

July 2010

GAO HUMAN CAPITAL REFORM ACT OF 2004

Final Report on GAO's Use of Provisions in the GAO Human Capital Reform Act of 2004

This report was revised on July 7, 2010, to reflect a change to the text on page 6, in the last line of the second paragraph, to contain "6.12 percent of salary."



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United States Government Accountability Office
Washington, DC 20548

July 6, 2010

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate

The Honorable Edolphus Towns
Chairman
The Honorable Darryl Issa
Ranking Member
Committee on Oversight and
Government Reform
House of Representatives

On July 7, 2004, the GAO Human Capital Reform Act of 2004, Public Law 108-271, was enacted and provided GAO with additional human capital flexibilities. Section 11(b) of the Act requires GAO to submit a final report concerning the implementation of the Act to Congress not later than 6 years from July 7, 2004. The report requires that we summarize our previous annual reports to Congress regarding our use of the flexibilities authorized by section 2, Voluntary Early Retirement Authority and Voluntary Separation Incentive Payments; section 3, Annual Pay Adjustments; section 4, Pay Retention; section 6, Increased Annual Leave for Key Employees; section 7, Executive Exchange Program; section 9, Performance Management System; and section 10, Consultation. Additionally, the report must contain any GAO recommendations for legislative changes to the above noted sections and any assessment furnished by the GAO Personnel Appeals Board (PAB) or any interested groups or associations representing officers and employees of GAO.

The following report will provide you with the information required by section 11(b). We have found that the additional flexibilities Congress authorized in Public Law 108-271 have helped to ensure we have the right staff, with the right skills, in the right locations to better meet the needs of the Congress and the American people. To further assist us, on September 22, 2008, the Congress passed the Government Accountability Office Act of 2008, Public Law 110-323, which provided additional authorities to GAO.

Therefore, at this time, we have no recommendations for any legislative changes to sections of the 2004 Act.

Regarding the requirement to include any assessment of the Act from the PAB or other interested groups, we solicited input from the PAB, the GAO Employees Association, International Federation of Professional and Technical Engineers (IFPTE) Local 1921, the Employee Advisory Council, and the Diversity Advisory Council. We only received a written reply from the PAB which we have included. However, IFPTE Local 1921 did indicate it will provide comments directly to Congress.

If you or members of your staff have any questions or comments about matters discussed in this report, please contact me at (202) 512-5600 or dodarog@gao.gov or Ms. Lynn Gibson, Acting General Counsel, at (202) 512-5207 or gibsonl@gao.gov.

A handwritten signature in black ink, reading "Gene L. Dodaro". The signature is fluid and cursive, with a large, stylized "D" and a long, sweeping underline.

Gene L. Dodaro
Acting Comptroller General
of the United States

Overview

As required by section 11 of the GAO Human Capital Reform Act of 2004 (Pub. L. No. 108-271), GAO is providing its final report not later than 6 years after the date of the Act's enactment. This report provides, as required by the Act, (1) a summary of the information included in GAO's annual reports for the fiscal year 2005 through 2009 reporting cycle for sections 2, 3, 4, 6, 7, 9, and 10;¹ (2) recommendations for any legislative changes to sections 2, 3, 4, 6, 7, 9, and 10; and (3) any assessment furnished by the GAO Personnel Appeals Board or any interested groups or associations representing officers and employees of GAO.

Summary of GAO's Annual Reports, Fiscal Years 2005–2009

Section 2: Voluntary Early Retirement Authority (VERA)/Voluntary Separation Incentive Payments (VSIP)

The first two sections of this Act made permanent our 3-year authority to offer voluntary early retirement and voluntary separation incentive payments under sections 1 and 2 of Public Law 106-303, October 13, 2000. Regulations reflecting the permanent nature of this authority were issued on November 15, 2004. These regulations continue to allow us to announce agency-wide voluntary retirement opportunities with specific time frames and, under an exception provision, permit us to authorize early retirement for up to five employees in any organizational unit in any fiscal year without an agency-wide announcement. While the number of employees who have separated through voluntary early retirement is relatively small, this authority, in conjunction with other workforce planning strategies, has been helpful in reshaping our workforce and providing us with necessary new skills and knowledge to fulfill our mission.

