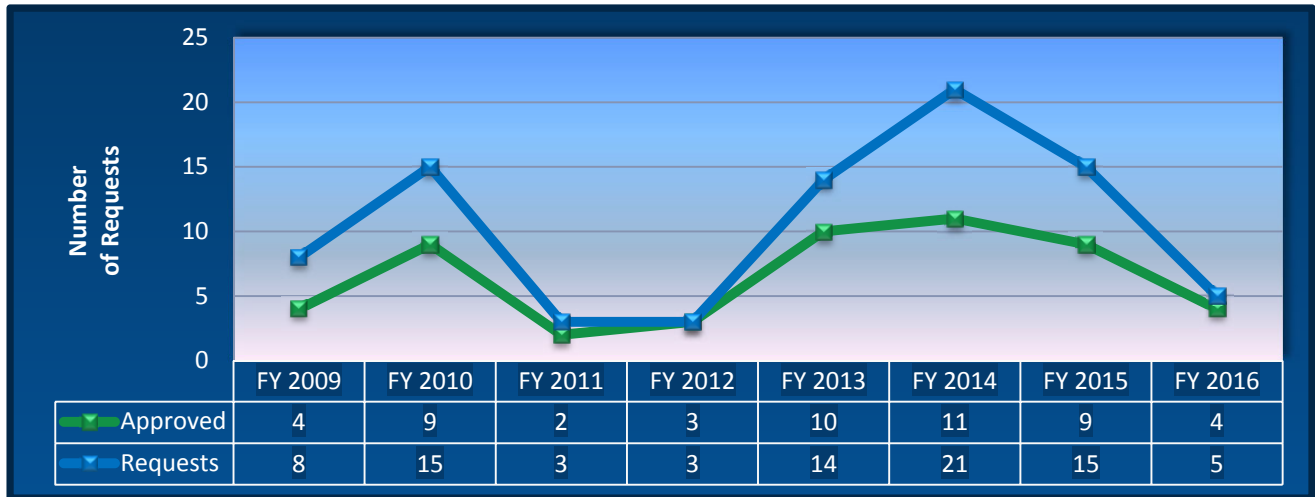
²⁸⁰ *See* Appendix F for data on “Employees with Disabilities at GAO.”

²⁸¹ Comparatively, GAO’s new hires without disabilities received 100% approval on their requests for reasonable accommodation in fiscal years 2010, 2011, 2015, and 2016.

²⁸² *See* Appendix H for data on “Reasonable Accommodation Requests at GAO” (more than one request could be made by the same individual).

**REASONABLE ACCOMMODATION REQUESTS
BY NEW HIRES WITH DISABILITIES AT GAO**

(Fiscal Years 2009-2016)



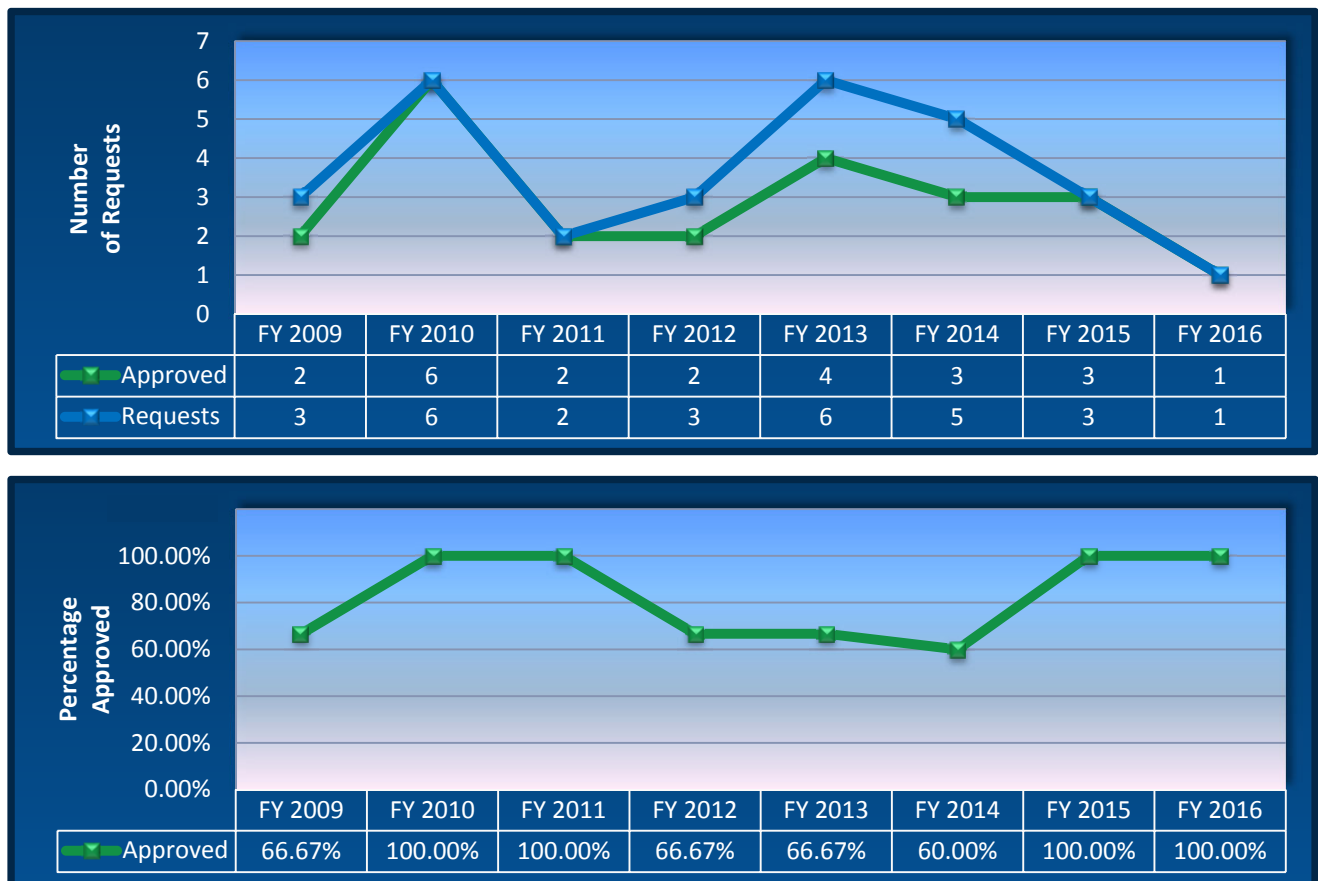
Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2009-2016)

The graphs above indicate that the highest number of approved requests for reasonable accommodation by new hires with disabilities (11 out of 21) occurred in fiscal year 2014 at 52.38% (when the Agency had 504 new hires: 50 with disabilities, and 454 without disabilities). The lowest

number of approved requests for reasonable accommodation by new hires with disabilities (2 out of 3) occurred in fiscal year 2011 at 66.66% (when the Agency had 96 new hires: 7 with disabilities, and 89 without disabilities).²⁸³

**COMPARATIVE ILLUSTRATION:
REASONABLE ACCOMMODATION REQUESTS
BY NEW HIRES WITHOUT DISABILITIES AT GAO**

(Fiscal Years 2009-2016)



Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2009-2016)

²⁸³ See Appendix F for data on “Employees with Disabilities at GAO,” and Appendix H for data on “Reasonable Accommodation Requests at GAO.”

The graphs on the previous page illustrate that the Agency has offered reasonable accommodation to new hires, regardless of disability status, for all the fiscal years under study.²⁸⁴ The graphs also indicate that new hires without disabilities appear to have a slightly higher approval percentage on their requests than new hires with disabilities.

Analysis of the graphs does not show a clear correlation between the number of new hires the Agency takes on board and the number of requests for reasonable accommodation that the Agency receives. The Agency welcomed its highest number of new hires in the following fiscal years: 2010 (408 new hires), 2014 (504 new hires), 2015 (332 new hires), and 2016 (431 new hires). Requests for accommodation among new hires with disabilities increased in fiscal years 2010 and 2014, but declined in fiscal years 2015 and 2016.²⁸⁵

C. Employees

For fiscal years 2009-2016, GAO employees made a total of 1,373 requests for reasonable accommodation, with the subset of employees with disabilities making 854 or 62.20% of these requests.²⁸⁶ For fiscal years 2010-2016, GAO had approximately 3,466 employees per fiscal year, of whom an average of 271 or 7.82% had disabilities.²⁸⁷ Between fiscal years 2009-2016, GAO approved 493 requests for reasonable accommodation made by employees with disabilities out of the 854 requests, an approval rate of 57.73%.²⁸⁸ When the 15 requests that were approved in part are also

²⁸⁴ See Appendix H for data on “Reasonable Accommodation Requests at GAO.”

²⁸⁵ Comparatively, requests for accommodation by new hires without disabilities also increased in fiscal years 2010 and 2013, but declined in fiscal years 2014, 2015, and 2016.

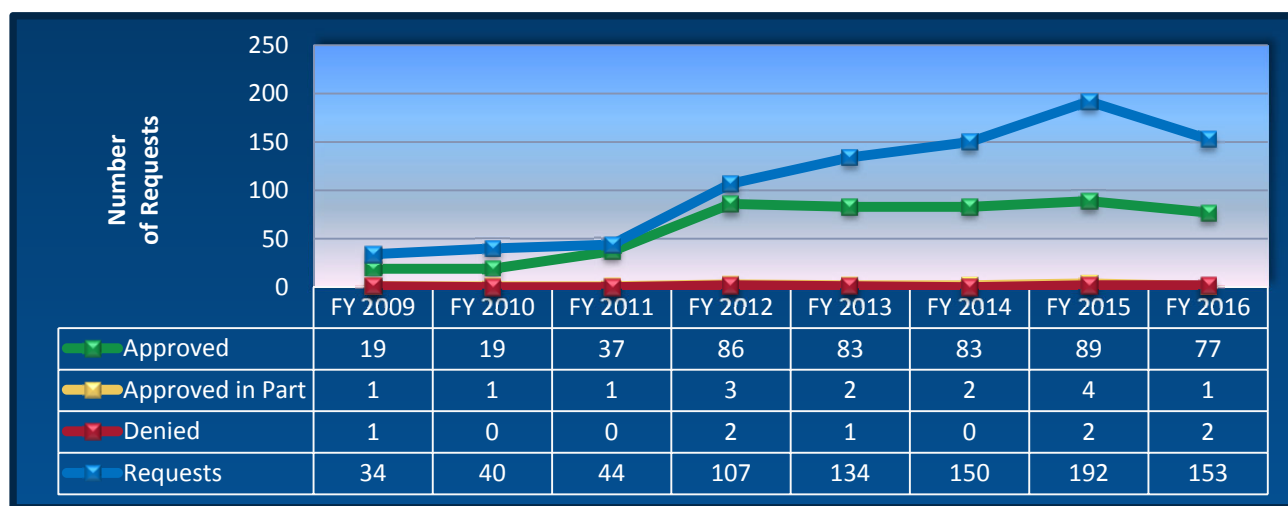
²⁸⁶ Requests from employees without disabilities comprised 519 or 37.80% of these requests. See Appendix H for data on “Reasonable Accommodation Requests at GAO.”

²⁸⁷ See Appendix F for data on “Employees with Disabilities at GAO.”

included, the approval percentage rises to 59.48%.²⁸⁹ The remaining cases include those that were denied, administratively closed, withdrawn, or the outcomes were marked as “Advice only,” “Unknown,” “Not in File,” or left blank.²⁹⁰ There was never a fiscal year when 100% of the requests for reasonable accommodation were approved, either for employees with disabilities or without disabilities.²⁹¹

**REASONABLE ACCOMMODATION REQUESTS
BY EMPLOYEES WITH DISABILITIES AT GAO**

(Fiscal Years 2009-2016)



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2009-2016)

²⁸⁸ See Appendix H for data on “Reasonable Accommodation Requests at GAO.”

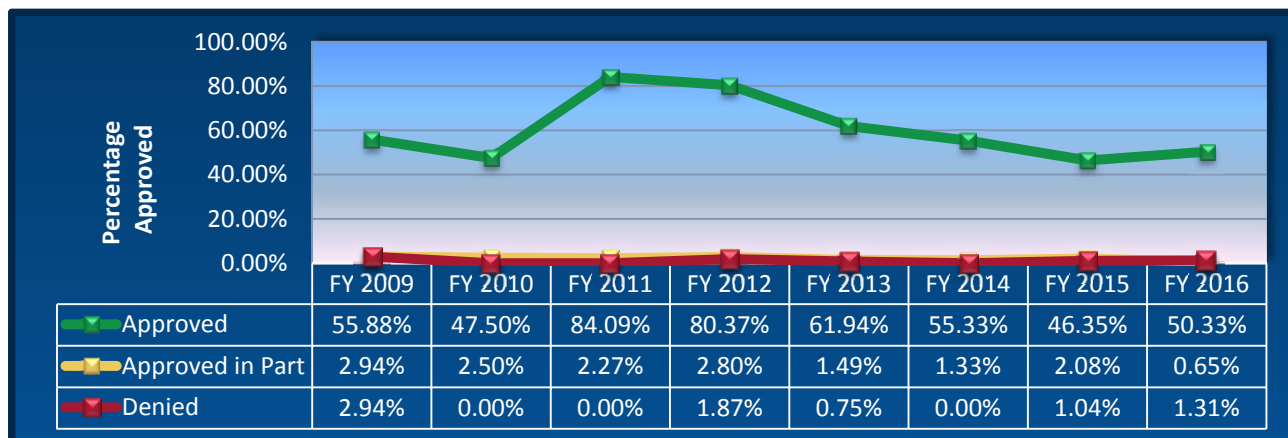
²⁸⁹ GAO approved an additional 410 requests for reasonable accommodation from employees without disabilities out of a total of 519 requests, an approval rate of 79.00%. When the 3 requests that were approved in part are also included, the approval rate rises to 79.58%. See Appendix H for data on “Reasonable Accommodation Requests at GAO.”

²⁹⁰ “Administrative closures” are requests that are closed after the requestor has not provided requested information to the Reasonable Accommodation Team by the applicable deadline. See Appendix H for a breakdown of outcomes of both approved and nonapproved “Reasonable Accommodation Requests at GAO.”

²⁹¹ See Appendix H for data on “Reasonable Accommodation Requests at GAO.”

**REASONABLE ACCOMMODATION REQUESTS
BY EMPLOYEES WITH DISABILITIES AT GAO**

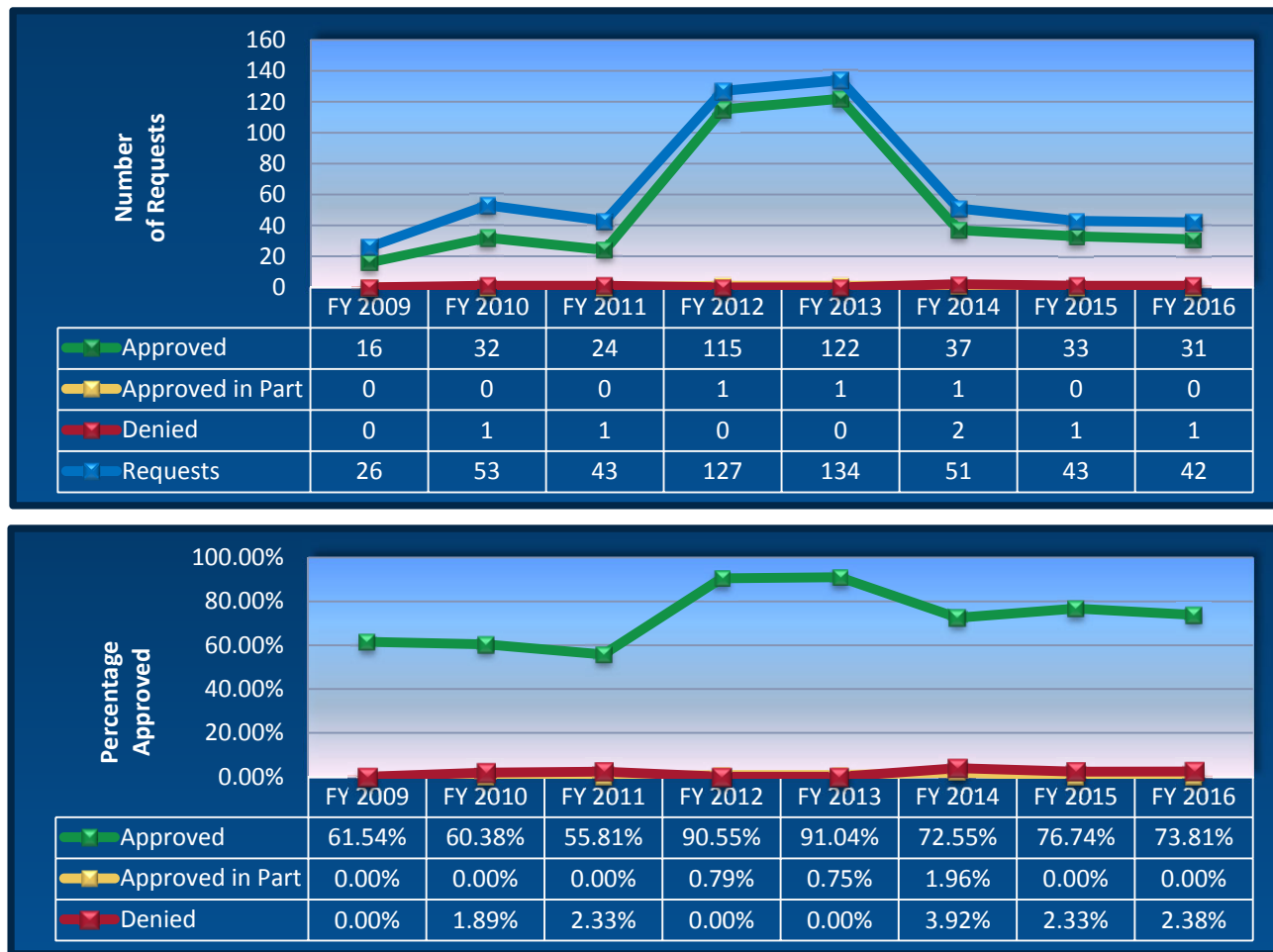
(Fiscal Years 2009-2016)



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2009-2016)

The graph on the previous page and the graph above indicate that the highest number of approved requests for reasonable accommodation by employees with disabilities in a fiscal year was 89, which occurred in fiscal year 2015 at an approval rate of 46.35%. Including the 4 requests approved in part that year increases the total to 93, corresponding to an approval rate of 48.44%. The lowest number of approved requests for reasonable accommodation by employees with disabilities in a fiscal year was 19, which occurred in both fiscal years 2009 and 2010 at approval rates of 55.88% and 47.50%, respectively. Including the 1 request approved in part in each of those two years increases the totals to 20, corresponding to approval rates of 58.82% and 50.00%, respectively.

**COMPARATIVE ILLUSTRATION:
REASONABLE ACCOMMODATION REQUESTS
BY EMPLOYEES WITHOUT DISABILITIES AT GAO
(Fiscal Years 2009-2016)**



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2009-2016)

The graphs above illustrate that the Agency has offered reasonable accommodation to its employees, regardless of disability status, for the fiscal years under review in this study.²⁹²

²⁹² See Appendix H for data on “Reasonable Accommodation Requests at GAO.”

