

# Rules and Regulations

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## GENERAL ACCOUNTING OFFICE

### 4 CFR Chapter I

#### Claims, Waiver of Claims and Transportation Issues

**AGENCY:** General Accounting Office.

**ACTION:** Final rule.

**SUMMARY:** The General Accounting Office (GAO) is removing regulations which relate to the settlement of claims, settlement of accounts of deceased and incompetent individuals, transportation transactions, and waiver of claims for erroneous payments. The Legislative Branch Appropriations Act of 1996 transferred these functions to the executive branch, but these regulations were kept for a transition period. This final rule eliminates these regulations as unnecessary because the functions are no longer carried out by GAO but have been transferred to other federal agencies.

**DATES:** Effective May 25, 2000.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

#### Claims Settlements Authority

In Subchapter C (Claims; General), Parts 30-36 set out the Comptroller General's regulations for the settlement of (1) claims and (2) accounts of certain deceased and incompetent individuals. The Legislative Branch Appropriations Act of 1996, Public Law 104-53, sec. 211(a), 109 Stat. 514, 535 (1996), transferred certain of the Comptroller General's authority to settle claims and accounts to the Director of the Office of Management and Budget (OMB), and provided for the Director of OMB to delegate this authority to other appropriate agencies. The Director of OMB delegated his authority to several executive branch agencies. Subsequently, the General Accounting

Office Act of 1996, Public Law 104-316, 110 Stat. 3826 (1996), set out in detail, among other things, the authority given to the Director of OMB and other heads of agencies to settle the claims and accounts formerly subject to settlement by the Comptroller General. Section 202(n) of the GAO Act of 1996 made a conforming amendment to 31 U.S.C. 732 to set out the executive branch agencies to whom the Director of OMB delegated the authority to settle claims formerly within the authority of the Comptroller General. Additionally, section 103(c) of the GAO Act of 1996 transferred the Comptroller General's authority to promulgate regulations with respect to the designation of beneficiaries for certain deceased and incompetent persons to various specified officials in the three branches of government.

The Director of OMB delegated to the Director of the Office of Personnel Management (OPM) the authority to settle claims against the United States involving Federal employee compensation and leave, deceased employees' compensation, and proceeds of canceled checks payable to deceased beneficiaries. Individuals with these types of claims should no longer contact GAO but should contact OPM.

The Director of OMB delegated to the Administrator of General Services the authority to settle claims involving expenses incurred by Federal civilian employees for official travel and transportation and for relocation expenses incident to transfers of official duty station. Individuals with these type of claims should no longer contact GAO but should contact the General Services Administration.

OMB delegated to the Secretary of Defense the authority to settle claims for military pay, allowances, travel, transportation, retired pay, and survivor benefits as well as claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense. Individuals with these types of claims should no longer contact GAO but should contact the Department of Defense.

Accordingly, the Comptroller General no longer has the authority to prescribe the regulations in 4 CFR parts 30-32, regarding claims settlement, and parts 33-36, regarding settlement of accounts

for certain deceased and incompetent persons.

#### Transportation

Sections 125 and 127(d) of the GAO Act of 1996, transferred the Comptroller General's authority to promulgate regulations for transportation transactions for use of U.S. flag carriers pursuant to the Merchant Marine Act of 1936, 46 U.S.C. 1241a, and the Fly America Act, 49 U.S.C. 40118(c), to the Administrator of General Services. Accordingly, the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 52. With the removal of part 52, there is no further need for 4 CFR part 51.

Section 202(o)(2) of the GAO Act of 1996 transferred the Comptroller General's authority to promulgate regulations governing the review of GSA transportation settlement actions pursuant to 31 U.S.C. 3726(g)(1) to the Administrator of General Services. Accordingly the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 53.

Section 202(o)(1) of the GAO Act of 1996, 110 Stat. 3826, 3844 (1996), removed the Comptroller General's authority to jointly prescribe standards, with the Secretary of Treasury, for advance payment of charges for transportation services pursuant to 31 U.S.C. 3726(f). Accordingly, the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 56.

Given the above discussion, there is no long current need for a subchapter devoted to transportation (Subchapter D).

#### Waiver

Sections 103 of the GAO Act of 1996 transferred the Comptroller General's authority to waive claims against civilian employees arising out of erroneous payments of pay and allowances, travel, transportation and relocation benefits to the head of an agency with respect to a legislative branch employee, or to the Director of OMB with respect to any other agency or employee. Further, the Comptroller General's authority over such claims against members of the military and the National Guard was transferred to the Director of OMB by sections 105(b) and 116 of the GAO Act of 1996. The Director of OMB has delegated his authority to the head of the agency that

made the erroneous payment. Accordingly the Comptroller General no longer has authority to promulgate the regulations at 4 CFR parts 91 and 92 (Subchapter G—Standards for waiver of claims for erroneous payments of pay and allowances, and of travel, transportation, and relocation expenses and allowances). Individuals seeking a waiver should no longer contact GAO but should direct a request for waiver to their employing agency.