¹See *GAO Performance and Accountability Report Fiscal Year 2005*, [GAO-06-1SP](#) (Washington, D.C.: Nov. 15, 2005); *GAO Performance and Accountability Report Fiscal Year 2006*, [GAO-07-2SP](#) (Washington, D.C.: Nov. 15, 2006); *GAO Performance and Accountability Report Fiscal Year 2007*, [GAO-08-1SP](#) (Washington, D.C.: Nov. 15, 2007); *GAO Performance and Accountability Report Fiscal Year 2008*, [GAO-09-1SP](#) (Washington, D.C.: Nov. 14, 2008); *GAO Performance and Accountability Report Fiscal Year 2009*, [GAO-10-234SP](#) (Washington, D.C.: Nov. 13, 2009).

Table 1 provides a summary of the number of employees separated from the agency under both the agency-wide and exception provisions for voluntary early retirement in fiscal years 2005 through 2009.

Table 1: Number of Employees Separated under Both Agency-wide and Exception Provisions for Early Retirement, Fiscal Years 2005–2009

	Fiscal year				
	2005	2006	2007	2008	2009
Total applicants separated under agencywide and exception provisions	12	28	12	8	4

Source: GAO.

The voluntary separation incentive provision requires us to make the payment out of current appropriations and to pay an additional amount into the retirement fund, which at a minimum is equal to 45 percent of the basic pay of the employee who is receiving the payment. Thus, the cost of using this flexibility is considerable and, given the many demands on our resources, this provision was not used during the 5-year reporting period.

Section 3: Annual Pay Adjustments

Section 3(a) of the Act authorized the Comptroller General to determine the amount of annual pay adjustments for its officers and employees and described the factors to be considered in making those determinations. This provision amended 31 U.S.C. 732(c)—which required employees’ pay to be adjusted at the same time and to the same extent as the General Schedule. Under section 3(b) the Comptroller General’s authority to establish the annual pay adjustment is also applicable to employees in the Senior Executive Service (SES) and in Senior Level (SL) positions. Under both sections 3(a) and 3(b) an employee must be performing at a satisfactory level in order to receive an annual pay adjustment

In January 2006, we issued regulations addressing the satisfactory performance requirement for GAO’s analysts and attorneys. Pursuant to the regulation, GAO analysts and attorneys had to be performing at “Meets Expectations” in all competencies to be considered satisfactory. In addition, most Band IIB and Band III analysts, had to have a performance appraisal that was in the top 50 percent or 80 percent, respectively, of their band and team. In subsequent years this added condition was not required. Since the annual adjustment is a significant component of employees’ annual compensation, limiting its applicability to satisfactory performers is critical to the integrity of GAO’s overall pay for performance system.

For calendar years 2006 through 2009, consistent with section 31 U.S.C. 732 (c)(3), the Comptroller General considered various data to determine the amount of GAO's annual adjustments, including

- salary planning data reported by the professional services, public administration, and general industry organizations;
- the General Schedule adjustment;
- purchasing power indices;
- the amount of Performance Based Compensation (PBC) and the appropriate distribution of funds between the annual adjustment and PBC.² and
- GAO's funding levels.

The Comptroller General provided an annual adjustment in 2006 and 2007 of 2.6 percent and 2.4 percent, respectively, to those who were performing at a satisfactory level and who were paid within applicable competitive compensation limits, except for wage-grade employees, and GAO Personnel Appeals Board employees. In addition to the annual adjustment, GAO employees were eligible for PBC based on their performance appraisal ratings. PBC was calculated using a budget factor of 2.15 percent for both 2006 and 2007.³ Under section 3(b), the Comptroller General is required to consider the statutory criteria set out in section 3(a) in determining an annual increase for members of the GAO SES and SL employees. The Comptroller General considered these criteria and determined that each member performing at a satisfactory level would receive in 2006 and 2007 a 1.9 percent and 1.7 percent increase, respectively—the same increase that was provided to the Executive Schedule for calendar years 2006 and 2007, respectively. In 2007, SES and SL members were also eligible for PBC using a budget factor of 2.25 percent.