Comparison of the graphs with employee headcount data does not show a clear correlation between the number of GAO employees per fiscal year and the number of requests for accommodation that the Agency receives. The Agency's highest number of employees occurred in the following fiscal years: 2010 (3,851 employees), 2011 (3,523 employees), and 2016 (3,547 employees).²⁹³ The data in the graphs indicate that the number of requests for reasonable accommodation by GAO employees with disabilities is generally trending upward but did decline in fiscal year 2016.²⁹⁴

GAO Analysis of Employee Requests for Reasonable Accommodation

The Board also reviewed reported data relating to the outcome of reasonable accommodation requests by GAO employees as published in the Agency's quarterly *Reports on Reasonable Accommodation*.²⁹⁵ These reports indicate that for fiscal years 2012–2017, the Agency reported a total of 1,859 (new and reopened) requests for reasonable accommodation. During this period, 1,834 cases were closed and 1,190 requests of 1,834 closed cases were approved in full (64.89%); 20 were approved in part (65.98%).²⁹⁶ The Agency also reports that

²⁹³ See Appendix F for data on "Employees with Disabilities at GAO."

²⁹⁴ Requests for accommodation by employees with disabilities increased in fiscal years 2010-2015, but declined in fiscal year 2016. Requests for accommodation by employees without disabilities increased in fiscal years 2010, 2012, and 2013, but declined in fiscal years 2011, 2014, 2015, and 2016.

²⁹⁵ See *Reports on Reasonable Accommodation*, published quarterly, at https://intranet.gao.gov/career_and_life/work_and_life_events/reasonable_accommodations/quarterly_reports_on_reasonable_accommodation_1. See also Appendix H for data on "Reasonable Accommodation Requests at GAO."

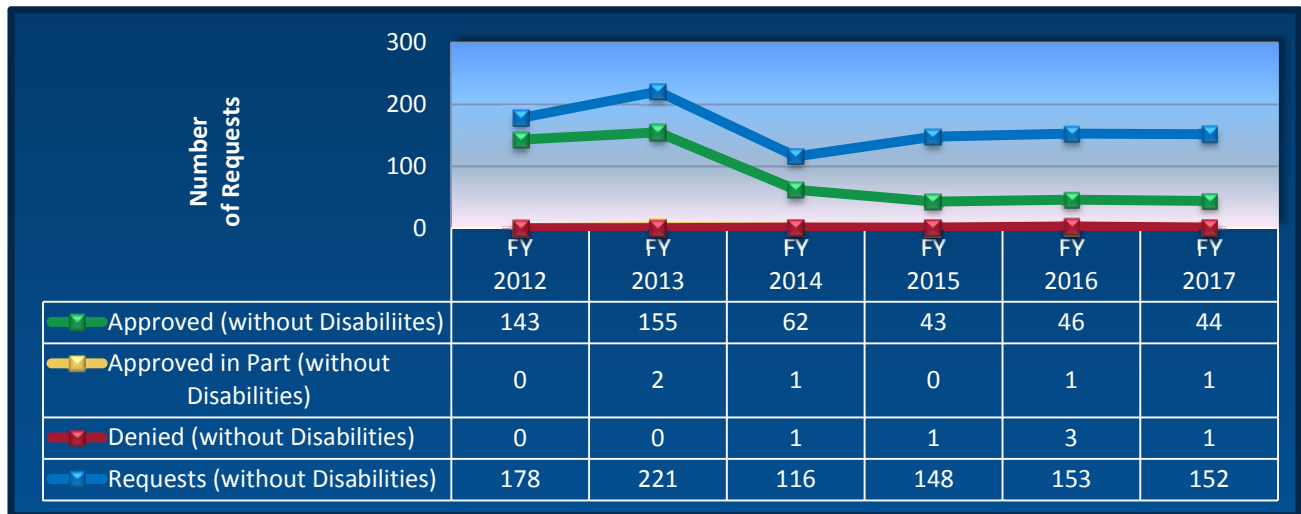
²⁹⁶ See Appendix H for data on "Reasonable Accommodation Requests at GAO."

employees with disabilities requesting reasonable accommodation received approval of their requests in 697 of their 866 closed cases, an approval rate of 80.48%. Including the 15 requests approved in part increases the Agency's approval rate to 82.22%.²⁹⁷ In addition to approvals, the closed cases were marked as denied, administratively closed, withdrawn, or advice only. Additionally, certain reopened cases had no outcome listed when they were closed. The graphs on the following pages present the Board's analysis of the Agency's published data from its quarterly *Reports on Reasonable Accommodation* for comparison with the data the Board collected and presented earlier in this subchapter.

²⁹⁷ *Id.*

GAO REPORTED ACTION ON REASONABLE ACCOMMODATION REQUESTS

(Fiscal Years 2012-2017)

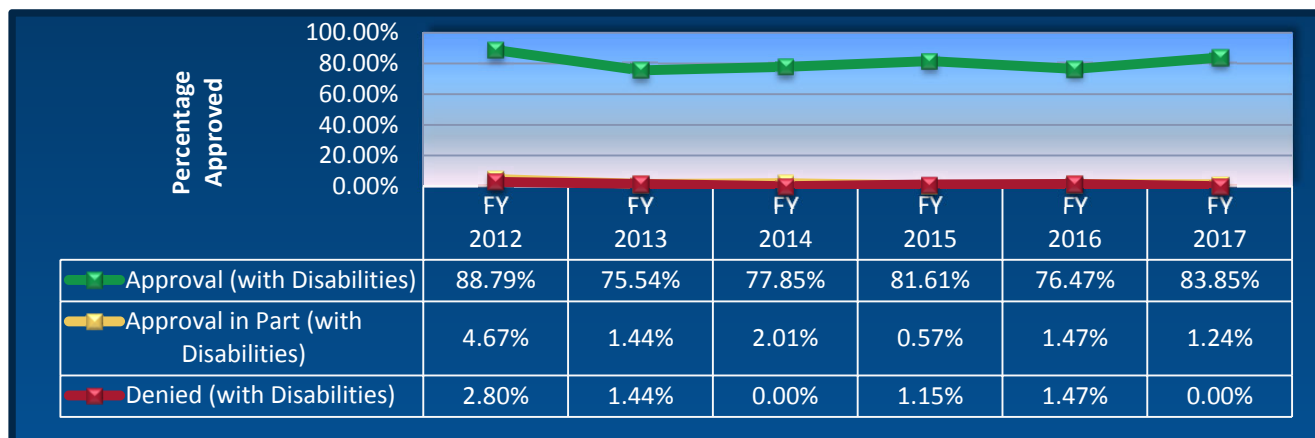


Source: Board Analysis of GAO Reports on Reasonable Accommodation (Fiscal Years 2012-2017, published quarterly)
(Cases not represented in chart were administratively closed, withdrawn, or had other outcomes)

* Requests by employees with disabilities and without disabilities for FY 2012 and FY 2013 potentially could be higher in number, due to less than full availability of fiscal year data for these fiscal years)

GAO REPORTED ACTION ON REASONABLE ACCOMMODATION REQUESTS

(Fiscal Years 2012-2017)



Source: Board Analysis of GAO Reports on Reasonable Accommodation (Fiscal Years 2012-2017, published quarterly)
 (Cases not represented in chart were administratively closed, withdrawn, or had other outcomes)

Overall, based on GAO’s quarterly *Reports on Reasonable Accommodation* for fiscal years 2012-2017, the approval rates of reasonable accommodation requests made by employees with disabilities were 80.48% for full approvals and 82.22% for both full and partial approvals. However, the Board’s analysis of personnel data provided by GAO in response to the Board’s information request for fiscal years 2009-2016 indicates average approval rates of only 57.73% for full approvals and 59.48% for both full and partial approvals of reasonable accommodation requests by employees with disabilities.

For fiscal years 2012-2016, GAO’s quarterly *Reports on Reasonable Accommodation* indicate an average approval rate of 79.72% (562 approvals out of 705 requests) for cases involving reasonable accommodation requests by employees with disabilities. The Board’s analysis of GAO personnel data for an identical set of fiscal years (2012-2016) from raw data provided to the Board for this study indicates an average approval rate of 56.79% (418 approvals out of 736 requests) for reasonable accommodation requests by employees with disabilities. The variance in these average approval rates may be due, at least in part, to different assumptions on the part of the Board staff, and on the part of HCO staff, used in preparing the calculations.²⁹⁸

²⁹⁸ The Board took an inclusive view of employees who were credited as having a disability, which included every employee who self-identified as having a disability, who claimed a veteran’s preference disability code, or who was identified as having a disability by the Reasonable Accommodation Team. *See supra* n.240. HCO staff indicated that it made different assumptions regarding the crediting of “disability” status. *See infra* Appendix M at A-86 (noting discussion between PAB and HCO on data concerns).

When the assumptions about which employees had disabilities are controlled by looking at the reasonable accommodation requests from all employees (those with and without disabilities), the approval rates for both data sets are nearly identical. In the quarterly *Reports on Reasonable Accommodation* for fiscal years 2012-2016, 66.47% of all reasonable accommodation requests were approved (1,011 approvals out of 1,521 requests). Under the Board’s analysis of the personnel data for these same years, 66.73% of the requests were approved (756 approvals out of 1,133 requests).

The Board did not have access to the method the HCO staff used to compile the quarterly reports. Consequently, the Board could not compare the two data sets on why the data differed.

D. Separated Employees

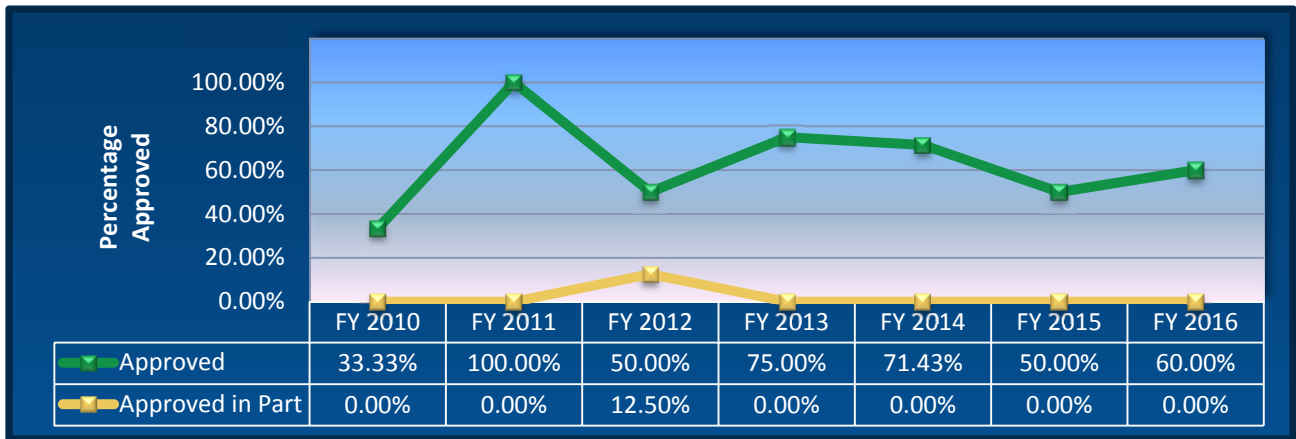
For fiscal years 2010-2016, GAO employees making requests for reasonable accommodation in the same fiscal year as their separation²⁹⁹ made a total of 80 requests, with the subset of those with disabilities making 61 or 76.25% of these requests.³⁰⁰ Across these fiscal years, the Agency had 2,295 employees who separated, of whom 210 had disabilities (and 28 with targeted disabilities). The Agency approved in full 38 of 61 requests for accommodation made by people with disabilities in the same fiscal year as their separation, an approval rate of 62.30%; 1 request was approved in part for an approval rate of 63.93%. The Agency also approved 10 of the 19 requests made by people without disabilities in the same fiscal year as their separation, an approval rate of 52.63%.

²⁹⁹ See Appendix K for data on “Separated Employees with Disabilities at GAO.”

³⁰⁰ Separated employees without disabilities made 19 of the 80 requests or 23.75%.

**REASONABLE ACCOMMODATION REQUESTS
BY SEPARATING GAO EMPLOYEES WITH DISABILITIES**

(Fiscal Years 2010-2016)



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

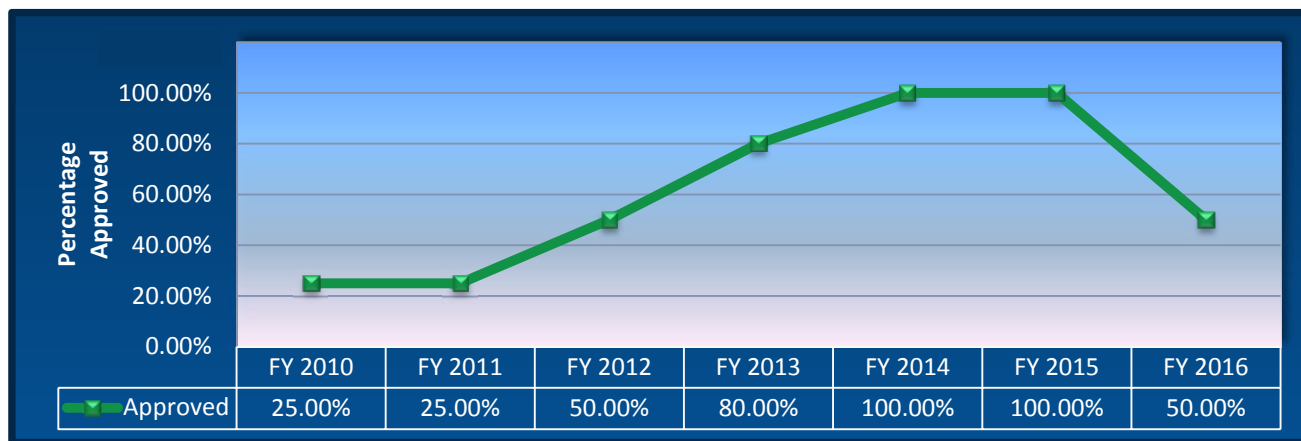
* Requests with descriptions of “unknown, not in file, or unmarked” are calculated in the “Number of Requests” only.

For fiscal years 2010-2016, the graphs above indicate that requests for reasonable accommodation from employees with disabilities in the same fiscal year as separation from the Agency have increased. Approvals of such requests also have increased. In fiscal year 2011, separating employees with disabilities making requests in the same fiscal year as their separation

received 100% approval on their requests.³⁰¹ In all other fiscal years, employees with disabilities did not always receive reasonable accommodation after making such requests in the same fiscal year as their separation.

**COMPARATIVE ILLUSTRATION:
REASONABLE ACCOMMODATION REQUESTS
BY SEPARATING GAO EMPLOYEES WITHOUT DISABILITIES**

(Fiscal Years 2010-2016)



Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)

* Requests with descriptions of “unknown, not in file, or unmarked” are calculated in the “Number of Requests” only.

³⁰¹ Comparatively, separating employees without disabilities making requests in the same fiscal year as separation received 100% approval on their requests in fiscal years 2014 and 2015.

The graphs on the previous page indicate that in five of the seven fiscal years under review (fiscal years 2012-2016), GAO provided 50%-100% of reasonable accommodation requests to separating employees without disabilities as compared to 50%-75% of reasonable accommodation requests to separating employees with disabilities.

E. Most Common Types of Reasonable Accommodation at GAO

To aid the Agency in its efforts to direct resources to reasonable accommodation, the Board compiled the table on the next page listing the most common disability types underlying requests for reasonable accommodation at GAO, as reported in the Agency’s *Reasonable Accommodation Reports* for fiscal years 2011-2017.³⁰²

Of the disabilities noted below, disabilities relating to “nonparalytic orthopedics,” “significant psychiatric disorders,” and “significant mobility impairments” are the most frequent disabilities in GAO’s workforce generating requests for reasonable accommodation from employees. Additionally, two noted disability types in the table on the next page are targeted disabilities, namely “significant psychiatric disorder,” and “vision/blind (inability to read ordinary size print, not correctable by glasses, or no usable vision, beyond light perception).”

³⁰² See Appendix I for data on “Reasonable Accommodation Requests by Disability at GAO.”

MOST COMMON REASONABLE ACCOMMODATION REQUESTS BY DISABILITY AT GAO (Fiscal Years 2011-2017)	
Disability†	Range of Requests for Named Disability*
Nonparalytic orthopedic	177-219+
Significant psychiatric disorder	75-149+
Significant mobility impairment	53-108+
Vision/blind (inability to read ordinary print/not correctable)	36-81+
Hearing impairment (partial)	35-96
Pulmonary or respiratory condition	27-86
Blind or serious difficulty seeing	26-33+
Learning disability or ADD/ADHD	22-77
Cancer	18-61
Spinal abnormalities	18-50
Hearing impairment (total)	15-49
Speech impairment	10-40
Visual impairments	10-29

Source: Board Analysis of GAO Reports on Reasonable Accommodation (Fiscal Years 2011-2017, published quarterly)

+ Indicates possibility the value may continue beyond the noted range

* Indicates less than full availability of fiscal year data

†Description of disabilities relating to OPM, Standard Form 256 – *Self-Identification of Disability*

Knowledge of the disability types, including targeted disability types, most frequently cited as a basis for reasonable accommodation requests appearing in the GAO workforce could be useful to the Agency in tailoring its reasonable accommodation program resources to be helpful for people with disabilities, including targeted disabilities, to increase the likelihood of their continued employment at GAO.

The Board also compiled a table of the most common types of reasonable accommodation provided to employees at the Agency, as reported in GAO’s *Reasonable Accommodation Reports* for fiscal years 2012-2017.³⁰³

MOST COMMON FORMS OF ACCOMMODATION PROVIDED TO EMPLOYEES AT GAO (Fiscal Years 2012-2017)	
Accommodation	Total Instances of Accommodation Provided
Height adjustable desk	165
Raised work surface	161
Telework	146
Ergonomic keyboard or mouse	141
Parking	78
Chair (in stock)	65
Second keyboard or monitor	64
Second keyboard tray or modification to keyboard tray	57
Software	48
Leave (including medical)	21
Training related modification	18
Rest breaks	16
Telephone equipment	10

Source: Board Analysis of GAO *Report on Reasonable Accommodation* (Fiscal Years 2012-2017, published quarterly)

Of the accommodation types noted above, “height adjustable desk,” “raised work surface,” “telework,” and “ergonomic keyboard or mouse” are the most frequent accommodation types provided by the Agency. Knowledge of this information could be useful to the Agency in tailoring its accommodation resources to benefit applicants, new hires, and employees with disabilities in the GAO workforce.

³⁰³ See Appendix J for data on “Forms of Reasonable Accommodation Provided to Employees at GAO.”

Summary

The Board's analysis of the data disclosed a downward trend in the number of reasonable accommodation requests by new hires with and without disabilities. The Board encourages the Agency to consider an increased emphasis on education on the reasonable accommodation process during new employee onboarding to highlight to new hires the importance the Agency places on diversity and inclusion. Likewise, the Board encourages regular communication to all employees of the Agency's goals in the area of inclusion of people with disabilities, such as during Town Hall meetings and postings on GAO's intranet. Such continued communication along with an increased emphasis on *providing accommodation*, instead of focusing on disability status, could have the dual benefits of increasing approval rates for reasonable accommodation requests and facilitating performance of all employees at their full work potential without causing an undue hardship to the Agency or adversely impacting the Agency's ability to carry out its mission.

CHAPTER VIII

CONCLUSION AND RECOMMENDATIONS

The objective of the Board's *Study on Disability & Reasonable Accommodation in the GAO Workforce* has been to conduct a legal review of applicable GAO policies, procedures, and practices, to ascertain the extent to which they reflect the requirements of the ADA, as amended by the ADAAA, a decade after it became law. In this context, the Board reviewed available GAO personnel data relating to employment of people with disabilities across several fiscal years and compared this data, where possible, to similar figures from the federal civilian workforce. The Board also reviewed GAO personnel data relating to requests for reasonable accommodation across a similar time period.