Accordingly, as set forth in the preamble and under the authority of Public Law 104–53, sec. 211(a), 109 Stat. 535, and secs. 103(c), 103(d), 105(b), 116, 125, and 127 of Public Law 104–316, 110 Stat. 3826, GAO amends 4 CFR Chapter I as follows:

1. Subchapter C, consisting of parts 30 through 36, Subchapter D, consisting of parts 51 through 53 and part 56, and Subchapter G, consisting of parts 91 through 93, are removed and reserved.

Dated: May 19, 2000.

**Robert P. Murphy,**  
*General Counsel, General Accounting Office.*  
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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 317

RIN 3206–A158

#### Employment in the Senior Executive Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations governing career and limited appointments to the Senior Executive Services (SES). The amended regulations emphasize the importance of executive leadership qualifications in agency SES selection criteria, strengthen merit principles, and increase SES staffing flexibilities to help agencies recruit the brightest and most diverse executive cadre possible.

**EFFECTIVE DATE:** June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Daliza Salas (202–606–1274, email [desalas@opm.gov](mailto:desalas@opm.gov)) or Marcia Staten (202–606–1832, email [mkstaten@opm.gov](mailto:mkstaten@opm.gov)).

**SUPPLEMENTARY INFORMATION:** The success of the Senior Executive Service (SES) rests on the ability of agencies to employ highly competent, motivated, and diverse professionals dedicated to

public service who have the requisite leadership expertise to meet the challenges facing the Government and the Nation now and into the future.

The final regulations and accompanying guidance to agencies are an outcome of extensive discussions with stakeholders about improving the SES. These discussions challenged stakeholders to think about the future and whether the way we develop, select, and manage the SES cadre produces the kind of executives the Government needs to meet the leadership challenges of the 21st century. Although stakeholder views varied widely, there was consensus on many ideas, including increasing agency flexibilities for SES staffing. Specifically, there was general support for improving the SES selection process to ensure that leadership and executive qualifications are the major selection criteria, reducing the paperwork burden on applicants and agencies, considering options for delegating QRB administration, and increasing agency authority to make limited terms appointments.

On July 30, 1999, OPM published a proposed rule in the **Federal Register** (64 CFR 41334) to amend the regulations governing career and limited appointments to the Senior Executive Service (SES) and Qualifications Review Board (QRB) certification. We received 24 written comments during the comment period: 16 from departments and agencies, 4 from professional organizations, and 4 from individuals. There was broad support for the changes, although some respondents had serious reservations about the proposal to delegate QRB administration to individual agencies via delegation agreement.

In addition to these regulatory changes, we have modified internal procedures and other requirements to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process. These modifications provide alternative methods for documenting executive qualifications for presentation to QRBS and improved guidance and instructions to QRBS to ensure that members fully understand their role and responsibilities. We have also suggested ways for agencies to improve their recruitment and selection procedures. OPM's administrative modifications and the suggested changes at the agency level will help agencies and candidates focus on substance rather than process and format, and they reinforce the goal of achieving a highly-qualified, diverse SES corps. We have summarized these procedural modifications and

flexibilities in supplemental guidance to agencies.

#### Emphasis on Executive Leadership

The key characteristic of an SES position is executive leadership, and therefore selection criteria should focus primarily on leadership qualifications. Further, the law at 5 U.S.C. 3393 requires agency Executive Resources Boards to conduct the merit staffing process for career entry into the SES, including reviewing the executive qualifications of each career SES candidate.

During discussions on improving the SES, stakeholders confirmed that, in many agencies, the selection criteria focuses mainly on candidates' professional or technical qualifications, and therefore consideration of executive qualifications is not getting the full attention intended by the SES legislation. To strengthen that focus and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes, the proposed regulations amended the current provisions to incorporate the statutory requirements.

Most commenters supported the proposal. One agency felt there was not pressing need to revise the current wording, as what constitutes SES qualifications changes over time with new studies and emerging approaches and theories. We do not agree, given that the statute requires selection based on executive qualifications and our findings that many agencies are not considering executive expertise in their SES selections. An August 1999 survey of SES members reinforces these findings. Only 56 percent of the senior executives responding to the survey said that their agencies strongly emphasize executive qualifications in evaluating applications and use them as key factor in determining who is selected for the SES. Further, our research tells us that the emphasis on executive skills and expertise is even more critical than in the past and will continue to be of primary importance in the future. The survey findings supported this as well. When asked to rank qualifications for SES positions now and in five years, respondents rated executive qualifications as more important than technical qualifications today and even more important in five years.

One agency, while not opposing the proposal, was concerned that it might lead to overly prescriptive procedural requirements. This is not our intent. Agencies will continue to have the latitude to design merit staffing processes to meet their unique mission requirements, within the framework of