In 2008, after the Comptroller General made preliminary determinations regarding pay adjustments as had been done in 2006 and 2007, GAO

²In addition to the annual adjustment, employees also are eligible each year to receive annual increases and bonuses as part of a performance based compensation system authorized under section 731(b) of title 31, United States Code.

³Under GAO's PBC system, employees receive various amounts of permanent pay or bonuses depending on their performance appraisal. Thus, employees may receive increases greater, the same, or less than a given year's budget factor percentage.

management negotiated with representatives of the newly established GAO Employees Association, International Federation of Professional and Technical Engineers (IFPTE) Local 1921 to reach final agreement regarding salary adjustments. In addition to the annual adjustment, GAO employees were eligible for PBC based on their performance appraisal ratings. Pay adjustments for GAO staff included an annual adjustment of 3.5 percent as well as performance based compensation using a budget factor of 2.75 percent.

In 2008, for the first time, GAO implemented a “floor guarantee.” The 2008 floor guarantee provided that if the total increase from the annual adjustment and PBC did not equal at least 4.49 percent of salary, the employee would receive an additional increase to base pay to equal this amount regardless of geographic location. For example, in Washington, D.C., the floor guarantee ensured that all staff received a base pay increase of at least 4.49 percent and was provided without regard to pay range maximums limited only by the GS-15, step 10, statutory maximum rate. In providing the floor guarantee to staff, the additional amount required to bring the base pay adjustment to 4.49 percent of salary was deducted from any PBC bonus. Overall, the average total dollar amount resulting from employees’ annual adjustments, PBC base pay increases and bonuses, and floor guarantees was approximately 6.12 percent of salary.

GAO employees participating in one of GAO’s development programs (Professional Development Program, Attorney Development Program, Communication Analysts Pay Process, Program and Technical Development Program, and Administrative Pay Process) received the 3.5 percent annual adjustment, not to exceed the maximum rate of their bands. These employees were not eligible for the floor guarantee because they received additional performance-based salary increases every 6 months for the 2-year duration of the development program.

GAO’s SES and SL employees were provided the same 2.5 percent increase authorized for the executive branch. SES and SL members were also eligible for PBC using a budget factor of 2.25 percent. The PBC was provided to the SES and SL staff as a base pay increase not to exceed \$169,300.

Employees of GAO’s Personnel Appeals Board and student employees are paid according to GS rates, and GAO’s wage grade employees are paid according to the Federal Wage System (FWS) salary rates. These employees received the same percentage across-the-board adjustment on the same effective date as the increases authorized for GS and FWS employees in the

executive branch. The pay ranges for these employees incorporated the changes made to the comparable executive branch pay ranges.

Prior to the annual adjustment for 2009, the Government Accountability Office Act of 2008, Public Law 110-323, September 22, 2008, was passed. Under section 2 of this Act, the so called “floor guarantee”, as described above, was enacted into law as section 731(j) of title 31, United States Code.⁴

For year 2009, following preliminary determinations by the Acting Comptroller General and negotiations between management and IFPTE Local 1921, GAO employees received an annual adjustment equal to the “floor guarantee,” which, for example, equaled 4.78 percent in Washington, D.C. In addition, employees were eligible for performance based compensation using a 2.65 percent budget factor.

GAO’s SES and SL employees rated “Fully Successful” were provided a 2.8 percent pay adjustment pursuant to 31 U.S.C. § 733(a)(3)(B) effective January 4, 2009. SES and SL members were also eligible for PBC using a budget factor of 2.65 percent. PBC was provided to the SES and SL staff as a permanent base pay increase not to exceed \$174,000.

As in 2008, employees of GAO’s Personnel Appeals Board and student employees were paid according to GS rates, and GAO’s wage grade employees are paid according to the Federal Wage System (FWS) salary rates. These employees received the same percentage across-the-board adjustment on the same effective date as the increases authorized for GS and FWS employees in the executive branch. The pay ranges for these employees incorporated the changes made to the comparable executive branch pay ranges.