The Board's study reveals that, a decade after its enactment, the ADAAA's changes to the ADA are reflected in some GAO policies, procedures, and practices, including those related to reasonable accommodation. However, several of the Agency's relevant Orders have not been updated to include reference to the amendments to the law. GAO Orders should be updated immediately to include references to the ADA, as amended, especially where interpretation of the law in accordance with the ADAAA is relevant.

The Board's study also reveals that GAO's employment of people with disabilities falls below federal goals and percentages for qualified people with disabilities (12%) and targeted disabilities (2%) in the federal civilian workforce for the fiscal years under review.³⁰⁴ This study reveals that representation of people with disabilities in GAO's workforce (7.82% with disabilities) is not as high as in the federal civilian workforce (11.87% with disabilities) across the fiscal years under review. This study also reveals that with specifically relating to targeted disabilities, the representation of people at GAO (1.10% with targeted disabilities) outpaces the

³⁰⁴ See *supra* n.28 (noting EEOC's *Final Rule*, applicable to the Executive Branch).

federal civilian workforce (0.99% with targeted disabilities) across the fiscal years under review. Overall, however, despite significant policies, procedures, and practices in place to support employment of people with disabilities at the Agency, GAO's employment of people with disabilities, like that of the federal civilian workforce, falls below federal goals for employment derived from EEOC policy, for the fiscal years under review.

The Board's study offers recommendations that follow to: (1) enhance compliance of Agency policies, procedures, and practices with the ADA, as amended by the ADAAA; (2) help enhance awareness, access, and utilization of the Agency's reasonable accommodation program; and (3) strengthen GAO's commitment to attract, hire, and retain people with disabilities. The Board suggests that utilization of the Agency's reasonable accommodation program by people with disabilities could be increased with enhanced publicity of the extent of the program. Higher approval rates for requests for reasonable accommodation from employees with disabilities can occur if the reasonable accommodation program, while avoiding undue hardship to the Agency, maintains *focus on providing accommodation* without engaging in extensive analysis of an individual's disability. Finally, GAO could consult the Department of Labor's Office of Disability Employment Policy website in researching ideas for increasing workplace success for people with disabilities.³⁰⁵ These efforts should help the Agency increase its progress in hiring, employing, and retaining people with disabilities by enhancing the Agency's ability to allow for people with disabilities to perform their work for the Agency at their full potential.

³⁰⁵ See Department of Labor, Office of Disability Employment Policy, at <https://www.dol.gov/odep>. GAO is not required to follow these procedures, but may view them as guidance.

The Board's recommendations aim to assist the Agency in ensuring legal compliance with the ADA, as amended by the ADAAA, as it embraces workplace goals of diversity, equity, and inclusion. GAO's Orders need to communicate the requirements of the ADA, as amended by the ADAAA, and supervisors and managers need to be fully informed about how to comply with the ADA, as amended by the ADAAA, when managing employees with disabilities. When the Agency publicizes the legal rights of employees with disabilities throughout all of its policies, procedures, and practices, it will be noticed by people with disabilities. This will help increase protection against discrimination and foster the development and utilization of the talents of employees with disabilities, along with all of GAO's employees, to assist the United States Congress in meeting its responsibilities to oversee the performance and accountability of the federal government for the benefit of the American people.

Recommendations

- 1. Develop and implement a Disability Plan, similar to plans under development in Executive Branch agencies, incorporating best practices for recruiting, hiring, retaining, and advancing qualified people with disabilities, as well as targeted disabilities, and announce the Agency's goals for employing people with disabilities, as well as targeted disabilities, during Town Hall meetings and through postings to GAO's internal and public websites.**
- 2. Undertake early steps in the Agency's recruitment and hiring process to increase awareness among hiring officials, managers, and employees of: (a) the Agency's goals for hiring and retaining qualified people with disabilities and targeted disabilities; and (b) the extent of the Agency's reasonable accommodation program.**
- 3. Review and revise GAO policies, procedures, and practices, as necessary, to ensure they accurately describe the process by which people with disabilities may be hired at GAO (clarifying, for example, GAO's noncompetitive appointment process which is similar, but not identical, to Schedule A in the Executive Branch).**

4. **Increase responsibilities of the Human Capital Office, its Reasonable Accommodation Office, and the Office of Opportunity and Inclusiveness to:**
 - (a) strengthen efforts to track and measure progress toward the Agency’s goals for hiring and retaining people with disabilities (recommended at 12% for disabilities and 2% for targeted disabilities);
 - (b) request and collect feedback from people with disabilities submitting reasonable accommodation requests to identify opportunities for enhancement of the reasonable accommodation program;
 - (c) report this information to the Comptroller General annually; and
 - (d) consider adding an accounting or statistics professional to the Reasonable Accommodation Office to assist in this endeavor while retaining confidentiality of disability records.

5. **Develop and advise the Board of a schedule for review and publication of revision to GAO Orders relating to employment of people with disabilities and reasonable accommodation to ensure that GAO Orders:**
 - (a) timely reflect changes in law affecting the rights of people with disabilities at the Agency; and
 - (b) afford appropriate opportunity for employees with disabilities to advance within the Agency.

6. **Review criteria for approval of reasonable accommodation requests at GAO to ensure the focus of review remains on *providing accommodation* to qualified people with disabilities (rather than on assessing the level of disability) to allow for modifications that do not present an undue hardship for the Agency.**

7. **Include a direct link to the Agency’s Reasonable Accommodation resources on both the Agency’s intranet and internet home pages to enhance ease of access to these resources.**

* * * * *

The Board appreciates the opportunity to submit this *Study on Disability & Reasonable Accommodation in the GAO Workforce* to the Agency. It is the Board’s hope that GAO finds this review beneficial and that GAO will be able to use the Board’s findings and recommendations to strengthen and enhance the mission, core values, and work of the Agency and allow for greater opportunities for employment of people with disabilities to assist in the Agency’s work to improve federal government operations for the benefit of the American people.

APPENDICES

APPENDIX A

Executive Orders

Presidential Documents

Title 3—

Executive Order 13163 of July 26, 2000

The President

Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the opportunities for individuals with disabilities to be employed at all levels and occupations of the Federal Government, and to support the goals articulated in section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), it is hereby ordered as follows:

Section 1. *Increasing the Federal Employment Opportunities for Individuals with Disabilities.* (a) Recent evidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field.

(b) Based on current hiring patterns and anticipated increases from expanded outreach efforts and appropriate accommodations, the Federal Government, over the next 5 years, will be able to hire 100,000 qualified individuals with disabilities. In furtherance of such efforts, Federal agencies shall:

- (1) Use available hiring authorities, consistent with statutes, regulations, and prior Executive orders and Presidential Memoranda;
- (2) Expand their outreach efforts, using both traditional and nontraditional methods; and
- (3) Increase their efforts to accommodate individuals with disabilities.

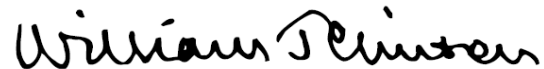
(c) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities available for individuals with disabilities.

(d) This order does not require agencies to create new positions or to change existing qualification standards for any position.

Sec. 2. *Implementation.* Each Federal agency shall prepare a plan to increase the opportunities for individuals with disabilities to be employed in the agency. Each agency shall submit that plan to the Office of Personnel Management within 60 days from the date of this order.

Sec. 3. *Authority to Develop Guidance.* The Office of Personnel Management shall develop guidance on the provisions of this order to increase the opportunities for individuals with disabilities employed in the Federal Government.

Sec. 4. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.



THE WHITE HOUSE,
July 26, 2000.

[FR Doc. 00-19322
Filed 7-27-00; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 13548 of July 26, 2010

Increasing Federal Employment of Individuals With Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish the Federal Government as a model employer of individuals with disabilities, it is hereby ordered as follows:

Section 1. Policy. Approximately 54 million Americans are living with a disability. The Federal Government has an important interest in reducing discrimination against Americans living with a disability, in eliminating the stigma associated with disability, and in encouraging Americans with disabilities to seek employment in the Federal workforce. Yet Americans with disabilities have an employment rate far lower than that of Americans without disabilities, and they are underrepresented in the Federal workforce. Individuals with disabilities currently represent just over 5 percent of the nearly 2.5 million people in the Federal workforce, and individuals with targeted disabilities (as defined below) currently represent less than 1 percent of that workforce.

On July 26, 2000, in the final year of his administration, President Clinton signed Executive Order 13163, calling for an additional 100,000 individuals with disabilities to be employed by the Federal Government over 5 years. Yet few steps were taken to implement that Executive Order in subsequent years.

As the Nation's largest employer, the Federal Government must become a model for the employment of individuals with disabilities. Executive departments and agencies (agencies) must improve their efforts to employ workers with disabilities through increased recruitment, hiring, and retention of these individuals. My Administration is committed to increasing the number of individuals with disabilities in the Federal workforce through compliance with Executive Order 13163 and achievement of the goals set forth therein over 5 years, including specific goals for hiring individuals with targeted disabilities.

Sec. 2. Recruitment and Hiring of Individuals with Disabilities. (a) Within 60 days of the date of this order, the Director of the Office of Personnel Management, in consultation with the Secretary of Labor, the Chair of the Equal Employment Opportunity Commission, and the Director of the Office of Management and Budget, shall design model recruitment and hiring strategies for agencies seeking to increase their employment of people with disabilities and develop mandatory training programs for both human resources personnel and hiring managers on the employment of individuals with disabilities.

(b) Within 120 days of the date the Office of Personnel Management sets forth strategies and programs required under subsection (a), each agency shall develop an agency-specific plan for promoting employment opportunities for individuals with disabilities. The plan shall be developed in consultation with and, as appropriate, subject to approval by the Director of the Office of Personnel Management and the Director of the Office of Management and Budget, and shall, consistent with law, include performance targets and numerical goals for employment of individuals with disabilities and sub-goals for employment of individuals with targeted disabilities.

(c) Each agency shall designate a senior-level agency official to be accountable for enhancing employment opportunities for individuals with disabilities and individuals with targeted disabilities within the agency, consistent with law, and for meeting the goals of this order. This official, among other things, shall be accountable for developing and implementing the agency's plan under subsection (b), creating recruitment and training programs for employment of individuals with disabilities and targeted disabilities, and coordinating employment counseling to help match the career aspirations of individuals with disabilities to the needs of the agency.

(d) In implementing their plans, agencies, to the extent permitted by law, shall increase utilization of the Federal Government's Schedule A exempted service hiring authority for persons with disabilities and increase participation of individuals with disabilities in internships, fellowships, and training and mentoring programs.

(e) The Office of Personnel Management shall assist agencies with the implementation of their plans. The Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall implement a system for reporting regularly to the President, the heads of agencies, and the public on agencies' progress in implementing their plans and the objectives of this order. The Office of Personnel Management, to the extent permitted by law, shall compile and post on its website Government-wide statistics on the hiring of individuals with disabilities.

Sec. 3. *Increasing Agencies' Retention and Return to Work of Individuals with Disabilities.* (a) The Director of the Office of Personnel Management, in consultation with the Secretary of Labor and the Chair of the Equal Employment Opportunity Commission, shall identify and assist agencies in implementing strategies for retaining Federal workers with disabilities in Federal employment including, but not limited to, training, the use of centralized funds to provide reasonable accommodations, increasing access to appropriate accessible technologies, and ensuring the accessibility of physical and virtual workspaces.

(b) Agencies shall make special efforts, to the extent permitted by law, to ensure the retention of those who are injured on the job. Agencies shall work to improve, expand, and increase successful return-to-work outcomes for those of their employees who sustain work-related injuries and illnesses, as defined under the Federal Employees' Compensation Act (FECA), by increasing the availability of job accommodations and light or limited duty jobs, removing disincentives for FECA claimants to return to work, and taking other appropriate measures. The Secretary of Labor, in consultation with the Director of the Office of Personnel Management, shall pursue innovative re-employment strategies and develop policies, procedures, and structures that foster improved return-to-work outcomes, including by pursuing overall reform of the FECA system. The Secretary of Labor shall also propose specific outcome measures and targets by which each agency's progress in carrying out return-to-work and FECA claims processing efforts can be assessed.

Sec. 4. *Definitions.* (a) "Disability" shall be defined as set forth in the ADA Amendments Act of 2008.

(b) "Targeted disability" shall be defined as set forth on the form for self-identification of disability, Standard Form 256 (SF 256), issued by the Office of Personnel Management, or any replacements, updates, or revisions thereto.

(c) Not less than 1 year after the date of this order and in consultation with the Equal Employment Opportunity Commission, the Department of Labor, and the Office of Management and Budget, the Office of Personnel Management shall review the effectiveness of the definition of targeted disability set forth in SF 256 and replace, update, or revise it as appropriate.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations, and shall not be construed to require any Federal employee to disclose disability status involuntarily.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
July 26, 2010.

APPENDIX B

Selected Provisions of the Americans with Disabilities Act, as Amended

**SELECTED PROVISIONS
OF THE AMERICANS WITH DISABILITIES ACT, AS AMENDED,
AS CODIFIED IN TITLE 42 UNITED STATES CODE,
WITH SELECTED NOTES**

Source: Department of Justice, Civil Rights Division at: <https://www.ada.gov/pubs/adastatute08mark.htm>
(Changes made to the ADA by the ADAAA of 2008 are shown in strike-out and bold)

Sec. 12101. Findings and purpose

(a) Findings

The Congress finds that

~~(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;~~

physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

~~(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;~~

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

~~(9)~~ the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Sec. 12101 note: Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, § 2, Sept. 25, 2008, 122 Stat. 3553, provided that:

(a) Findings

Congress finds that—

- (1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage;**
- (2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;**
- (3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;**
- (4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;**
- (5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;**
- (6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;**
- (7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress; and**

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

(b) Purposes

The purposes of this Act are—

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives";

(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for "substantially limits", and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act.

Sec. 12102. ~~Definitions~~ **Definition of disability**

As used in this chapter:

~~(1) Auxiliary aids and services~~

The term ~~"auxiliary aids and services"~~ includes

~~(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;~~

~~(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;~~

~~(C) acquisition or modification of equipment or devices; and~~

~~(D) other similar services and actions.~~

[Note: the definition of "auxiliary aids and services" has been moved to Section 12103.]

~~(2 1)~~ Disability

The term "disability" means, with respect to an individual

~~(i A)~~ a physical or mental impairment that substantially limits one or more major life activities of such individual;

~~(ii B)~~ a record of such an impairment; or

~~(iii C)~~ being regarded as having such an impairment **(as described in paragraph (3)).**

~~(3) State~~

~~The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.~~

[Note: the definition of "state" has been moved to Section 12103.]

(2) Major Life Activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

Sec. 12103. Additional definitions

As used in this chapter

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Sec. 12111. Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual ~~with a disability~~

The term "qualified individual ~~with a disability~~" means an individual ~~with a disability~~ who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

APPENDIX C

Lists of Targeted and Nontargeted Disabilities

**LIST OF TARGETED DISABILITIES
WITH ACCOMPANYING NUMERIC PERSONNEL CODES**

(July 2010 – September 2016)

TARGETED DISABILITIES
<p><u>Hearing</u></p> <p>18 - Total deafness in both ears (with or without understandable speech)</p>
<p><u>Vision</u></p> <p>21 - Blind (inability to read ordinary size print, not correctable by glasses, or no usable vision, beyond light perception)</p>
<p><u>Missing Extremities</u></p> <p>30 - Missing extremities (missing one arm or leg, both hands or arms, both feet or legs, one hand or arm and one foot or leg, one hand or arm and both feet or legs, both hands or arms and one foot or leg, or both hands or arms and both feet or legs)</p>
<p><u>Partial Paralysis</u></p> <p>69 - Partial paralysis (because of a brain, nerve or muscle impairment, including palsy and cerebral palsy, there is some loss of ability to move or use a part of the body, including both hands; any part of both arms or legs; one side of the body, including one arm and one leg; and/or three or more major body parts)</p>
<p><u>Complete Paralysis</u></p> <p>79 - Because of a brain, nerve or muscle impairment, including palsy and cerebral palsy, there is a complete loss of ability to move or use a part of the body, including both hands; one or both arms or legs; the lower half of the body; one side of the body, including one arm and one leg; and/or three or more major body parts</p>
<p><u>Other Impairments</u></p> <p>82 - Epilepsy</p> <p>90 - Severe intellectual disability</p> <p>91 - Psychiatric disability</p> <p>92 - Dwarfism</p>

Source: OPM, Standard Form 256–*Self-Identification of Disability* (Revised July 2010)

**LIST OF NONTARGETED DISABILITIES
WITH ACCOMPANYING NUMERIC PERSONNEL CODES**

(July 2010 – September 2016)

NONTARGETED DISABILITIES
<u>Hearing Conditions</u>
15 - Hearing impairment/hard of hearing
<u>Vision Conditions</u>
22 - Visual impairments (e.g., tunnel or monocular vision or blind in one eye)
<u>Physical Conditions</u>
26 - Missing extremities (one hand or one foot)
40 - Mobility impairment (e.g., cerebral palsy, multiple sclerosis, muscular dystrophy, etc.)
41 - Spinal abnormalities (e.g., spina bifida, scoliosis)
44 - Nonparalytic orthopedic impairments: chronic pain, stiffness, weakness in bones or joints, some loss of ability to use part or parts of the body
51 - HIV Positive/AIDS
52 - Morbid obesity
61 - Partial paralysis of one hand, arm, foot, leg, or any part thereof
70 - Complete paralysis of one hand
80 - Cardiovascular/heart disease with or without restriction or limitation on activity; a history of heart problems with complete recovery
83 - Blood diseases (e.g., sickle cell anemia, hemophilia)
84 - Diabetes
86 - Pulmonary or respiratory conditions (e.g., tuberculosis, asthma, emphysema, etc.)
87 - Kidney dysfunction (e.g., required dialysis)
88 - Cancer (present or past history)
93 - Disfigurement of face, hands, or feet (such as those caused by burns or gunshot wounds) and noticeable gross facial birthmarks
95 - Gastrointestinal disorders (e.g., Crohn's Disease, irritable bowel syndrome, colitis, celiac disease, etc.)
98 - History of alcoholism
<u>Speech/Language/Learning Conditions</u>
13 - Speech impairment - includes impairments of articulation (unclear language sounds), fluency (stuttering), voice (with normal hearing), dysphasia, or history of laryngectomy
94 - Learning disability - a disorder in one or more of the processes involved in understanding, perceiving, or using language or concepts (spoken or written) (e.g., dyslexia, ADD/ADHD)
<u>Other Options</u>
01 - Do not wish to identify disability status
05 - No disability
06 - Disability not listed in the options above

Source: OPM, Standard Form 256–*Self-Identification of Disability* (Revised July 2010)

**REVISED LIST OF TARGETED DISABILITIES
WITH ACCOMPANYING NUMERIC PERSONNEL CODES**

(Fiscal Year 2017 – Present)

TARGETED DISABILITIES
02 - Developmental Disability, for example, autism spectrum disorder
03 - Traumatic Brain Injury
19 - Deaf or serious difficulty hearing, benefiting from, for example, American Sign Language, CART, hearing aids, a cochlear implant and/or other supports
20 - Blind or serious difficulty seeing even when wearing glasses
31 - Missing extremities (arm, leg, hand and/or foot)
40 - Significant mobility impairment, benefiting from the utilization of a wheelchair, scooter, walker, leg brace(s) and/or other supports
60 - Partial or complete paralysis (any cause)
82 - Epilepsy or other seizure disorders
90 - Intellectual disability
91 - Significant Psychiatric Disorder, for example, bipolar disorder, schizophrenia, PTSD, or major depression
92 - Dwarfism
93 - Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders

Source: OPM, Standard Form 256–*Self-Identification of Disability* (Revised Oct. 2016)

**REVISED LIST OF NONTARGETED DISABILITIES
WITH ACCOMPANYING NUMERIC PERSONNEL CODES**

(Fiscal Year 2017 – Present)

NONTARGETED DISABILITIES
13 - Speech impairment
41 - Spinal abnormalities, for example, spina bifida or scoliosis
44 - Nonparalytic orthopedic impairments, for example, chronic pain, stiffness, weakness in bones or joints, some loss of ability to use part or parts of the body
51 - HIV Positive/AIDS
52 - Morbid obesity
59 - Nervous system disorder, for example, migraine headaches, Parkinson's disease, or multiple sclerosis
80 - Cardiovascular or heart disease
81 - Depression, anxiety disorder, or other psychiatric disorder
83 - Blood diseases, for example, sickle cell anemia, hemophilia
84 - Diabetes
85 - Orthopedic impairments or osteo-arthritis
86 - Pulmonary or respiratory conditions, for example, tuberculosis, asthma, emphysema
87 - Kidney dysfunction
88 - Cancer (present or past history)
94 - Learning disability or attention deficit/hyperactivity disorder (ADD/ADHD)
95 - Gastrointestinal disorders, for example, Crohn's Disease, irritable bowel syndrome, colitis, celiac disease
96 - Autoimmune disorder, for example, lupus, fibromyalgia, rheumatoid arthritis
97 - Liver disease, for example, hepatitis or cirrhosis
98 - History of alcoholism or history of drug addiction (but not currently using illegal drugs)
99 - Endocrine disorder, for example, thyroid dysfunction
OTHER OPTIONS
01 - Do not wish to identify disability or serious health condition
05 - Do not have a disability or serious health condition
06 - Disability or serious health condition not listed in options above

Source: OPM, Standard Form 256–*Self-Identification of Disability* (Revised Oct. 2016)

APPENDIX D

Employees with Disabilities in the Federal Civilian Workforce

**NEW HIRES WITH DISABILITIES IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 2010-2015)**

NEW HIRES IN THE FEDERAL CIVILIAN WORKFORCE					
Fiscal Year	Number of New Hires	New Hires with Disabilities		New Hires with Targeted Disabilities	
		Number	%	Number	%
2010	304,762	30,354	9.96%	2,191	0.72%
2011	258,748	29,761	11.50%	2,056	0.79%
2012	217,921	27,254	12.51%	2,003	0.92%
2013	184,802	26,844	14.53%	2,124	1.15%
2014	204,570	31,362	15.33%	2,402	1.17%
2015	249,896	38,991	15.60%	2,773	1.11%
Total	1,420,699	184,566	12.99%	13,549	0.95%

Source: OPM Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015 (Oct. 2016); OPM Enterprise Human Resources Integration–Statistical Data Mart *

* Data represent **ALL** new hires (temporary and career (including transfers)).
“Disability” data include veterans with 30% or more service-related disability.