⁴In addition to enacting the “floor guarantee” into law, Public Law 110-323, section 3, made adjustments to the basic pay of certain GAO employees for 2006 and 2007 who were still on the rolls on the date of the passage of the Act, September 22, 2008. As noted in the text, in 2006 and 2007, respectively, GAO employees received an annual adjustment of 2.6 percent and 2.4 percent. Certain employees, however, did not receive an increase to basic pay equal to that amount even taking into account any performance based compensation that the employees received. Section 3 required that the minimum increase to basic pay for these employees would be equal to 2.6 percent for 2006 and 2.4 percent for 2007, limited only by the GS-15, step 10 cap applicable to all GAO employees outside of the Senior Level and Senior Executive Service. Payments were made to these individuals.

In fiscal years 2005 through 2009, there were no extraordinary economic conditions or budgetary constraints that had a significant impact on the determination of the annual pay adjustments.

Section 4: Pay Retention

Section 4 authorizes the Comptroller General to establish pay retention regulations applicable to employees who are placed in lower grades or bands as a result of workforce restructuring, reclassification, or other appropriate circumstances. Table 2 summarizes these data for fiscal years 2005 through 2009.

Table 2: Employees under Pay Retention, Fiscal Years 2005–2009	
Fiscal year	Number of employees
2005 ^a	
2006	1 ^{b,c}
2007	1 ^c
2008	1 ^c
2009	1

Source: GAO.

^aDuring this period, draft regulations were under review. After the review and consultation process, the regulations were implemented in fiscal year 2006.

^bIn our 2006 Performance and Accountability Report, we reported 329 employees as being under pay retention; however, this figure actually represented employees who were either above the pay range maximum for Band IIA or above the pay caps for the Analyst Band I or APSS bands after GAO’s transition in 2005 to a banded pay system.

^cThere was one Administrative Professional and Support Staff (APSS) employee on pay retention under the GAO pay retention regulations established in January 2006 under the authority of section 4 of the act. This employee was subject to pay retention provisions continuously since prior to passage of Pub L. No. 108-271.

Section 6: Increased Annual Leave for Key Employees with Less Than 3 Years Service

Under section 6, certain key employees with less than 3 years’ service for purposes of leave accrual may be treated as if they had 3 years of federal service. Therefore, they would earn 160 hours on an annual basis instead of 104 hours. These key employees must be occupying positions that are difficult to fill or have unique or unusually high qualifications and would be difficult to recruit without additional incentives. Table 3 shows the number of employees receiving this flexibility in fiscal years 2005 through 2009.

Table 3: Employees Receiving Increased Annual Leave, Fiscal Years 2005–2009

Fiscal year	Number of employees
2005 ^a	
2006	5
2007	4
2008	8
2009	7

Source: GAO.

^aWe posted draft regulations for employee comment on December 29, 2004. These regulations would permit designated key employees with less than 3 years of federal service to earn 6 hours of annual leave per pay period. After the consideration of employee comments, the regulations of this provision were finalized and implemented in fiscal year 2006.

Section 7: Executive Exchange Program

Section 7 authorized GAO to establish an Executive Exchange Program. After soliciting and analyzing employees' comments on draft regulations, we issued the final regulations for GAO's Executive Exchange Program on May 20, 2005. The authority was not used in fiscal years 2006, 2008, or 2009. However, during fiscal year 2007, this authority was used to bring in two executives from private industry, each for a period of 4 months. At GAO, the executives worked on several special projects related to federal agency audits and agency financial statement issues. In addition to helping revise the GAO/PCIE Financial Audit Manual, they used their experience as auditors of agency financial statements to help develop protocols to help GAO interact with the agency-level auditors (inspectors general as well as public accounting firms) during GAO's audit of the U.S. government's consolidated financial statement. This program was considered a success from GAO's standpoint and it met the expectation of the private industry employer that was involved. The authority expired on July 7, 2009.

Section 9: Performance Management System

Section 9 relates to GAO's performance management system and, among other things, requires a link between the performance management system and the agency's strategic plan, adequate training on the implementation and operation of the system, and a process for ensuring ongoing performance feedback. Even before the imposition of these requirements, GAO's performance management system was in conformity with the statutory requirements of section 9.

In fiscal years 2005 and 2006, we conducted annual reviews and assessments of our performance management policies and processes and made improvements, when appropriate. During fiscal year 2007, an

evaluation of the fiscal year 2006 appraisal and pay cycle was deferred pending the outcome of the then-ongoing union election.

In fiscal year 2008, GAO undertook various initiatives to ensure the performance management system met its objectives and provided an even playing field for all employees. In response to continuing differences between African American and Caucasian analyst performance appraisal averages, the Ivy Planning Group conducted an independent assessment of the factors that may influence these differences, and was also tasked with identifying what additional steps GAO could take. A final report was issued on April 25, 2008, which contained over 25 major recommendations. GAO is committed to implementing the Ivy Planning Group's recommendations and has a number of efforts completed and underway to address the recommendations.

In fiscal year 2009, the agency continued to pursue actions designed to ensure that the system met its objectives and was fair and equitable for all employees. GAO established its Management Improvement Priorities Action Plan that includes five areas of concentration: recognizing and valuing diversity; reassessing the performance appraisal system; managing workload, sustaining quality, and streamlining processes; enhancing staffing practices and developing the workforce; and, finally, strengthening recruitment and retention incentives. Projects within these five areas originated from multiple sources, including the Ivy Planning Group's recommendations, CG Special Projects, and suggestions received over time from GAO staff at all levels throughout the agency. These areas also reflect the ongoing efforts of the Office of Opportunity and Inclusiveness, QCI, the Human Capital Office, and the Chief Administrative Office.

GAO completed one of the key management improvement projects—a full, systematic, and inclusive review of the performance appraisal system. The objectives of the review were to examine what works, what does not, and what could be done better. Data collected included a comprehensive content analysis of existing data, the results of 28 focus groups of employees, and 53 semistructured interviews with managing directors and a random sample of SES/SL, Band III, and field office managers. In addition, GAO conducted an agencywide, Web-based survey of employees, with an overall survey response rate of 67 percent. Data from all of these sources were synthesized into a final report issued in November 2009 with extensive findings and short- and long-term recommendations for improving GAO's performance appraisal system. Planning for implementing the recommendations is in progress with over 50 percent of the short-term recommendations already under way. GAO has also

established a steering committee composed of managers and employees including representatives from IFPTE Local 1921 to guide the direction of a more extensive contractor review of the current system to address the findings from the systematic review of the appraisal system.

GAO continues to provide continuing training on the performance appraisal system and the roles and responsibilities of staff, supervisors, and managers. To ensure that all designated performance managers are knowledgeable about appraisal policies, procedures, and practices, GAO required all raters to take online training prior to preparing fiscal year 2008 ratings. Each subsequent year, all new designated performance managers must take online training. GAO also continues to expand staff, supervisory and managerial training and development to include offerings in how to give and receive feedback.

Lastly, during this period, GAO instituted consistent practices across the organization with regard to the review of ratings. Designated performance managers present their preliminary ratings of staff to all Senior Executive Service reviewers. This panel helps to ensure that all raters are consistently applying the rating criteria.

Section 10: Consultation

Section 10 requires us to consult with any interested groups or associations representing officers and employees of GAO when implementing changes brought about by this Act. Typically, in implementing changes such as those in this Act, we have consulted with interested groups and associations within GAO, provided them with draft policies and regulations, and obtained input from them on suggested clarifications or changes to the policies and regulations. We carefully considered this input and have incorporated it, when appropriate, before distributing policies and regulations for comment to all employees.

In 2007, GAO Band I and Band II analysts, auditors, specialists, and investigators, and staff in the Professional Development Program, elected to be represented by a union and established IFPTE, Local 1921. In 2008, GAO and IFPTE, Local 1921, reached an interim collective bargaining agreement. GAO is committed to continuing to work constructively with IFPTE, Local 1921, to finalize and implement a master term collective bargaining agreement.