**NEW HIRES WITH DISABILITIES IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 1980-2003)**

HISTORICAL DATA ON NEW HIRES IN THE FEDERAL CIVILIAN WORKFORCE					
Fiscal Year	Number of New Hires	New Hires with Disabilities		New Hires with Targeted Disabilities	
		Number	%	Number	%
1980	163,827	8,079	4.93%	994	0.61%
1981	139,447	7,277	5.22%	825	0.59%
1982	121,466	5,969	4.91%	761	0.63%
1983	115,447	5,612	4.86%	763	0.66%
1984	142,019	6,959	4.90%	982	0.69%
1985	151,866	7,231	4.76%	1,026	0.68%
1986	128,372	6,428	5.01%	902	0.70%
1987	136,491	6,500	4.76%	938	0.69%
1988	127,130	6,246	4.91%	928	0.73%
1989	148,583	7,854	5.29%	965	0.65%
1990	117,222	6,304	5.38%	844	0.72%
1991	124,099	7,597	6.12%	1,155	0.93%
1992	102,411	7,330	7.16%	1,134	1.11%
1993	70,358	5,731	8.15%	757	1.08%
1994	57,457	4,263	7.42%	519	0.90%
1995	121,235	8,620	7.11%	1,596	1.32%
1996	53,303	3,736	7.01%	316	0.59%
1997	59,470	4,275	7.19%	423	0.71%
1998	65,381	4,754	7.27%	479	0.73%
1999	68,129	5,112	7.50%	585	0.86%
2000	80,822	5,957	7.37%	631	0.78%
2001	94,698	7,465	7.88%	696	0.73%
2002	132,968	9,412	7.08%	721	0.54%
2003	204,399	13,080	6.40%	1,043	0.51%

Source: OPM Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015 (Oct. 2016); OPM Enterprise Human Resources Integration—Statistical Data Mart *

* Data represent nonseasonal full-time career new hires (including transfers).
“Disability” data include veterans with 30% or more service-related disability.

**NEW HIRES WITH DISABILITIES IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 2004-2015)**

<i>HISTORICAL DATA ON NEW HIRES IN THE FEDERAL CIVILIAN WORKFORCE</i>					
Fiscal Year	Number of New Hires	New Hires with Disabilities		New Hires with Targeted Disabilities	
		Number	%	Number	%
2004	88,679	7,343	8.28%	530	0.60%
2005	100,408	8,774	8.74%	544	0.54%
2006	102,949	9,437	9.17%	569	0.55%
2007	112,669	10,819	9.60%	732	0.65%
2008	152,257	15,407	10.12%	1,053	0.69%
2009	156,306	16,706	10.69%	1,071	0.69%
2010	151,999	18,926	12.45%	1,178	0.78%
2011	127,487	18,675	14.65%	1,122	0.88%
2012	102,093	16,653	16.31%	1,101	1.08%
2013	88,131	16,028	18.19%	1,155	1.31%
2014	104,440	20,618	19.74%	1,424	1.36%
2015	139,159	26,466	19.02%	1,768	1.27%

Source: OPM *Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015* (Oct. 2016); OPM Enterprise Human Resources Integration–Statistical Data Mart *

* Data represent nonseasonal full-time career new hires (including transfers). “Disability” data include veterans with 30% or more service-related disability.

**EMPLOYEES WITH DISABILITIES IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 2010-2015)**

EMPLOYEES IN THE FEDERAL CIVILIAN WORKFORCE					
Fiscal Year	Number of Employees	Employees with Disabilities		Employees with Targeted Disabilities	
		Number	%	Number	%
2010	2,113,210	208,333	9.86%	19,406	0.92%
2011	2,130,289	225,529	10.59%	19,918	0.93%
2012	2,110,221	242,557	11.49%	20,535	0.97%
2013	2,067,262	255,918	12.38%	20,864	1.01%
2014	2,045,707	268,035	13.10%	21,485	1.05%
2015	2,058,924	286,468	13.91%	22,221	1.08%
Mean	2,087,602	247,807	11.87%	20,738	0.99%

Source: OPM Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015 (Oct. 2016); OPM Enterprise Human Resources Integration–Statistical Data Mart *

* Data represent ALL employees (temporary and career (including transfers)).
“Disability” data include veterans with 30% or more service-related disability.

**EMPLOYEES WITH DISABILITIES IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 1980-2005)**

<i>HISTORICAL DATA ON EMPLOYEES IN THE FEDERAL CIVILIAN WORKFORCE</i>					
Fiscal Year	Number of Employees	Employees with Disabilities		Employees with Targeted Disabilities	
		Number	%	Number	%
1980	1,779,834	125,067	7.03%	14,624	0.82%
1981	1,772,572	124,364	7.02%	15,260	0.86%
1982	1,779,131	123,850	6.96%	15,723	0.88%
1983	1,764,968	124,169	7.04%	16,557	0.94%
1984	1,780,789	126,742	7.12%	17,708	0.99%
1985	1,809,339	129,001	7.13%	18,883	1.04%
1986	1,789,529	127,900	7.15%	19,347	1.08%
1987	1,822,004	129,321	7.10%	20,151	1.11%
1988	1,821,824	130,745	7.18%	20,570	1.13%
1989	1,845,876	134,930	7.31%	21,288	1.15%
1990	1,848,435	138,099	7.47%	21,693	1.17%
1991	1,877,323	143,023	7.62%	22,493	1.20%
1992	1,879,894	150,809	8.02%	23,036	1.23%
1993	1,823,193	148,043	8.12%	22,713	1.25%
1994	1,755,221	142,191	8.10%	21,989	1.25%
1995	1,693,177	137,050	8.09%	21,245	1.25%
1996	1,640,258	131,683	8.03%	20,212	1.23%
1997	1,585,408	126,831	8.00%	19,190	1.21%
1998	1,556,531	123,957	7.96%	18,507	1.19%
1999	1,536,156	122,571	7.98%	18,051	1.18%
2000	1,524,883	121,756	7.98%	17,730	1.16%
2001	1,536,627	123,088	8.01%	17,564	1.14%
2002	1,579,254	127,417	8.07%	17,417	1.10%
2003	1,582,636	129,782	8.20%	17,187	1.09%
2004	1,602,773	134,025	8.36%	16,917	1.06%
2005	1,611,400	137,578	8.54%	16,458	1.02%

Source: OPM Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015 (Oct. 2016); OPM Enterprise Human Resources Integration-Statistical Data Mart *

* Data represent nonseasonal full-time career employees (including transfers).
“Disability” data include veterans with 30% or more service-related disability.

**EMPLOYEES WITH DISABILITIES IN THE FEDERAL CIVILIAN WORKFORCE
(Fiscal Years 2006-2015)**

<i>HISTORICAL DATA ON EMPLOYEES IN THE FEDERAL CIVILIAN WORKFORCE</i>					
Fiscal Year	Number of Employees	Employees with Disabilities		Employees with Targeted Disabilities	
		Number	%	Number	%
2006	1,608,157	140,622	8.74%	16,048	1.00%
2007	1,618,159	145,486	8.99%	15,910	0.98%
2008	1,673,249	154,555	9.24%	16,030	0.96%
2009	1,757,105	169,530	9.65%	16,560	0.94%
2010	1,831,719	187,068	10.21%	17,445	0.95%
2011	1,856,580	203,694	10.97%	17,845	0.96%
2012	1,850,311	219,975	11.89%	18,319	0.99%
2013	1,831,723	234,395	12.80%	18,665	1.02%
2014	1,825,762	247,608	13.56%	19,536	1.07%
2015	1,838,352	264,844	14.41%	20,274	1.10%

Source: OPM Report on the Employment of Individuals with Disabilities in the Federal Executive Branch: Fiscal Year 2015 (Oct. 2016); OPM Enterprise Human Resources Integration–Statistical Data Mart *

* Data represent nonseasonal full-time career employees (including transfers).
“Disability” data include veterans with 30% or more service-related disability.

APPENDIX E

**Applicants for Employment
with Disabilities at GAO**

**PERSONNEL APPEALS BOARD REPORT OF
 APPLICANTS FOR EMPLOYMENT WITH DISABILITIES AT GAO
 (Fiscal Years 2010-2015)**

APPLICANTS FOR EMPLOYMENT AT GAO			
Fiscal Year	Number of Applicants	Number with Disabilities	% with Disabilities
2010	20,948	2,012	9.60%
2011	3,198	537	16.79%
2012	5,644	888	15.73%
2013	26,728	3,971	14.86%
2014	15,490	2,824	18.23%
2015	10,374	4,838	46.64%
Total	82,382	15,070	18.29%

Source: Board Analysis of GAO Personnel Data on Nonemployee Applicants (Fiscal Years 2010-2015);
 GAO Excel Database on Nonemployee Applicants *

* Data on applicants with disabilities includes data on veterans with service-related disabilities (CP, CPS, XP).
 (Targeted disability data not available).

APPENDIX F

Employees with Disabilities at GAO

**PERSONNEL APPEALS BOARD REPORT OF
NEW HIRES WITH DISABILITIES AT GAO**

NEW HIRES AT GAO					
Fiscal Year	Number of New Hires	Number with Disabilities	% with Disabilities	Number with Targeted Disabilities	% with Targeted Disabilities
2010	408	35	8.58%	4	0.98%
2011	96	7	7.29%	1	1.04%
2012	54	7	12.96%	0	0.00%
2013	187	27	14.44%	4	2.14%
2014	504	50	9.92%	2	0.40%
2015	332	33	9.94%	4	1.20%
2016	431	33	7.66%	4	0.93%
Total	2,012	192	9.54%	19	0.94%

Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2010-2016);
GAO Excel Databases on New Hires *

**PERSONNEL APPEALS BOARD REPORT OF
EMPLOYEES WITH DISABILITIES AT GAO**

EMPLOYEES AT GAO					
Fiscal Year	Number of Employees	Number with Disabilities	% with Disabilities	Number with Targeted Disabilities	% with Targeted Disabilities
2010	3,851	231	6.00%	28	0.73%
2011	3,523	215	6.10%	30	0.85%
2012	3,271	249	7.61%	43	1.31%
2013	3,194	270	8.45%	38	1.19%
2014	3,431	296	8.63%	38	1.11%
2015	3,448	329	9.54%	41	1.19%
2016	3,547	307	8.66%	47	1.33%
Mean	3,466	271	7.82%	38	1.10%

Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016);
GAO Excel Database on All Employees *

* Data represent all new hires and all employees (temporary and career (including transfers)).
“Disability” data include veterans with service-related disabilities (CP, CPS, XP).

APPENDIX G

Disabilities of Employees at GAO

**PERSONNEL APPEALS BOARD REPORT OF
DISABILITIES OF NEW HIRES AT GAO**

NEW HIRES AT GAO									
Code	Disability	Occurrence of Named Disability by Fiscal Year							
		2010	2011	2012	2013	2014	2015	2016	Total
06	Disability not listed on SF-256	4	0	0	5	4	3	5	21
13	Speech impairment	0	0	0	1	0	0	0	1
15	Hearing impairment (partial)	3	0	2	1	3	4	3	16
18	Total deafness (both ears) (targeted)	1	0	0	1	1	0	1	4
21	Vision/blind (inability to read ordinary print/not correctable) (targeted)	1	1	0	0	1	0	1	4
22	Visual impairments	1	2	0	1	1	1	0	6
26	Missing extremities (nontargeted)	0	0	0	0	0	0	0	0
30	Missing extremities (targeted)	0	0	0	0	0	0	0	0
40	Significant mobility impairment	0	0	0	1	1	0	0	2
41	Spinal abnormalities	0	0	0	0	2	1	1	4
44	Nonparalytic orthopedic	4	1	1	6	8	5	5	30
51	HIV positive/AIDS	0	0	0	0	0	0	0	0
52	Morbid obesity	0	0	0	0	0	0	1	1
61	Partial paralysis (nontargeted)	1	1	0	1	2	1	2	8
69	Partial paralysis (targeted)	0	0	0	0	0	1	0	1
70	Complete paralysis of one hand (nontargeted)	0	0	0	0	0	0	0	0
79	Complete paralysis (targeted)	0	0	0	0	0	0	0	0
80	Cardiovascular/heart disease	2	0	0	0	0	0	0	2
82	Epilepsy/seizure disorder (targeted)	1	0	0	1	0	2	1	5
83	Blood disease	0	0	0	0	0	1	0	1
84	Diabetes	0	0	1	1	5	2	1	10
86	Pulmonary or respiratory condition	3	0	0	3	2	1	2	11
87	Kidney dysfunction	0	0	0	0	0	0	0	0
88	Cancer	0	0	1	2	1	0	1	5
90	Severe intellectual disability (targeted)	0	0	0	0	0	0	0	0
91	Significant psychiatric disorder (targeted)	1	0	0	2	0	1	1	5

(Chart continued on next page)

Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2010-2016);
GAO Excel Databases on New Hires *

* Data represent all new hires (temporary and career (including transfers)).
“Disability” data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).

**PERSONNEL APPEALS BOARD REPORT OF
DISABILITIES OF NEW HIRES AT GAO**

NEW HIRES AT GAO									
(Chart continued from previous page)									
Code	Disability	Occurrence of Named Disability by Fiscal Year							
		2010	2011	2012	2013	2014	2015	2016	Total
92	Dwarfism (targeted)	0	0	0	0	0	0	0	0
93	Disfigurement	0	0	0	0	0	0	0	0
94	Learning disability or ADD/ADHD	3	0	0	1	1	0	0	5
95	Gastrointestinal disorder	0	1	0	1	2	1	1	6
98	History of alcoholism	0	0	0	0	0	0	0	0
Total		25	6	5	28	34	24	26	148

Source: Board Analysis of GAO Personnel Data on New Hires (Fiscal Years 2010-2016);
GAO Excel Databases on New Hires *

* Data represent all new hires (temporary and career (including transfers)).
“Disability” data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).

**PERSONNEL APPEALS BOARD REPORT OF
DISABILITIES OF EMPLOYEES AT GAO**

EMPLOYEES AT GAO									
Code	Disability	Occurrence of Named Disability by Fiscal Year							
		2010	2011	2012	2013	2014	2015	2016	Mean
06	Disability not listed on SF-256	32	29	29	30	31	26	31	29.71
13	Speech impairment	5	5	5	6	5	5	5	5.14
15	Hearing impairment (partial)	17	17	19	20	22	23	25	20.43
18	Total deafness (both ears) (targeted)	5	5	5	6	5	4	3	4.71
21	Vision/blind (inability to read ordinary print/not correctable) (targeted)	2	2	4	4	4	4	4	3.43
22	Visual impairments	7	8	5	6	4	5	4	5.57
26	Missing extremities (nontargeted)	0	0	0	0	0	0	0	0.00
30	Missing extremities (targeted)	1	1	1	1	1	1	1	1.00
40	Significant mobility impairment	7	11	8	8	10	9	8	8.71
41	Spinal abnormalities	0	1	0	0	7	5	7	2.86
44	Nonparalytic orthopedic	24	30	45	55	50	53	47	43.43
51	HIV positive/AIDS	0	0	0	0	0	0	1	0.14
52	Morbid obesity	0	0	0	0	0	1	3	0.57
61	Partial paralysis	5	4	2	3	2	3	2	3.00
69	Partial paralysis (targeted)	2	2	0	0	1	2	1	1.14
70	Complete paralysis of one hand (nontargeted)	0	0	0	0	0	0	0	0.00
79	Complete paralysis (targeted)	0	0	0	0	0	0	0	0.00
80	Cardiovascular/heart disease	5	3	3	2	3	2	5	3.29
82	Epilepsy/seizure disorder (targeted)	4	4	5	5	4	6	7	5.00
83	Blood disease	1	1	3	1	2	4	2	2.00
84	Diabetes	11	9	12	13	15	14	14	12.57
86	Pulmonary or respiratory condition	23	19	18	18	18	21	21	19.71
87	Kidney dysfunction	0	0	0	1	0	1	0	0.29
88	Cancer	8	8	11	11	12	12	12	10.57
90	Severe intellectual disability (targeted)	1	1	1	1	1	1	1	1.00
91	Significant psychiatric disorder (targeted)	13	15	27	21	22	23	30	21.57
(Chart continued on next page)									

Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016);
GAO Excel Database on All Employees *

* Data represent all employees (temporary and career (including transfers)).
“Disability” data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).

**PERSONNEL APPEALS BOARD REPORT OF
DISABILITIES OF GAO EMPLOYEES**

EMPLOYEES AT GAO									
(Chart continued from previous page)									
Code	Disability	Occurrence of Named Disability by Fiscal Year							
		2010	2011	2012	2013	2014	2015	2016	Mean
92	Dwarfism (targeted)	0	0	0	0	0	0	0	0.00
93	Disfigurement	1	1	1	0	0	0	0	0.43
94	Learning disability or ADD/ADHD	8	7	9	9	8	8	8	8.14
95	Gastrointestinal disorder	1	0	4	2	7	5	4	3.29
98	History of alcoholism	0	0	1	0	0	1	1	0.43
Total		183	183	218	223	234	239	247	

Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016);
GAO Excel Database on All Employees *

* Data represent all employees (temporary and career (including transfers)).
“Disability” data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).