GAO management actively consults with IFPTE Local 1921; the Employee Advisory Council-which is comprised of headquarters and field administrative, professional, and support staff (APSS), as well as Assistant

Directors in analyst and analyst-related positions, and attorneys-and the Diversity Advisory Council-comprised of diversity representatives of IFPTE, Local 1921, and employee liaison groups for employees who are disabled, Asian-American, African-American, Hispanic, veterans of the armed forces, people over 40, and advocates for nondiscrimination based on sexual orientation or gender identity-to hear and consider employee needs, concerns, and suggestions as they arise. IFPTE, Local 1921; the Employee Advisory Council; and the Diversity Advisory Council (DAC) are the primary mechanisms for fostering collaboration and open communication between GAO management and staff.

GAO provided all employees with the opportunity to comment on draft orders concerning proposed policies and regulations prior to publication in final form. These steps were taken in regard to the promulgation of all policies and regulations implementing the provisions of the Human Capital Reform Act of 2004. The Executive Committee considered all input from Employee Advisory Council and Diversity Advisory Council members and other GAO employees before implementing any changes.

Assessments Furnished by Groups Representing Employees

Although GAO specifically solicited comments from the PAB, IFPTE Local 1921, the DAC, and the EAC, only the PAB responded to this request with comments. These are included in appendix I. IFPTE Local 1921 informed GAO management that it will provide its input directly to Congress.

Conclusion

The flexibilities provided in the GAO Human Capital Reform Act of 2004, along with the human capital flexibilities provided in the 2002 and 2008 Acts, have provided GAO with the ability to attract and retain high caliber employees so that GAO can meet its responsibilities to the Congress and the American people.

Recommendations for Legislative Change

GAO is making no recommendations for legislative change.

Appendix I: Comments from the Personnel Appeals Board



Personnel
Appeals
Board

May 13, 2010

Patrina Clark
Chief Human Capital Officer
U.S. Government Accountability Office
441 G St. NW
Washington, DC 20548

Dear Patrina:

Thank you very much for the opportunity to comment on the effectiveness of GAO's human capital flexibilities under P.L. No. 108-271 (GAO Human Capital Reform Act of 2004). Because the Personnel Appeals Board has been and may again be called upon to adjudicate matters deriving from the Human Capital Reform Act, it is not appropriate to comment at this juncture.

Faced with a similar request in 2003 for comments on the GAO Personnel Flexibilities Act of 2000, the Board responded through its General Counsel with an analysis of the 2000 Act's provisions and with recommendations related to the implementation of those provisions. At that time, neither the Board nor its General Counsel had received any charges derived from the 2000 statute.

Two factors distinguish the situation today from that in 2003. First, both the PAB Office of General Counsel and the Board itself have already encountered cases based upon the Human Capital Reform Act. Indeed, a number of consolidated Petitions derived from that Act are pending before the Board. Further, the General Counsel position at the Board is currently vacant; we expect to have a new General Counsel in place by the end of June.

Given the ongoing litigation and the vacancy in the General Counsel position, the Board has concluded that the only appropriate form of comment is to have the staff of the General Counsel's Office compile a summary of the case impact on that Office caused by the Human Capital Reform Act. That summary is attached.

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**Appendix I: Comments from the Personnel
Appeals Board**

Again, thank you for seeking input from the Personnel Appeals Board on this important review of effectiveness of the Human Capital Reform Act.

With best wishes,



Beth Don
Executive Director

attachment

Appendix I: Comments from the Personnel
Appeals Board



Personnel
Appeals
Board

Office of General Counsel

MEMORANDUM

TO: BETH L. DON
EXECUTIVE DIRECTOR

FROM: FRANK J. MACK *FJM*
SENIOR TRIAL ATTORNEY

DATE: May 13, 2010

SUBJECT: GAO'S HUMAN CAPITAL REFORM ACT OF 2004

Pursuant to your request of May 10, 2010, this memorandum is to inform you that as of today's date, there have been 278 charges filed with this office that arose out of GAO's Human Capital Reform Act of 2004. Out of the 278 charges filed, there were a total of 49 Petitions filed with the PAB.

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