APPENDIX H

Reasonable Accommodation Requests

at GAO

**PERSONNEL APPEALS BOARD REPORT OF
REASONABLE ACCOMMODATION REQUESTS
OF APPLICANTS, NEW HIRES, AND EMPLOYEES AT GAO**

REASONABLE ACCOMMODATION REQUESTS AT GAO						
Fiscal Year	Applicant Requests		New Hire Requests		Employee Requests	
	All	Disability	All	Disability	All	Disability
2009	0	0	11	8	60	34
2010	0	0	21	15	93	40
2011	0	0	5	3	87	44
2012	1	1	6	3	234	107
2013	3	3	20	14	268	134
2014	4	4	26	21	201	150
2015	1	1	18	15	235	192
2016	Data Not Available		6	5	195	153
Total	9	9	113	84	1,373	854
Mean	1.29	1.29	14.13	10.5	171.63	106.75

Source: Board Analysis of GAO Personnel Data of Nonemployee Applicants, New Hires, and All Employees (Fiscal Years 2009-2016)
GAO Excel Databases on Nonemployee Applicants, New Hires, and All Employees *

* “Disability” data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).

**PERSONNEL APPEALS BOARD REPORT OF
REASONABLE ACCOMMODATION REQUESTS
OF APPLICANTS, NEW HIRES, AND EMPLOYEES AT GAO**

OUTCOME OF ACTION ON REASONABLE ACCOMMODATION REQUESTS OF APPLICANTS AND NEW HIRES WITH DISABILITIES						
Fiscal Year	Applicant Requests (with Disabilities)			New Hire Requests (with Disabilities)		
	Approved	Approved in Part	Other	Approved	Approved in Part	Other†
2009	0	0	0	4	0	4
2010	0	0	0	9	0	6
2011	0	0	0	2	0	1
2012	1	0	0	3	0	0
2013	3	0	0	10	0	4
2014	4	0	0	11	0	10
2015	1	0	0	9	0	6
2016	Data Not Available			4	0	1
Total	9	0	0	52	0	32
Mean	1.29	0	0	6.5	0	4.00

OUTCOME OF ACTION ON REASONABLE ACCOMMODATION REQUESTS OF APPLICANTS AND NEW HIRES WITHOUT DISABILITIES						
Fiscal Year	Applicant Requests (without Disabilities)			New Hire Requests (without Disabilities)		
	Approved	Approved in Part	Other	Approved	Approved in Part	Other†
2009	0	0	0	2	0	1
2010	0	0	0	6	0	0
2011	0	0	0	2	0	0
2012	0	0	0	2	0	1
2013	0	0	0	4	0	2
2014	0	0	0	3	0	2
2015	0	0	0	3	0	0
2016	Data Not Available			1	0	0
Total	0	0	0	23	0	6
Mean	0	0	0	2.88	0	0.75

Source: Board Analysis of GAO Personnel Data of Nonemployee Applicants and New Hires (Fiscal Years 2009-2016)
GAO Excel Databases on Nonemployee Applicants and New Hires*

* "Disability" data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).

† "Other" includes requests resulting in administrative closure, advice only, or withdrawal or denial of requests.

**PERSONNEL APPEALS BOARD REPORT OF
REASONABLE ACCOMMODATION REQUESTS
OF APPLICANTS, NEW HIRES, AND EMPLOYEES AT GAO**

OUTCOME OF ACTION ON REASONABLE ACCOMMODATION REQUESTS OF EMPLOYEES WITH DISABILITIES								
Fiscal Year	Total Requests	Approved	Approved in Part	Denied	Administrative Closure	Advice Only	Withdrawn	Other†
2009	34	19	1	1	5	0	2	6
2010	40	19	1	0	12	0	0	8
2011	44	37	1	0	3	0	0	3
2012	107	86	3	2	9	3	4	0
2013	134	83	2	1	26	3	18	1
2014	150	83	2	0	40	3	20	2
2015	192	89	4	2	80	0	17	0
2016	153	77	1	2	45	7	21	0
Total	854	493	15	8	220	16	82	20
Mean	106.75	61.63	1.88	1.00	27.50	2.00	10.25	2.50

OUTCOME OF ACTION ON REASONABLE ACCOMMODATION REQUESTS OF EMPLOYEES WITHOUT DISABILITIES								
Fiscal Year	Total Requests	Approved	Approved in Part	Denied	Administrative Closure	Advice Only	Withdrawn	Other†
2009	26	16	0	0	0	0	0	10
2010	53	32	0	1	1	0	1	18
2011	43	24	0	1	0	0	0	18
2012	127	115	1	0	1	0	10	0
2013	134	122	1	0	1	0	9	1
2014	51	37	1	2	5	1	5	0
2015	43	33	0	1	4	0	5	0
2016	42	31	0	1	2	1	7	0
Total	519	410	3	6	14	2	37	47
Mean	64.88	51.25	0.38	0.75	1.75	0.25	4.63	5.88

Source: Board Analysis of GAO Personnel Data of All Employees (Fiscal Years 2009-2016)
GAO Excel Databases on All Employees *

* “Disability” data include both self-recorded and RAC assigned codes (including those of veterans with service-related disabilities).
† “Other” includes requests where the outcome was listed as “not in file” (26 total occurrences on requests by employees with disabilities and without disabilities), “unknown” (2 total occurrences), or was left blank (38 total occurrences). “Other” also includes the closure of one request by an employee with a disability who died while the request was pending.

**DATA FROM GAO *REASONABLE ACCOMMODATION REPORTS* ON
REASONABLE ACCOMMODATION REQUESTS
OF APPLICANTS, NEW HIRES, AND EMPLOYEES AT GAO**

OUTCOME OF REPORTED ACTION ON REASONABLE ACCOMMODATION REQUESTS OF EMPLOYEES AT GAO										
Fiscal Year	New and Reopened Cases	All Closed Cases	Requests by All Employees				Requests By Employees with Disabilities			
			Approved	Approved in Part	Denied	Other†	Approved	Approved in Part	Denied	Other†
2012	286*	285	238	5	3	39*	95	5	3	4*
2013	361	360	260	4	2	94*	105	2	2	30*
2014	295	265	178	4	1	82	116	3	0	30
2015	329	322	185	1	3	133	142	1	2	29
2016	282	289	150	3	5	131	104	2	2	28
2017	306	313	179	3	1	130	135	2	0	24
Total	1,859	1,834	1,190	20	15	609	697	15	9	145
Mean	309.83	305.67	198.33	3.33	2.50	101.50	116.17	2.50	1.50	24.17

Source: Board Analysis of GAO *Report on Reasonable Accommodation* (Fiscal Years 2012-2017, published quarterly)

† “Other” includes requests resulting in administrative closure (355 total occurrences); withdrawal (186 total occurrences); advice only (31 total occurrences); outcome “unknown” or not listed (37 total occurrences).

* Indicates less than full availability of fiscal year data.

APPENDIX I

**Reasonable Accommodation Requests
by Disability at GAO**

DATA FROM GAO *REASONABLE ACCOMMODATION REPORTS ON REASONABLE ACCOMMODATION REQUESTS BY DISABILITY*

REASONABLE ACCOMMODATION REQUESTS BY DISABILITY TYPE									
Code	Disability	Range of Requests by Fiscal Year							
		2011	2012	2013	2014	2015	2016	2017	Total
06	Disability not listed on SF-256	2-8*	4-16	1-4	1-4	1-4	4-16	1-4	14-56*
13	Speech impairment	0*	4-16	2-8	0	2-8	1-4	1-4	10-40*
15	Hearing impairment (partial)	3-12*	4-16	3-12	5-9	12-26	8-21	0	35-96*
18	Hearing impairment (total)	1-4*	2-8	6-13	1-4	3-12	2-8	0	15-49*
19	Deaf or serious difficulty hearing	0*	0	0	0	0	0	4-16	4-16*
20	Blind or serious difficulty seeing	0*	0	0	0	0	0	26-33+	26-33+*
21	Vision/blind (inability to read ordinary print/not correctable)	3-12*	8-21	7-17	5-9	2-8	11-14+	0	36-81+*
22	Visual impairments	0*	0	0	5-9	4-16	1-4	0	10-29*
30	Missing extremities	0*	0	0	1-4	0	0	0	1-4*
40	Significant mobility impairment	11-22*	6-13	12-18+	10+	8-21	2-8	4-16	53-108+*
41	Spinal abnormalities	0*	0	0	5-9	8-21	3-12	2-8	18-50*
44	Nonparalytic orthopedic	30+*	22-28+	25-37+	10+	35-39+	30-38+	25-37+	177-219+*
52	Morbid obesity	0*	0	0	1-4	1-4	0	1-4	3-12*
59	Nervous system disorder	0*	0	0	0	0	0	2-8	2-8*
61	Partial paralysis	0*	0	1-4	0	1-4	0	0	2-8*
69	Partial paralysis (targeted)	0*	0	0	1-4	1-4	0	0	2-8*
80	Cardiovascular/heart disease	2-8*	2-8	0	1-4	0	2-8	0	7-28*
81	Psychiatric disorder	0*	0	0	0	0	0	3-12	3-12*
82	Epilepsy/seizure disorder	0*	0	0	1-4	0	0	1-4	2-8*
83	Blood disease	0*	0	0	0	1-4	1-4	0	2-8*
(Chart continued on next page)									

Source: Board Analysis of GAO Report on Reasonable Accommodation (Fiscal Years 2011-2017, published quarterly)

+ Indicates possibility the value may continue beyond the noted range
 * Indicates less than full availability of fiscal year data

**DATA FROM GAO *REASONABLE ACCOMMODATION REPORTS ON
REASONABLE ACCOMMODATION REQUESTS BY DISABILITY***

REASONABLE ACCOMMODATION REQUESTS BY DISABILITY TYPE									
(Chart continued from previous page)									
Code	Disability	Range of Requests by Fiscal Year							
		2011	2012	2013	2014	2015	2016	2017	Total
84	Diabetes	0*	1-4	1-4	1-4	1-4	1-4	0	5-20*
86	Pulmonary or respiratory condition	2-8*	1-4	4-16	5-9	4-16	3-12	8-21	27-86*
87	Kidney dysfunction	0*	0	4-16	0	1-4	0	0	5-20*
88	Cancer	1-4*	5-9	3-12	1-4	3-12	2-8	3-12	18-61*
91	Significant psychiatric disorder	10-18*	8-21	7-17	10+	12-26	16-31	12-26	75-149+*
93	Disfigurement	0*	2-8	0	0	0	0	0	2-8*
94	Learning disability or ADD/ADHD	3-12*	4-16	4-16	5-9	2-8	3-12	1-4	22-77*
95	Gastrointestinal disorder	1-4*	4-16	2-8	1-4	1-4	0	1-4	10-40*
96	Autoimmune disorder	0*	0	0	0	0	0	3-12	3-12*
98	History of alcoholism	0*	0	0	0	1-4	1-4	0	2-8*

Source: Board Analysis of GAO *Report on Reasonable Accommodation* (Fiscal Years 2011-2017, published quarterly)

+ Indicates possibility the value may continue beyond the noted range
* Indicates less than full availability of fiscal year data

APPENDIX J

Forms of Reasonable Accommodation

Provided to Employees at GAO

**DATA FROM GAO *REASONABLE ACCOMMODATION REPORTS* ON
FORMS OF REASONABLE ACCOMMODATION PROVIDED**

REASONABLE ACCOMMODATION PROVIDED TO EMPLOYEES AT GAO							
Category	Number of Instances per Fiscal Year Accommodation Provided						
	2012	2013	2014	2015	2016	2017	Total Number of Instances Accommodation Provided
Captioning	0	0	0	0	2	0	2
Chair (in stock)	37	21	0	7	0	0	65
Chair (unspecified)	0	0	0	0	0	6	6
Changes to departure/arrival time	0	0	0	0	4	0	4
Ergonomic consultation	0	0	0	7	0	0	7
Ergonomic keyboard or mouse	7	27	22	29	7	49	141
Footstool	0	0	0	0	2	0	2
Height adjustable desk	0	7	33	25	41	59	165
ISTS Technical assistance	4	0	0	0	0	0	4
Location changes	0	0	0	0	4	0	4
Leave (including medical)	8	5	0	8	0	0	21
Parking	10	5	24	12	15	12	78
Raised work surface	71	90	0	0	0	0	161
Rest breaks	0	0	0	0	13	3	16
Second keyboard tray or modification to keyboard tray	7	50	0	0	0	0	57
Second monitor or keyboard	23	41	0	0	0	0	64
Separate training class	0	0	0	4	0	0	4
Software	0	0	18	0	16	14	48
Special order chair	0	0	0	5	2	0	7
Telephone equipment	5	0	0	0	0	5	10
Telework	15	7	25	29	30	40	146
Training related modification	10	4	0	0	2	2	18

Source: Board Analysis of GAO *Report on Reasonable Accommodation* (Fiscal Years 2012-2017, published quarterly)

APPENDIX K

Separated Employees with Disabilities at GAO

**PERSONNEL APPEALS BOARD REPORT OF
SEPARATED EMPLOYEES WITH DISABILITIES AT GAO**

SEPARATED EMPLOYEES AT GAO					
Fiscal Year	Number of Separated Employees	Number Separated with All Disabilities	% Separated with All Disabilities	Number Separated with Targeted Disabilities	% Separated with Targeted Disabilities
2010	422	28	6.64%	1	0.24%
2011	307	22	7.17%	3	0.98%
2012	266	30	11.28%	4	1.50%
2013	270	27	10.00%	5	1.85%
2014	315	29	9.21%	5	1.59%
2015	338	31	9.17%	3	0.89%
2016	377	43	11.41%	7	1.86%
Total	2,295	210	9.15%	28	1.22%
Mean	328	30	9.15%	4	1.22%

OUTCOME OF REASONABLE ACCOMMODATION REQUESTS BY SEPARATED EMPLOYEES FROM GAO								
Fiscal Year	Requests by Separated Employees with Disabilities				Requests by Separated Employees without Disabilities			
	Number of Requests	Approved	Approved in Part	Other	Number of Requests	Approved	Approved in part	Other
2010	3	1	0	2	4	1	0	3
2011	5	5	0	0	4	1	0	3
2012	8	4	1	3	2	1	0	1
2013	4	3	0	1	5	4	0	1
2014	14	10	0	4	1	1	0	0
2015	12	6	0	6	1	1	0	0
2016	15	9	0	6	2	1	0	1
Total	61	38	1	22	19	10	0	9
Mean	8.71	5.43	0.14	3.14	2.71	1.43	0	1.29

Source: Board Analysis of GAO Personnel Data on All Employees (Fiscal Years 2010-2016)
GAO Excel Database on All Employees *

* Data include only requests made during fiscal year of separation.
 “Disability” data include both self-recorded disability codes and veteran with service-related disability status, as well as RAC-assigned disability codes resulting from RA requests made during fiscal year of separation.
 “Other” includes requests resulting in administrative closure, advice only, or withdrawal or denial of requests.

APPENDIX L

Applicable GAO Policies, Procedures, and Practices

APPLICABLE GAO POLICIES, PROCEDURES, AND PRACTICES

GAO Orders

- Order 2213.1: *Positions Covered by Non-Competitive Appointments* (July 2018)
- Order 2306.1: *Employment of Individuals with Disabilities* (Mar. 2006)
(First Proposed Revision Comment Period closed June 2017)
(Second Proposed Revision Comment Period closed Feb. 2019)
- Order 2713.1: *Opportunity and Inclusiveness in the Government Accountability Office (GAO)*
(Mar. 2005) (Proposed Revision Comment Period closed Sept. 2017)
- Order 2713.2: *Discrimination Complaint Resolution Process* (Dec. 2009)
(Proposed Revision Comment Period closed Sept. 2017)
- Order 2713.3: *GAO Equal Opportunity Recruitment Program* (Oct. 2004)

Workforce Diversity Plans

- *2016 Workforce Diversity Plan* (Nov. 2016)
- *2013-2014 Workforce Diversity Plan* (Feb. 2015)
- *2012 Workforce Diversity Plan* (Dec. 2012)
- *2011 Workforce Diversity Plan* (Sept. 2011)
- *2010 Workforce Diversity Plan* (June 2010)
- *2009 Workforce Diversity Plan* (June 2009)

APPLICABLE GAO POLICIES, PROCEDURES, AND PRACTICES

Reports on Reasonable Accommodation

- *Report on Reasonable Accommodation* (July 2017 - Sept. 2017)
- *Report on Reasonable Accommodation* (Apr. 2017 - June 2017)
- *Report on Reasonable Accommodation* (Jan. 2017 - Mar. 2017)
- *Report on Reasonable Accommodation* (Oct. 2016 - Dec. 2016)
- *Report on Reasonable Accommodation* (July 2016 - Sept. 2016)
- *Report on Reasonable Accommodation* (Apr. 2016 - June 2016)
- *Report on Reasonable Accommodation* (Jan. 2016 - Mar. 2016)
- *Report on Reasonable Accommodation* (Oct. 2015 - Dec. 2015)
- *Report on Reasonable Accommodation* (July 2015 - Sept. 2015)
- *Report on Reasonable Accommodation* (Apr. 2015 - June 2015)
- *Report on Reasonable Accommodation* (Jan. 2015 - Mar. 2015)
- *Report on Reasonable Accommodation* (Oct. 2014 - Dec. 2014)
- *Special Report on Reasonable Accommodation* (Oct. 2013 - Sept. 2014)
- *Report on Reasonable Accommodation* (July 2013 - Sept. 2013)
- *Report on Reasonable Accommodation* (Apr. 2013 - June 2013)
- *Report on Reasonable Accommodation* (Jan. 2013 - Mar. 2013)
- *Report on Reasonable Accommodation* (Oct. 2012 - Dec. 2012)
- *Report on Reasonable Accommodation* (July 2012 - Sept. 2012)
- *Report on Reasonable Accommodation* (Apr. 2012 - June 2012)
- *Report on Reasonable Accommodation* (Jan. 2012 - Mar. 2012)
- *Report on Reasonable Accommodation* (Oct. 2011 - Dec. 2011)
- *Report on Reasonable Accommodation* (July 2011- Sept. 2011)
- *Report on Reasonable Accommodation* (Apr. 2011- June 2011)
- *Report on Reasonable Accommodation* (Jan. 2011- Mar. 2011)

APPLICABLE GAO POLICIES, PROCEDURES, AND PRACTICES

Additional Plans & Reports

- *Diversity, Equity, and Inclusion Strategic Implementation Plan, 2019-2023* (Sept. 2019)
- *Strategic Plan, 2018-2023: Key Efforts* (Feb. 2018)
- *Diversity & Inclusion Policy* (Sept. 2018)
- *Diversity and Inclusion Strategic Plan, 2012-2014 Progress* (June 2015)
- *Diversity & Inclusion Strategic Plan, 2012-2016* (Dec. 2012)
- *Diversity Recruitment Report* (Nov. 2009)

Training Courses & Presentations

- *How to Interact with People with Disabilities* (Oct. 2018)
- *The Reasonable Accommodation Process at GAO* (Oct. 2017)
- *Sustain an Inclusive GAO* (Apr. 2017)
- *Leaders Make Inclusion Matter* (July 2017)
- *Leadership and Inclusion: Required Course for Managers* (Jan. 2017)
- *Deaf Gain Workshop* (June 2016)
- *Deaf Gain Workshop 2.0* (Oct. 2017)
- *New Pilot Course: The Americans with Disabilities Act for Managers* (Apr. 2012)
- *Rollout of Diversity Training Part 2* (Apr. 2011)
- *Diversity Training Rollout* (Jan. 2010)

APPLICABLE GAO POLICIES, PROCEDURES, AND PRACTICES

Speakers, Seminars, and Panel Discussions

- *(In)visible: How to Interact with People with Disabilities* (Oct. 2017)
- *Federal Assistance Programs for Deaf People* (May 2018)
- *Reasonable Accommodation Forum Panel Discussion* (Mar. 2017)
- *Disability Employment Awareness Month Keynote Speaker: Jeanne Goldberg* (Oct. 2016)
- *National Disability Employment Awareness Panel: Improving Access to Work and Work Participation through Assistive Technology* (Oct. 2016)
- *Panel Discussion on Promoting Diversity and Inclusiveness in an Extended Telework Environment* (June 2016)
- *Noon Seminar: Using Ergonomics and JAN (Job Accommodation Network) in the Office or Working Remotely* (May 2016)
- *Reasonable Accommodations Overview, Q&A and CART Demonstration* (Oct. 2014)
- *Creating an Inclusive Work Environment for Employees with Disabilities* (Oct. 2012)
- *Working with Deaf or Hard-of-Hearing Individuals: Workshop with Tom Savage of Birnbaum Interpreting Services* (Nov. 2010)
- *Workshop on Deaf Culture and Basic American Sign Language* (June 2010)

Notices & Intranet Postings

- *Advisory Council for People with Disabilities Celebrates National Disability Employment Awareness Month* (Oct. 2019).
- *From the Comptroller General: Recognizing Pathways to Inclusion* (June 5, 2019).
- GAO Diversity & Inclusion Community of Practice, *Checking-In* (Aug. 2018)
- GAO Management News, Vol. 45, No. 18 (July 2018)
- GAO Management News, Vol. 45, No. 15 (May 2018)
- *Reasonable Accommodation at GAO* (Oct. 2017)
- *Types of Telework* (July 2017)
- *Expanded Telework Agreement for Headquarters* (May 2017)
- *GAO Diversity & Inclusion Summit* (May 2017)

APPLICABLE GAO POLICIES, PROCEDURES, AND PRACTICES

Notices & Intranet Postings

- *Deaf and Hard of Hearing Resources* (June 2017)
- *Reasonable Accommodations–User Resources* (May 2018)
- *Diversity & Inclusion Contacts* (Sept. 2018)
- *HCO: Diversity & Inclusion* (Feb. 2017)
- *Diversity & Inclusion Site Overview* (Sept. 2018)
- *Reasonable Accommodation at GAO* (June 2018)
- *Diversity & Inclusion Plan and Reports* (Sept. 2018)
- *Helpful Links to GAO Groups and Services* (Mar. 2018)
- *Recruitment at GAO* (Sept. 2018)
- *Diversity & Inclusion Newsletter* (Dec. 2016)
- *508 Compliance and Accessibility at GAO* (Dec. 2017)
- *Diversity and Inclusion Month Calendar of Events 2016* (May 2016)
- *What Do You Want to Know About Reasonable Accommodations?* (Mar. 2016)
- *Diversity and Inclusion Community of Practice Session* (Feb. 2016)
- *Film Screening and Discussion to Commemorate the 25-Year Anniversary of the Americans with Disabilities Act (ADA)* (Nov. 2015)

APPLICABLE GAO POLICIES, PROCEDURES, AND PRACTICES

Notices & Intranet Postings

- *Send an Anonymous Message to the Reasonable Accommodation Team* (Aug. 2015)
- *GAO Commemorates 25-Year Anniversary of the Americans with Disabilities Act (ADA)* (July 2015)
- *Office of Opportunity & Inclusiveness Homepage* (Jan. 2019)
- *Advisory Council for Persons with Disabilities* (Feb. 2018)
- *Diversity Month 2015 - A Message from the Comptroller General* (June 2015)
- *VDI and Reasonable Accommodations* (Mar. 2015)
- *Reasonable Accommodation and Disability Program Contacts* (Jan. 2014)
- *National Disability Employment Awareness Month* (Oct. 2014)
- *New GAO Disability Program Manager* (Aug. 2011)
- *Clarifying Guidance on Reasonable Accommodations* (May 2011)
- *Reasonable Accommodations Requests—Actions Managers Can Take* (May 2011)
- *Computer Workstation Ergonomic Self-Evaluation Checklist* (Aug. 2009)
- *New Reasonable Accommodation Program Coordinator* (May 2008)

APPENDIX M

Comments

COMMENTS

Pursuant to established practice, the Board approved a draft of the *Study on Disability & Reasonable Accommodation in the GAO Workforce* for distribution and comment to the General Counsel of the Personnel Appeals Board (PAB/GC), the Agency's General Counsel and Managing Associate General Counsel for Legal Services, the Chief Administrative Officer and his Special Assistant for Telework, the Chief Human Capital Officer, the Reasonable Accommodation Coordinator (RAC), the Diversity and Inclusion Community of Practice, the Special Assistant for Diversity and Inclusion, and the Office of Opportunity and Inclusiveness (O&I). The following GAO employee groups also were invited to comment on the draft: the Diversity Advisory Council, the Advisory Council for Persons with Disabilities (the ACPD), the Veterans of the Armed Forces Employee Group, the Women's Liaison Group, and the GAO Employees Organization, IPFTE Local 1921 (the Union).

The Board received responsive comments to its draft from the PAB/GC, the Agency's Human Capital Office (HCO), O&I, the ACPD, and the Union.¹ Collectively, the comments fall into the following subject areas: (I) the scope and method by which the Board's study was conducted; (II) the Board's recommendations; (III) clarification of data; and (IV) discussion of GAO's current policies and practices. Following receipt of comments, the Board staff met separately with officers of the ACPD and representatives from HCO to discuss their comments on the Board's prepublication draft. Based on the comments and suggestions received, the Board has made appropriate adjustments to the study.²

¹ Comments have been reproduced at the end of this Appendix.

² Suggested editorial revisions from the PAB/GC, HCO, O&I, the ACPD, and the Union have, where applicable, been incorporated into the main body of the Board's study.

I. Scope and Method of the Study

The scope and method of the Board's study is to conduct an independent review of the Agency's compliance with the ADA, as amended by the ADAAA. This study focuses on the issue of the current status of the law and how GAO has applied the law to its policies, practices, and procedures, which include provisions for reasonable accommodation. Specifically, it is designed to assess the Agency's conformance with existing legal requirements. It is not designed to be a comprehensive review of the full extent of the Agency's implementation of its obligations under the ADA, as amended.

The Board approved the scope and method of this study in 2010,³ shortly after the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) was enacted by Congress. At that time, the Board noted that the ADAAA responded to a series of Supreme Court decisions that narrowly construed sections of the ADA, eliminating protection for many individuals whom Congress intended to be covered by the Act. The Board noted that, among other provisions, the ADA, as amended by the ADAAA, promulgated rules of construction to be followed when defining the term "disability"; expanded the definition of major life activities; directed the EEOC to revise the portion of its regulations that defines the term "substantially limits"; and changed the definition of the phrase "regarded as."

The Board additionally noted in 2010 that, in response to these statutory changes, GAO began redrafting its Order on reasonable accommodation and offered a training course to its managers and supervisors, available on the intranet, explaining the main provisions of the ADA, as amended by the ADAAA, reviewing the definition of reasonable accommodation, describing the process used at GAO to address requests for reasonable accommodation, and providing an opportunity to ask questions regarding ADA-related situations arising in the workplace.

³ PAB Annual Report at 34-35 (2010).

The Board decided that given the sweeping changes in the law, as well as the revision of GAO's internal operating directives, it was appropriate to re-examine GAO's procedures and practices as they relate to and interpret current disability law, with particular focus on reasonable accommodation. The Board's review focuses only on the issue of the current status of the law, the Agency's compliance with existing legal requirements, and how GAO has applied the law to its policies, practices, and procedures, which include provisions for reasonable accommodation. Interviews, surveys, focus group discussions, and listening sessions with GAO employees, GAO employee groups, or the Agency were not conducted as part of the study because the study focused on the Agency's conformance with existing legal requirements, rather than on individual employee experiences.

In comments relating to the scope and method of the Board's study, the Union and the ACPD note that the Board could have included interviews with or participation by employees with disabilities in the study's planning and drafting stages. The ACPD states that the study could have included "gathering information through interviews" or "listening sessions." The Union suggests that "[t]he Board might also have considered surveying or conducting focus groups with affected employees." Contributions from these sources, while useful from a policy-making perspective, would not change the Board's review. The Board recognizes the importance of such employee feedback and encourages the Agency to consider requesting more detailed information in employee feedback surveys, possibly including questions geared toward specific employee groups, which may aid the Agency's policy-making decisions going forward.

The Union and the ACPD also raise some concerns regarding the Agency's implementation of policies and procedures impacting people with disabilities. For example, they describe experiences of employees with disabilities who were not included in disability-related events, were denied reasonable accommodation, faced challenges pursuing and receiving requested

reasonable accommodation, or feared retaliation. They also note concern with the frequency of the Accommodation Committee meetings, details concerning the Agency's use of its Category A hiring authority, and the role of a Selective Placement Program Coordinator (SPPC) at the Agency.⁴

The Board is independent of GAO and does not control GAO management. The comments noted above do not appreciate the distinction between the Board and GAO management and ascribe power to the Board to control the Agency's policy implementation, for which the Board is not responsible. The Agency has responsibility to investigate shortcomings in its policy implementation in specific cases, and may do so without Board involvement. Accordingly, the specific incidents of GAO policy implementation raised in the comments from the Union and the ACPD were not addressed by the Board and are beyond the scope and method of the Board's study.

The Union and the ACPD additionally suggest that the study should have addressed GAO's Category A hiring in light of a recent PAB Office of General Counsel investigation. Reports of investigation drafted by the PAB Office of General Counsel are generally not available to the Board or its staff due to confidentiality requirements contained in the Board's regulations.⁵ Therefore, this investigation was not addressed in the Board's study.

The ACPD further notes that "much of the discussion of hiring practices appears in Chapter V" of the Board's study entitled "Analysis of Reasonable Accommodation Processing at GAO." The ACPD would prefer that discussion of the Agency's efforts to recruit and hire people with disabilities be in a separate chapter. The ACPD indicates that they believe inclusion of

⁴ While the Agency did not provide the Board with information relating to GAO's use of a SPPC, the Board notes GAO is familiar with the concept, as reported in the following GAO publication: GAO-11-81SP, *Highlights of a Forum: Participant-Identified Leading Practices that Could Increase the Employment of Individuals with Disabilities in the Federal Workforce* (Oct. 2010) (noting that a "[S]elective [P]lacement [C]oordinator may serve as the principal advisor on policy, strategic planning, and program and policy implementation relating to the full employment life cycles of persons with disabilities—including recruitment, hiring, advancement, and retention").

⁵ See 4 C.F.R. § 28.12(i).

discussion of hiring practices in Chapter V implies that hiring people with disabilities is viewed only “through the lens of reasonable accommodations, rather than through the lens of diversity and inclusion” as part of an overall diverse recruiting strategy. The focus of the Board’s study is to give a broad overview of the extent to which GAO’s policies and practices comport with the law in relation to the ADA, as amended. A reasonable accommodation program is an important indicator of whether an agency is complying with the law. Review of hiring and recruitment practices at the Agency for people with disabilities may be the subject of a future study.

II. Board Recommendations for the Agency

The Board made seven specific recommendations for follow-up by the Agency. The Union and the ACPD indicate that they agree with, and support, several of the Board’s recommendations. However, the Union states that the Board’s recommendations “do not go anywhere near far enough to address the shortcomings of GAO’s reasonable accommodation program.” The ACPD states that “while the Board’s recommendations are a good starting place, they are inadequate in effectively directing GAO to address the challenges that hamper the Agency from achieving its goals for recruiting, hiring, and retaining employees with disabilities.”

The Board’s study was designed to examine the Agency’s compliance with the ADA, as amended by the ADAAA. The Board’s recommendations address those issues most relevant to compliance by the Agency. HCO addresses each of the Board’s recommendations in its comments. The Managing Director of O&I also indicates by written comment letter that her office will follow up regarding the updating of certain Agency Orders.

III. Clarification of Data

In its comments, HCO requests clarification of data contained in the prepublication draft, specifically occurring in Chapter VII: Analysis of Requests for Reasonable Accommodation at GAO. The comments note that the Board’s calculations using GAO-provided personnel data did not align with computations drawn from data in GAO’s *Reports on Reasonable Accommodation*, published quarterly, “which provide[] a very different picture on the outcome of requests for reasonable accommodation from 2012 to 2017.” The ACPD also reports perceived discrepancies in some of the data in the draft.

Following receipt of the data concerns, Board staff met with HCO representatives, including the Reasonable Accommodation Coordinator (RAC), to offer additional clarification on the Board’s calculations. The RAC and the Board staff reviewed the data and calculations and confirmed the accuracy of the Board’s original calculations, with one minor adjustment.⁶ Board staff also met separately with officers of the ACPD, communicating that the Board and HCO had come to a mutual agreement on the accuracy of the data reported in the Board’s final publication of this study. The Board staff also accepted additional suggestions from the ACPD regarding the presentation of the data in the study.

IV. Clarification of GAO’s Current Policies and Practices

Comments from the PAB/GC note, with respect to the Board’s selection of source support for GAO’s current policies and practices, that the Board should not cite training materials, intranet postings, or language from proposed orders as descriptions of GAO’s current policies and practices. Specifically, Chapter V of the prepublication draft mentioned proposed orders and training materials including the intranet posting, *The Reasonable Accommodation Process at GAO*, GAO

⁶ See *supra* nn.253, 298 (regarding variances in percentages).

Presentation (Oct. 23, 2017), and *Reasonable Accommodation Requests – Actions Managers Can Take* (May 2, 2011), which is a management directive circulated via electronic mail and posted on the Agency’s intranet. The PAB/GC notes concern with inclusion of these sources in the Board’s study because the reader mistakenly may rely upon referenced GAO training materials, intranet postings, and proposed orders as a source of enforceable and binding authority on the Agency.

The Board recognizes the concern of the PAB/GC that certain training programs, or proposed actions within the Agency, may not be well known across all segments of GAO, and best practices included therein may not be applied uniformly throughout the Agency. While in agreement that such Agency materials may not be well known, are subject to change, and are not officially binding and enforceable sources of legal authority on the Agency, it is the Board’s view that the above materials nevertheless are still a valuable source of information. Indeed, they are indicative of management interpretation of GAO policies, procedures, and practices relating to laws prohibiting disability discrimination. The Board has included notation of its review of these materials to give the Comptroller General, GAO employees, and other readers of the study, a more complete picture of the status of GAO’s policies, procedures, and practices regarding disability and reasonable accommodation at the time the Board conducted its study.⁷

The Board appreciates all comments it received on its prepublication draft.

⁷ In accordance with the recommendation of the PAB/GC, references to the contents of proposed Orders circulated for comment, but that are not yet published by the Agency, have been removed from the final publication of the Board’s study. This response also applies to the suggestions of the Union and the ACPD that the Board should have analyzed comments they presented to the Agency relating to the contents of proposed Orders. Unpublished internal deliberative process memoranda relating to proposed Orders were not included in the final publication of the Board’s study.



July 15, 2019

Vanessa H. Gallagher
Director, Office of EEO Oversight
Personnel Appeals Board
U.S. Government Accountability Office
441 G Street, N.W.
Suite 1566
Washington, D.C. 20548

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PAB

Dear Ms. Gallagher:

We have reviewed the draft report "Study on Disability & Reasonable Accommodation in the GAO Workforce" of the Personnel Appeals Board (PAB). I assumed the position of Managing Director for the Office of Opportunity and Inclusion (O&I) on November 26, 2018 and have been working on a number of issues, including several addressed by the draft report. With respect to those areas, I offer the following comments:

1. The O&I office was responsible for Workforce Diversity Plans through the issuance of the 2016 report. The responsibility for Workforce Diversity Plans is now under the office of the Special Assistant to the Comptroller General for Diversity and Inclusion.
2. With respect to GAO Orders 2713.1 and 2713.2, the O&I office is working on the comments received. We will take into account the suggestions identified by the draft report to ensure there are references to the Americans with Disabilities Act Amendment Act of 2008 (ADAAA) and protections afforded to individuals with disabilities.

Thank you for the opportunity to review the draft report. If you have any questions, please contact me at (202) 512-2853 or at emmanuellipereze@gao.gov.

Sincerely,

Edda Emmanuelli Perez
Managing Director
Office of Opportunity and Inclusiveness



Personnel
Appeals
Board

July 16, 2019

Office of General Counsel

Vanessa H. Gallagher
Director, Office of EEO Oversight
Personnel Appeals Board
United States Government Accountability Office
441 G Street, N.W., Room 1566
Washington, D.C. 20548

Dear Ms. Gallagher:

Thank you for the opportunity to review and comment on the Personnel Appeals Board's draft report, Study on Disability and Reasonable Accommodation in the GAO Workforce (June 2019) (the Report). The PAB/OGC comments are as follows:

1. Not all factual statements have citations, such that the reader cannot determine the basis for some of the factual findings. For instance, on page 58, the Report states, "Requests for reasonable accommodation presented to the RAC are acknowledged in writing . . .," but GAO's *Employment of Individuals with Disabilities Order* does not require that the RAC acknowledge receipt in writing. The order only requires that, "When the RAC receives a request for reasonable accommodation, he/she will acknowledge receipt of the request within one week." GAO Order 2306.1, ch. 3, par 1.a. (Mar. 2006). Without a citation in the report, the reader cannot determine how the PAB determined that a written receipt is required.
2. The following statement was likely not intended to be a factual finding or conclusions of law, but could be interpreted as such.
 - Page 51 includes the statement, "The Board finds that GAO's reasonable accommodation program provides assistance to both applicants and employees who can benefit from a change in the work environment or in the way things are customarily done." While GAO's reasonable accommodations program has definitely provided *some* assistance to

some applicants and employees, there are employees who have come to the PAB/OGC (some represented by the Union, some not) who believe that the program has failed to provide the adequate assistance to disabled applicants and employees.

3. Unless GAO has provided written assertions that it agrees that statements contained in training materials, intranet postings, and language from proposed orders cited in Chapter 5 are enforceable and binding on the Agency, we recommend that the PAB not cite such sources in the report for descriptions of GAO's current policies and practices. In Chapter V, the Report repeatedly cites to training material for *The Reasonable Accommodations Process at GAO*, GAO Presentation (Oct. 23, 2017); a document available via an intranet posting, *Reasonable Accommodations Requests – Actions Managers Can Take* (May 2, 2011); and the 2019 Proposed Revisions to GAO Order 2306.
4. On page 66, there is a statement describing the composition of the AC that seems to reflect the positions that will be included on the Accommodation Committee (the AC) if the 2019 Proposed Revisions to GAO Order 2306 are adopted. See Report footnote 92 on page 32. This statement on page 66 is not consistent with the statement on page 32 in the text with respect to the composition of the AC.
5. Chapter V, Part E is titled "Appeals", but elevating a request for an accommodation from the RAC to the AC is not an appeal because the Reasonable Accommodation Coordinator (the RAC) does not have the authority to deny a request. See *Gray v. GAO*, PAB Docket No. 17-02, at 22 (10/30/17). The use of the term "appeal" in this context is confusing. In GAO Order 2306, ch. 3, par. 2 (Mar. 21, 2006), an employee's "appeal rights," in the event his or her request for reasonable accommodation is denied, is described as the right to file a complaint of discrimination with the Office of Opportunity and Inclusiveness.

Thank you again for the opportunity to review and comment on this report.

Best regards,



Stuart Melnick
General Counsel
Personnel Appeals Board



Memorandum

Date: July 19, 2019

To: Vanessa H. Gallagher
Director, Office of EEO Oversight
Personnel Appeals Board (PAB)

From: William J. White 
Chief Human Capital Officer

Subject: Study on Disability & Reasonable Accommodation in the GAO Workforce

Thank you for the opportunity to comment on your draft *Study on Disability & Reasonable Accommodation in the GAO Workforce*. We appreciate your insights in this area as GAO continues to enhance its efforts to attract and retain individuals with disabilities into the workforce, as well as to provide reasonable accommodations to these individuals to promote equal employment opportunity at GAO. As noted in your draft Study, GAO has demonstrated its commitment to employing and accommodating individuals with disabilities through robust diversity and inclusion efforts and core people values aimed at reflecting a diverse workforce, ensuring GAO employees are valued, respected, and treated fairly in the workplace and given opportunities to develop their full potential. Moreover, we have been working diligently to update relevant GAO Orders related to the employment of individuals with disabilities, positions covered by non-competitive appointments, and opportunity and inclusiveness in the Government Accountability Office. We recognize the importance of having current information that is aligned with the Americans with Disabilities Act in our Orders and are working through the review process to complete these updates. We also provide the GAO Executive Committee with quarterly updates on the disposition of reasonable accommodation requests at GAO and post this information on the GAO intranet so it is available to employees. GAO comments to your recommendations are provided below.

Prior to responding to your recommendations, we seek clarification on the information you are citing beginning on page 111 of the draft study. Page 111 states that reasonable accommodations were provided in 35.83% of all requests made (1,373), and were provided in 36.93% of requests made by individuals with disabilities. These figures do not match the data provided in Appendix H, which provides a very different picture on the outcome of requests for reasonable accommodation from 2012 to 2017. Appendix H, Reasonable Accommodation Requests at GAO (page A-55), includes the data table "Outcome of Reported Action on Reasonable Accommodation Requests of Employees at GAO." The source material is cited as "Board Analysis of GAO Quarterly Reasonable Accommodation Report (Fiscal Years 2012-2017). For this table, the percentages of approved, denied, and other outcomes for all requests is:

- 2012: approved 84.97%, denied 1.05%, other 13.64%
- 2013: approved 73.13%, denied 0.55%, other 20.22%
- 2014: approved 61.69%, denied 0.34%, other 24.07%
- 2015: approved 55.93%, denied 0.91%, other 38.91%
- 2016: approved 54.26%, denied 1.77%, other 45.45%
- 2017: approved 59.48%, denied 0.00%, other 42.48%
- Total: approved 64.98%, denied 0.75%, other 30.77%

On page 111, there is no explanation or mention of any other outcomes on requests for reasonable accommodation. Providing these figures, without the full underlying data or context of the outcomes for the remainder of reasonable accommodation requests, invites an inference from the reader that we denied reasonable accommodations to more than 60% of individuals who requested them, which is not true. Only 14 requests for reasonable accommodation were denied for fiscal years 2009-2016. From a total of 1,373 requests, 1.02% of requests were denied. Eight of the requests that were denied were made by individuals with disabilities, so 0.938% of these requests were denied. The remainder of the requests were closed as:

- withdrawn requests: those where the employee removes the request from consideration before the Reasonable Accommodations (RA) Team has either made a determination on the request, or has provided all of the accommodations that were approved;
- advice only: the RA Team provided advice to the employee in response to the accommodation request which met the employee's needs; or
- administrative closures: those requests where the RA Team requested medical documentation or other information which was not received by the 45th day of the quarterly reporting period after the request was made. Administrative closures are almost always made because the employee did not provide medical documentation to Reasonable Accommodations.

We want to ensure that we understand your analysis and that we are in agreement on the points you make with the data. This is particularly important as we demonstrate that GAO only requires medical documentation to support a request for reasonable accommodation and that we do not engage in an extensive disability analysis in the reasonable accommodation decision process. Additionally, RA began reporting on how long it took the RA Team to make decisions on requests for accommodation in 2016. This data demonstrates that RA does not perform or require extensive analysis when making a determination of disability:

- In FY 2016, there were 82 decisions made on requests when RA determined medical documentation was required. RA made a decision on 46 of these requests without needing to consult with the employee's manager. 76.09% (35 of 46) of decisions were made by the next business day. 93.48% (43 of 46) of decisions were made within five business days.
- In FY 2017, there were 118 decisions made on requests when RA determined medical documentation was required. RA made a decision on 77 of these requests without needing to consult with the employee's manager. 58.44% (45 of 77) of decisions were made by the next business day. 93.51% (72 of 77) of decisions were made within five business days.

We believe that we do focus on providing accommodation to qualified individuals and do not engage in an assessment of the level of disability. Please let me know if we can arrange a time to meet with you to discuss your analysis and concern whether GAO has aligned itself with the ADA Amendments Act.

GAO comments on your draft study recommendations:

1. Develop a Disability Plan, similar to plans under development in Executive branch agencies, incorporating best practices for recruiting, hiring, retaining, and advancing qualified individuals with disabilities, as well as targeted disabilities, and announce Agency goals for employing individuals with disabilities, as well as targeted disabilities, during Town Hall meetings and through postings to GAO's internal and public websites. **Response: GAO is currently engaged in a strategic planning effort to identify options to enhance the diversity of its recruitment pipeline. Efforts to recruit, hire, retain, and advance qualified individuals with disabilities, as well as targeted disabilities, will be included in the finalized recruitment strategy.**
2. Undertake early steps in the Agency's recruiting and hiring process to increase awareness among hiring officials, managers, and employees of: (a) Agency goals for hiring and retaining qualified individuals with disabilities and targeted disabilities; and (b) the extent of the Agency's reasonable accommodation program. **Response: GAO will continue to underscore and communicate its commitment to recruit and hire qualified individuals with disabilities and targeted disabilities in recruitment strategy documents, diversity and inclusion efforts, and targeted information sessions about the GAO's reasonable accommodation program.**
3. Review and revise GAO policies, procedures, and practices to ensure they accurately describe the process by which individuals with disabilities may be hired at GAO (making clear that GAO has its own noncompetitive appointment process, which is similar though not identical to Schedule A, which applies to the Executive branch and not to the Agency). **Response: GAO has identified GAO Order 2213.1, Positions Covered by Non-Competitive Appointments, as a priority to update. Revisions are being drafted and the revised Order will be sent through GAO's review and approval process.**
4. Increase responsibilities of the Human Capital Office, its Reasonable Accommodation Office, and the Office of Opportunity and Inclusiveness to: (a) strengthen efforts to track and measure progress toward Agency goals for hiring and retaining individuals with disabilities (recommended at 12% for disabilities and 2% for targeted disabilities); **Response: GAO will continue to evaluate data relative to hiring and retaining individuals with disabilities, and ensure this information is incorporated in recruit strategy plans;** (b) request and collect feedback from individuals with disabilities submitting reasonable accommodation requests to identify opportunities for improvement of the reasonable accommodation program; **Response: GAO collects**

this information annually through the Employee Feedback Survey; (c) report this information to the Comptroller General annually; Response: The results of the Employee Feedback Survey are provided to the Comptroller General annually; and (d) consider adding an accounting or statistics professional to the Reasonable Accommodation Office to assist in this endeavor while retaining confidentiality of disability records. Response: GAO uses program and management analyst staff resident within its Human Capital Office to perform these responsibilities.

5. Develop a regular review and revision schedule for GAO Orders relating to employment of individuals with disabilities and reasonable accommodation to ensure GAO Orders: (a) timely reflect changes in law affecting the rights of individuals with disabilities at the Agency; and (b) afford appropriate opportunity for employees with disabilities to advance within the Agency. **Response: GAO already has identified these Orders as a priority to update and will continue to review them on a regular basis or as changes in law are enacted.**
6. Review criteria for approval of reasonable accommodation requests at GAO to ensure the focus of review remains on providing accommodation to qualified individuals (rather than on assessing the level of disability) to help ensure employees with disabilities can continue employment at the Agency when their disabilities can be accommodated without undue hardship. **Response: The focus of review by Reasonable Accommodations is on providing accommodation to qualified individuals, including individuals with disabilities and those with medical conditions that are not disabilities. Reasonable Accommodations does not assess the level of disability, it merely notes whether the employee does or does not have a disability. If Reasonable Accommodations did not note in its records whether employees have a disability, it would not be possible to carry out other PAB recommendations, including information on recruiting, hiring, retaining, and advancing qualified individuals with disabilities, as well as targeted disabilities, and progress toward Agency goals for employing individuals with disabilities, as well as targeted disabilities.**
7. Include a direct link to the Agency's Reasonable Accommodation resources on both the Agency's internet and intranet home pages to enhance ease of access to these resources. **Response: GAO will provide the direct link.**

Thank you again for the opportunity to review and provide comment on your draft study.



GAO EMPLOYEES ORGANIZATION

IFPTE Local 1921

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July 15, 2019

Vanessa H. Gallagher
Director, Office of EEO Oversight
Personnel Appeals Board

Dear Ms. Gallagher:

The GAO Employees Organization, IFPTE Local 1921, appreciates the opportunity to comment on the on the Personnel Appeals Board's draft report entitled *Study on Disability & Reasonable Accommodation in the GAO Workforce*. The GAO Employees Organization offers these comments for your consideration on behalf of our colleagues in the bargaining unit.

We appreciate the role the Personnel Appeals Board (the "Board") plays in oversight of equal employment opportunity at GAO and are pleased that the Board undertook "to evaluate the representation of individuals with disabilities in the workforce at [GAO] and the extent to which such individuals have access to appropriate reasonable accommodation to share in equal employment opportunity at the agency." We support several of the Board's recommendations, particularly that pertaining to the criteria for approval of reasonable accommodation requests (#6).

However, we are deeply concerned that the evidence gathered by the Board was insufficient to address the report's stated objective. In particular, we are disturbed by the lack of input from employees with disabilities. The Methodology chapter indicates that the Board reviewed a trove of Agency documents, including Orders, directives, and policy statements, as well as personnel data relating to employment of individuals with disabilities at GAO and information about the reasonable accommodation process. The attorneys assisting the Board with this study also met with representatives from GAO's Human Capital Office and Reasonable Accommodation Office. Glaringly absent from the Board's data collection effort is any input from the GAO employees affected by the Agency's policies and procedures related to disability and reasonable accommodation. The Board could have gained considerable insight into the Agency's application of its policies and procedures—which is to say, its actual practices—from the various groups that represent employees with disabilities, including the Advisory Council for People with Disabilities, the Diversity Advisory Council, and the GAO Employees Organization. The Board might also have considered surveying or conducting focus groups with affected employees.

The lack of input from GAO employees with disabilities undermines many of the Board's statements and conclusions concerning GAO's practices with respect to employment of individuals with disabilities and the extent to which such individuals have access to reasonable accommodation. For example:

- Process for approving reasonable accommodation requests. The draft states that “the Board finds that if the [reasonable accommodation coordinator] has not found a basis to approve a request for reasonable accommodation, the RAC is expected to notify the employee or applicant and elevate the request to GAO’s [Accommodation Committee] for review” (p.66). This statement is misleading in two respects. First, it implies that this expectation has been consistently met. The Board is apparently unaware that for at least a year during the timeframe of its review, the Accommodation Committee lacked a quorum and did not meet, and that employees were thus denied their full due process rights. Similarly, the statement that the RAC “meets regularly” with the Accommodation Committee (p.42) is false. According to data provided to GAO Employees Organization by the Agency, the committee has met just three times since 2017.

Second, the Board’s statement implies that requests go unapproved by the RAC only if employees have not proven a basis for those requests. In fact, as we noted in our February 2019 comments on GAO draft order 2306.1 (Enclosure A), the RAC cannot approve an employee’s request if “the employee’s unit head or other relevant manager disagrees with granting the request.” As a result, many requests have not been approved in a timely manner because managers with little or no knowledge of disability law inappropriately rejected them.

In addition, the Board is apparently unaware of concerns raised by the Advisory Council for People with Disabilities and others that Agency policy may deny employees full due process, since requesters are not permitted to interact in person with the Accommodation Committee but must rely on the RAC to present their request while also presenting the reasons it was not approved.

- Category A. The draft describes GAO’s “Category A” hiring authority for individuals with certain disabilities (p.55), but makes no mention of the finding by the PAB’s own Office of General Counsel (PAB/GC) that GAO implemented this hiring authority incorrectly. This finding by the PAB/GC resulted in a 2018 corrective action by the Agency that had considerable negative consequences for employees. For example, several employees suffered the rescission of certain benefits—including FEGLI, Retirement, Thrift Savings Plan (TSP), Dental and Vision, and Retirement Service Computation Date—for the initial appointment of eight pay periods, which entailed loss of agency matching for TSP and liability for any dental/vision expenses incurred during the time frame.
- Accommodations for employees with hearing impairments. The draft lists a variety of accommodations provided to employees with hearing impairments or communication-related disabilities (p.53), but does not acknowledge deaf employees’ struggle to secure qualified interpreter services and to eliminate the conflict of interest inherent in the Agency’s assignment of oversight of the interpreter contract to its Office of Opportunity & Inclusiveness.
- Disability determination. The report presents a finding that “GAO’s stated interpretation of the definition of disability conforms to the broadened interpretation of disability under the ADA, as amended by the ADAAA.” (p.60). The source of this “stated interpretation” is unclear, as this finding contradicts the Board’s other finding that GAO Order 2306.1 does not reflect the ADAAA revisions to the ADA with respect to determinations of disability, which call for employers to focus on providing accommodation to qualified individuals rather than on assessing the level of disability. Moreover, we are aware of employees who have been denied accommodation for months—and in one case, over two years—because the RAC insisted they provide specific diagnostic information.
- Disability-related personnel data. The analysis of GAO’s personnel data--based on information from Standard Form 256, statutory hiring authority for disabled veterans, and reasonable accommodation requests--includes no discussion of the limitations of these data sources. We

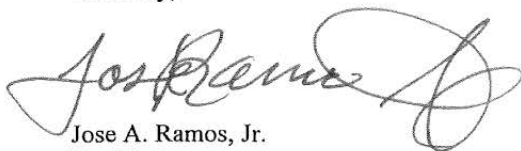
have reason to believe that few employees are aware of the SF-256, which employees can use to voluntarily indicate their disability status. This lack of awareness, coupled with reluctance on the part of some employees to reveal their disabilities to the Agency, may result in significant underreporting of individuals with disabilities--particularly of certain types--and attendant biases in analyses. The report presents tabulations of the data and cites findings from GAO's analyses of these data--including comparisons of ratings and performance awards received by employees with disabilities versus others (p.41)--without questioning the reliability of the data.

In general, the GAO Employees Organization believes the Board did not obtain the evidence needed to support the approval of GAO's reasonable accommodation program implicit in such findings as "GAO's reasonable accommodation program is available to employees and applicants with disabilities..." (p.51) and "GAO welcomes individuals to request accommodation based on their current situation" (p.60). In our role representing and supporting employees, we are aware of too many who have been discouraged from pursuing accommodations, waited an inordinate amount of time for accommodations to be approved, or been denied accommodations to which they were legally entitled, sometimes leading to their departure from GAO. The absence of employee perspectives from this draft undercuts any generalizations about the Agency's actual practices with respect to employment of individuals with disabilities and reasonable accommodation.

While we support several of the Board's recommendations, we believe they do not go anywhere near far enough to address the shortcomings of GAO's reasonable accommodation program. We agree with the Board's recommendations that the Agency ensure that its policies accurately describe the process by which individuals with disabilities may be hired at GAO (#3), ensure that its Orders reflect current law (#4), and ensure that the focus of review of reasonable accommodation requests is on providing accommodation to qualified individuals rather than on assessing the level of disability (#6). We also support the Board's recommendation that the Agency establish a mechanism for collecting feedback from individuals submitting accommodation requests to identify opportunities for improvement of the reasonable accommodation program (part of #4).

However, we are concerned that the Board's findings and the tepid nature of its recommendations may well lead GAO management and others to conclude little improvement is needed in the Agency's policies, procedures, and practices related to disability and reasonable accommodation. We believe that if the Board had obtained input from affected employees, it would have reached different conclusions and formulated stronger recommendations for improvement. We encourage the Board to take the time to incorporate the perspectives of employees with disabilities into this important report.

Sincerely,



Jose A. Ramos, Jr.
President

Enclosure



August 16, 2019

To whom it may concern:

On behalf of the Advisory Council for People with Disabilities (ACPD) membership, we thank you for inviting us to comment on the Personnel Appeals Board's (Board) draft report, *Study on Disability & Reasonable Accommodation in the GAO Workforce*. We appreciate the opportunity to provide input on this report, which stands to significantly influence the environment at the Agency for employees with disabilities.

First, we would like to commend the Agency's attention to this important matter. It is a critically needed step towards improving the representation of individuals with disabilities in the workforce at GAO and the extent to which these individuals feel "valued, treated fairly, and given the opportunity to develop to their full potential." We agree with a number of the Board's recommendations, particularly that the Agency promptly issue revisions to GAO Order 2306.1, develop a Disability Plan, review criteria for approval of reasonable accommodations in order to focus on providing accommodation, and analyze disparities relating to disabilities in performance appraisals and awards.

However, after a thorough review of the draft report, we strongly feel that it has significant and numerous enough flaws and areas of concern that the Board would be doing the Agency and its employees a disservice by releasing it in its current form. This draft inadequately conveys the degree to the Agency is experiencing serious challenges in its employment of individuals with disabilities, and it does not adequately examine Agency policies, processes, and practices to identify why the Agency's employment of these individuals falls below federal goals. We also feel that while the Board's recommendations are a good starting place, they are inadequate in effectively directing GAO to address the challenges that hamper the Agency from achieving its goals for recruiting, hiring, and retaining employees with disabilities.

Below are selected examples of our concerns. These should not be considered comprehensive, but illustrative of areas in which consultation with ACPD and employees with disabilities could have helped the Board as it conducted its investigation.

Framing and Organization

We believe that the report's analysis of disability employment at GAO is hindered by its implicit framing of reasonable accommodations as the main—or even sole—conduit for achieving Agency goals related to equal employment opportunity for employees with disabilities. For

example, in Chapter IV: Analysis of GAO Policies, Procedures, and Practices, the report describes GAO's *Workforce Diversity Plans* as communicating how the Agency addresses "the special needs of employees with disabilities." This report omits mention of whether or how these plans communicate how the Agency fosters the inclusion of employees with disabilities through efforts other than providing accommodations. Even the training cited is described in terms of how they "enhance awareness related to the prevention of prejudice or discrimination at the Agency, including in the area of reasonable accommodation." Where is the awareness about prejudice or discrimination on the basis of disability itself?

Enabling individuals with disabilities to feel included and valued as people goes beyond simply making reasonable accommodations available or educating others about those accommodations. This sort of framing does not appeal to individuals with disabilities who may be interested in employment at the Agency, nor does it make current employees with disabilities feel valued equal to other employees. A more holistic approach that clearly regards individuals with disabilities as part of the Agency's diversity efforts, rather than through the lens of legal obligations and whether employees get their accommodations, will be far more effective in helping the Agency achieve its goals.

The organization of this report reinforces the framing we described above. For example, much of the discussion of hiring practices appears in Chapter V: Analysis of Reasonable Accommodation Processing at GAO. This implies that the Board views hiring of people with disabilities through the lens of reasonable accommodations, rather than through the lens of diversity and inclusion. An important step the Board could take toward changing this framing would be to separate out information about and analysis of the Agency's efforts to recruit and hire individuals with disabilities into, ideally, a separate chapter. We believe the Agency has significant work to do in the area of recruitment and hiring and that the Board should stress the importance of this by giving these topics more attention.

Methodology

We are particularly concerned that multiple deficiencies in the methodology used in this report hamper the Board's ability to provide an accurate impression of employment of individuals with disabilities at GAO or adequate prescriptions for how the Agency can remedy deficiencies.

- **Scope.** Limiting the scope to a simple review of selected GAO policies, procedures, and practices and accommodations and employment data does not present a fair or accurate picture of the extent to which individuals with disabilities "share in equal employment opportunity at the Agency" or feel comfortable utilizing its Reasonable Accommodations services. Simply comparing some GAO policies against the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act of 2008 is also insufficient for an adequate understanding of whether these policies support or are counterproductive to the Agency's goals. If the intention of this report is to identify the extent to which applicants and employees with disabilities may face challenges in requesting and receiving reasonable accommodations, the scope chosen in no way

enables the report to adequately identify those challenges. At a minimum, this report should have evaluated the *implementation* of these policies, processes, and practices, which has often had negative effects on employees with disabilities and the Agency's ability to hire and retain them.

We are also concerned that the scope did not include available sources of information that would allow for a more accurate analysis of the Agency's efforts. For example, the Board did not include in its scope certain policies and practices that impact employees with disabilities, as we describe below. The Board also did not review comments from entities such as ACPD on various draft GAO Orders that could have provided the Board insight on deficiencies and gaps in these orders that have negatively impacted—or stand to negatively impact—employees with disabilities (we submit these comments as attachments). The Board also omitted valuable information about recruiting and hiring people with disabilities, such as aspects of Schedule A appointment authority and mentions best practices only sparingly, such as the Department of Labor's Office of Disability Employment Policy's summary on promising and emerging practices. This report did not compare the Agency's efforts against these or other leading practices but, rather, directed the Agency to look at them themselves.

- **Stakeholders.** The methodology also omits important stakeholders, a leading practice in federal strategic planning, as GAO itself has often reported.¹ Specifically, the Board did not consult with ACPD or obtain input from employees with disabilities, such as by gathering information through interviews, surveys, focus groups, or listening sessions. Therefore, this report does not include the views of vital stakeholders on whether they feel comfortable requesting accommodations or feel the process is transparent, consistently applied, enables them to perform their work to their fullest abilities, and makes them feel valued at the Agency. It also does not consider what more the Agency could be doing to make them feel included and valued—an important element of retention. This is particularly puzzling, as in the Board's 1990 and 1994 reports on this topic, the Board sent questionnaires to GAO employees who had identified themselves as having disabilities.² We strongly believe that omission of key stakeholders creates serious limitations that prevent the Board from accurately understanding and describing the various challenges associated with employment of individuals with disabilities at the Agency. Furthermore, limiting the scope to information provided by the Human Capital Office and Reasonable Accommodations provides an unbalanced picture of conditions at the Agency that effectively excludes the voices of very people that GAO professes are an important part of its inclusion efforts.

It is one thing to review documented processes, and entirely another to examine how these processes are actually implemented. The discovery that the Accommodations Committee had not met for over a year due to lack of quorum is one example of a

¹GAO-12-77.

²See *EEO Oversight Study of GAO's Employment of Persons with Disabilities* (September 28, 1990) and *Follow-Up Report: EEO Oversight Study of GAO's Employment of Persons with Disabilities*, GAO/PAB-94-3 (January 24, 1994).

discrepancy between what is on paper and what actually happens. Had the Board consulted with ACPD, the Board could have learned that multiple employees with disabilities have experienced negative impacts from various Agency policies and procedures, either because of how these policies and procedures are written or because of how they have been implemented. These employees are frequently—and understandably—extremely reluctant to speak to Agency management but could have been willing to do so in confidence to the Board during its investigation.

- **Data Reliability.** This report does not describe how the Board evaluated the reliability or accuracy of the data it received from the Agency. This is particularly ironic, considering GAO has reported concerns about the quality of executive branch agencies' data on their employment of individuals with disabilities. However, this report does not state whether the Board conducted the same rigorous review of the Agency's own data. ACPD has identified puzzling discrepancies in the data in chapters VI and VII that cast doubts on the reliability of the data.

ACPD also noted some omissions of potentially valuable data. For example, the data on reasonable accommodation requests by employees does not differentiate between how many requests were approved by the RAC and how many were referred to the Accommodations Committee and subsequently approved or denied. This data is important to evaluating employees' access to due process. The report also does not provide data regarding the length of time between request and approval, which ACPD and employees have noted is a challenge and may factor into an employee's decision to leave the agency.

- **Criteria.** The Board also does not describe the criteria against which it is comparing Agency performance, beyond the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act of 2008. For example, the Board suggests that this report is to be similar in focus to GAO reports on federal employment of people with disabilities but does not compare Agency efforts against OPM's criteria, as GAO did in these reports; best practices for employment of individuals with disabilities; or leading practices for strategic planning.

Recruiting and Hiring

One of ACPD's greatest areas of focus in the past 2 years has been providing input on GAO's strategy for recruiting and hiring individuals with disabilities. ACPD has identified extensive problems in this area that put the Agency at a considerable disadvantage against other federal agencies. ACPD has provided consultation and advice to HCO through comments on draft GAO orders and meetings with various people such as the recruitment working group within HCO. The following are the most significant areas of concern ACPD has pointed out, and ACPD believes the Board's report does not satisfactorily examine these issues:

- **Category A Hiring Authority.** HCO has repeatedly informed ACPD that it continues to be unclear as to how the Agency can utilize its special non-competitive appointing authority to hire people with targeted disabilities. As the Board is well aware, HCO misused this authority for multiple “Schedule A” hires. During the process of revising GAO Order 2213.1: Positions Covered by Non-Competitive Appointments, ACPD provided extensive comments, many of which HCO incorporated, and we commend them for this. However, HCO continues to state that it cannot clarify whether it is permitted to exercise this authority in the same manner as executive branch agencies. Specifically, ACPD has repeatedly asked about the ability to hire Category A applicants with disabilities without using a vacancy announcement, as per EEOC guidance for executive branch that states: “Schedule A allows agencies to hire qualified applicants with disabilities without posting a position, thereby reducing the time it may take to fill a vacancy.”³ Talented, experienced individuals with disabilities are often highly sought after, and other agencies are able to expedite their recruitment and hiring of these individuals by hiring them without a vacancy announcement. ACPD has repeatedly warned management that the Agency’s inability to understand or explain its own Category A process, internally or externally, is detrimental to its ability to compete with executive branch agencies in this area. By not clarifying its Category A authorities or sharing this information with employees responsible for recruiting or with potential recruits, GAO is depriving itself of one of the most significant tools federal agencies have for recruiting individuals with disabilities.

However, the Board’s report only superficially discusses Order 2213.1 and the Agency’s Category A hiring authority. Chapter IV contains only a brief description of Order 2213.1, without explanation or analysis of the provisions in the Order. Chapter V offers, through a Reasonable Accommodations lens, an equally as brief description of Category A. It does not explain how the Agency uses—or is supposed to effectively use—the authority and offers no insight on the question of whether the Agency can bypass the vacancy announcement process. The report does not mention the Board’s investigation into the Agency’s use of the authority and the subsequent actions taken to (1) retroactively place a selected number of hires on temporary appointments without satisfactory explanation as to how HCO determined whom to grandfather in and whom to retroactively place on temporary appointments, with significantly negative impacts on these selected employees; and (2) revise the Order to more closely align the Category A authority with the executive branch’s Schedule A authority. The Board is missing an important opportunity to address the ongoing lack of clarity as to how the Agency can use the Category A authority to enhance its recruitment and hiring efforts.

- **Selective Placement Program Coordinator.** This report also does not include any discussion of the Agency’s Selective Placement Program Coordinator (SPPC), typically

³U.S. Equal Employment Opportunity Commission, “Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce,” accessed August 15, 2019, <https://www.eeoc.gov/federal/qanda-employment-with-disabilities.cfm>.

a vital component of federal agencies' strategy for recruiting individuals with disabilities.⁴ Currently, the Agency's Reasonable Accommodations Coordinator serves as the Agency's SPPC. At other federal agencies, this role is typically filled by a HR specialist, Human Capital Consultant, or someone in a recruitment-related position, among others. In its comments on draft GAO Order 2306.1, ACPD expressed concern about the inherent conflict of interest in appointing a RAC as a SPPC. The Board's omission of information about the SPPC prevents the Board from comparing Agency practice against EEOC guidance and best practices.⁵ For example, EEOC guidance provides that SPPCs are to review a resume bank to identify potential candidates as soon as they learn about a vacancy, as well as use WRP and OPM resume banks, and, upon identifying candidates who may be qualified for the position, reach out to the candidates and ask them for a tailored resume specific to the position. However, this report does not look into whether the Agency is using this strategy, among other things. Without discussing the SPPC's roles and responsibilities, as well as the Agency's utilization of its SPPC, this report misses a valuable opportunity to evaluate an important element of the Agency's recruiting strategy.

- **Recruiting.** Although HCO has stood up a recruiting working group, the Board's report does not recognize the Agency's initial efforts to incorporate recruitment of individuals with disabilities in its overall recruiting efforts. Instead, this report falls into the trap of taking a limited view of disability-targeted recruiting efforts as categorized under reasonable accommodations efforts. Individuals with disabilities do not always need or utilize reasonable accommodations. And even those who do may resent an overly close association of recruiting and reasonable accommodations. While information about accommodations is a component of recruitment, an overemphasis can be counterproductive. ACPD believes that recruiting individuals with disabilities should be done through the lens of diversity and inclusion, with respect for the individual themselves, not simply a focus on their disability and accommodations. To that end, ACPD has recommended to HCO that it train recruiters on strategies for recruiting individuals with disabilities, as well as Agency policies and processes, particularly Category A. However, HCO has informed ACPD that although it can incorporate tips for recruiting individuals with disabilities, it is not yet ready to address Category A in recruiter training. Category A is one of the most important recruiting tools the Agency has to make progress towards its hiring goals, but it is depriving its recruiters of the knowledge and ability to use this tool. The Board plans to recommend that the Agency take steps "to increase awareness among hiring officials, managers, and employees of (a) Agency goals for hiring and retaining qualified individuals with disabilities and targeted disabilities; and (b) the extent of the Agency's reasonable accommodation program." ACPD strongly believes this is insufficient because it omits, among other

⁴The Office of Personnel Management outlines SPPC responsibilities at <https://www.opm.gov/policy-data-oversight/disability-employment/selective-placement-program-coordinator/>.

⁵See, for example, U.S. Equal Employment Opportunity Commission, "The ABCs of Schedule A: Disability Program Managers & Selective Placement Program Coordinators," accessed August 15, 2019, https://www.eeoc.gov/eeoc/publications/abc_ada_program_manager.cfm#_Toc417389569.

things, awareness of the Agency's hiring procedures, particularly Category A and how recruiters can respond to inquiries about whether and how GAO uses its non-competitive appointing authority.

- **Publicity.** Potential applicants with disabilities tend to be particularly interested in an agency's Schedule A hiring processes and frequently check agencies' websites for information as well as inquire about it via email and at career fairs. However, the Agency's website does not mention or explain its Category A hiring authority, putting it at a disadvantage compared to other federal agencies, which extensively explain on their websites their Schedule A hiring capabilities and their commitment to hiring people with disabilities. Although the Board plans to recommend the Agency include a direct link to the Agency's Reasonable Accommodations resources on its internet home page, this will be insufficient to support the Agency in its hiring goals or to present the Agency as a "disability-friendly" workplace. Furthermore, HCO provided ACPD with a copy of a typical email sent by the SPPC in response to inquiries by potential "Schedule A" applicants. This email did not explain the Agency's Category A authority, but states that "If you would like to be considered for a position at GAO under Schedule A, please apply for the desired position posted on www.USAJobs.gov." Clearly, this language is misleading. However, it is unclear whether the Board reviewed the Agency's website and other documentation in order to evaluate how they can support the Agency's hiring efforts of individuals with disabilities beyond simply providing information about accommodations.

As the Board can see, not only does recruitment and hiring not belong under the reasonable accommodations umbrella, there is enough to discuss regarding these areas for this topic to merit its own chapter or section, particularly if the Board's goal is to help the Agency improve its employment of individuals with disabilities.

Analysis of GAO Policies, Procedures, and Practices

We concur with the Board in its finding that there are areas in which the Agency should revise its policies, procedures, and practices. This report also states that it recognizes that GAO's "People Values" campaign is "intended to enhance the tone at the Agency that individuals with disabilities should expect to receive fair and equal access to employment opportunity at GAO." However, the report does not provide information on whether employees with disabilities perceive this to align with their experience at the Agency. We note that there are numerous challenges and incidents that have affected—and continue to affect—employees with disabilities that Board does not mention. Including such information would enable a more balanced assessment of Agency performance in this area and further bolster the Board's argument that improvements are needed.

For example:

- **Avenues to address Equal Employment Opportunity concerns.** The Board cites the Comptroller General's 2017 EEO Statement as stating that employees have multiple

avenues to address concerns, such as bringing issues to the attention of management, including Directors and Managing Directors (MDs). Employees with disabilities have had experiences in which they expressed concerns to these managers, but the managers did little to advocate for their employees' needs or address their concerns with upper management, leaving their employees feeling adrift and unsupported. In fact, some managers have actively dismissed these employees' concerns or opposed accommodations, with the result that a number of employees have become fearful of disclosing a disability to their DPMs and MDs.

Furthermore, the Board describes the services of the Office of Opportunity & Inclusiveness (OI) but does not mention incidents in which this office oppressed employees with disabilities. For example, a former employee in this office implemented American Sign Language classes but barred Deaf employees from participating in this initiative, citing a need to create a "safe space" for hearing employees to learn the Deaf employees' language. Other employees have filed complaints with OI, but this report does not include data about appeals or complaints to OI and how often these efforts are successful. These issues, among others, and fear of retaliation from management for approaching OI have caused numerous employees with disabilities to be wary of utilizing OI's services.

"People Values Campaign." The report describes GAO's "People Values" campaign as encouraging recognition of the talents and life experiences that all individuals at GAO bring to their work and supporting fair and equal access to employment opportunity at the Agency. However, the report does not mention the Board's discovery of HCO's misapplication of its Category A authority to hire individuals with disabilities and the adverse impacts of the subsequent corrective actions HCO took for selected employees with disabilities the Agency hired using this authority. HCO's actions inflicted psychological, emotional, professional, and even financial harm to these employees. This incident also caused the employees to feel they were unfairly treated and disrespected solely on the basis of disability. However, being new employees retroactively placed on temporary appointments, some were reluctant to use the avenues the Agency provides for addressing concerns, due to fear of retaliation and losing their jobs. Furthermore, this report does not acknowledge the inequities built into the former iteration of Order 2213.1 that prevented individuals with disabilities from enjoying fair and equal access to employment opportunities, including promotions, at GAO and that necessitated the expedited revision and issuance of the new Order on July 31, 2018. The omission of this incident, among others, contributes to creating a seriously unbalanced picture of Agency actions regarding employees with disabilities.

- **GAO Orders.** The Board lists the various GAO Orders that it reviewed, and we deeply appreciate the Board stressing that 2306.1, 2713.1, and 2713.2 need to be promptly updated. However, we feel that the Board did not go far enough in analyzing how these Orders impact employees with disabilities. The Board simply advises the Agency to "reconsider any policies, procedures, and practices that could potentially have the effect

of hindering agency progress toward” its objective for employment levels of individuals with disabilities. However, ACPD feels strongly that simply seeking to meet a quota is unacceptable. The Board should also advise the Agency to review its policies, procedures, and practices with an eye toward their impact on current employees’ experience at GAO and, consequently, the Agency’s retention of these employees.

The Board also does not mention the extensive comments that entities, such as ACPD and the GAO Employees Organization, have submitted to management about draft Orders, specifically 2306.1: Employment of Individuals with Disabilities and 2213.1: Positions Covered by Non-Competitive Appointments. For example, ACPD has pointed out that the Agency has not clearly identified the “essential functions” of each position, such as in job descriptions—a critical element of ensuring the Agency is complying with the law, particularly when providing accommodations and addressing unacceptable performance.

The report’s list of relevant Orders omits other Orders that impact employees with disabilities, such as 2300.5, regarding telework; 2339.1, regarding medical determinations; 2432.1, regarding unacceptable performance; and 0610.1, regarding office space. A draft of Order 2432.1: Unacceptable Performance was recently distributed for comment, and ACPD provided comments to HCO expressing concerns about due process for employees with disabilities.

Furthermore, this report does not point out that while telework is considered an acceptable reasonable accommodation, order 2300.5 regarding telework has not been updated since 2012 and references 2306.1, but 2306.1 does not mention telework as an accommodation, nor provide guidance. As a result, employees with disabilities have been told various things, such as that if they request expanded telework on the basis of disability, they may lose their offices and parking spaces, which they may need due to their disability. This has had the effect of discouraging employees from submitting requests and spurring others to leave the Agency for other jobs or through retirement.

- **Workforce Diversity Plans.** ACPD feels that simply reporting the contents of these plans without evaluation of their accuracy or reliability is insufficient. This report examines only the “level of emphasis in these plans on the Agency’s efforts to (1) recruit, hire, retain, and advance qualified individuals with disabilities, as well as targeted disabilities, and (2) to provide reasonable accommodation, when appropriate.” The report recognizes Agency efforts but does not evaluate their effectiveness in enabling the Agency to make progress toward its goals. It does not compare the Agency’s efforts or progress against leading practices for strategic planning, which include defining goals and developing and using performance measures. For example, the report cites one plan’s mention of closed captioning as an area of improvement; however, this is a questionable claim because numerous videos on GAOTV that qualify for CPEs are not captioned. Of 63 videos posted thus far in 2019, only four are captioned, and none of them relate directly to analyst work. Captioning is provided only on request, and it can

take an inordinate length of time for videos to be captioned, impacting analysts who are required to earn CPEs and often do so by watching videos. What, exactly, were the Agency's goals and metrics that it used to determine improvement in this area, and why does this report not question their absence?

The report also describes the position and duties of the Reasonable Accommodations Coordinator and states that the RAC "coordinates efforts to increase hiring of employees with disabilities." However, the duties cited relate exclusively to the provision and tracking of reasonable accommodations provided to employees. It is unclear how these duties constitute "coordination" of hiring efforts.

Furthermore, the report cites the plans as stating that the Agency "highlighted National Disability Employment Awareness Month"; had the Board interviewed ACPD and employees with disabilities, it would have learned that they do not perceive Agency management to have actively "highlighted" NDEAM. Rather, ACPD has tended to take the initiative to plan these events with little involvement or support from management. It is actually somewhat insulting for the Agency to take credit for ACPD's hard work in this area.

In conclusion, ACPD hopes this extensive—but not exhaustive—list of concerns about the draft report demonstrates to the Board the need to take a step back and conduct additional work in order to produce a report that fairly and accurately represents the environment at the Agency as it relates to individuals with disabilities. To not do so would result in a report that is not adequately beneficial and that will not provide GAO enough impetus and direction to make the substantial changes required for it to make progress towards its goals related to employment of individuals with disabilities.

ACPD strongly urges the Board to take steps to collect and incorporate the views of employees with disabilities in its report, and we stand ready to assist the Board in doing so. We also stand ready to consult with the Board on any aspect of the draft report, to support our common goal of helping the Agency improve its employment of individuals with disabilities.

Thank you for your time and attention to this matter.

Tara Congdon, Chair

Jonathan Harmatz, Vice Chair

Angela Pun, Secretary

Vikki Porter, Outreach Coordinator