



PERSONNEL APPEALS BOARD
U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Annual Report

2023

JUSTICE

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BIOGRAPHIES OF BOARD MEMBERS



JULIA AKINS CLARK was appointed to the Board in March 2022 and elected as Board Chair in October 2022. Until her retirement from federal service, Ms. Clark was the Deputy General Counsel for the Office of Congressional Workplace Rights from 2017- 2019, and was responsible for conducting investigations, making enforcement recommendations, and litigating enforcement actions to ensure compliance with the labor law provisions of the Congressional Accountability Act. She also served two terms (2009-2017) as the Federal Labor Relations Authority's General Counsel, leading that agency's independent investigative and prosecutorial component. From 1988-2009, Ms. Clark represented the International Federation of Professional and Technical Engineers, AFL-CIO, a labor organization representing public and private sector employees in the United States and Canada and served as the organization's General Counsel from 1995-2009. Ms. Clark began her legal career in the U.S. Department of Justice, Antitrust Division, where she served as an Honors Program Trial Attorney from 1980-1985. Ms. Clark earned her Juris Doctorate from the American University, Washington College of Law in 1980, and her bachelor's degree in Political Science from Oklahoma Baptist University in 1977.



BARBARA S. FREDERICKS was appointed to the Board in January of 2019. In October 2021, Ms. Fredericks was elected Vice Chair of the Board and continues to hold that position. She is a member of the Montgomery County, Maryland Merit System Protection Board. She is also on the faculty of the Graduate School USA in Washington, D.C., teaching courses on topics of administrative and employment law. She is a consultant on the development of rule of law programs and civil service systems. Ms. Fredericks previously served as Assistant General Counsel for Administration at the U.S. Department of Commerce, responsible for advising management on labor issues and transparency. She also was the Department's chief ethics officer. Ms. Fredericks served on the Montgomery County Ethics Commission and taught a course on Anticorruption Law and Practices at the Georgetown University Law Center. Earlier in her career, she served as Deputy Assistant General Counsel for Administration at the Department of the Treasury, and as a senior labor counsel at the U.S. Postal Service and the National Labor Relations Board. Ms. Fredericks graduated from Boston University School of Law, after obtaining a B.A. at Case Western Reserve University.



CAROLE W. WILSON was appointed to the Board in April 2019. Before being appointed to the Board, Ms. Wilson served as an Administrative Judge (unfair labor practice, representation, and mediation matters) for the District of Columbia Public Employee Relations Board for five years. Previously, Ms. Wilson served in various supervisory attorney positions at the Department of Housing and Urban Development, as Associate General Counsel for Litigation, Associate General Counsel for Finance and Regulatory Enforcement, Associate General Counsel for Fair Housing, Associate General Counsel for Human Resources Law, Senior Counsel for Equal Employment Opportunity and Senior Attorney for Administrative Law from 1989-2011. She also served as an Associate General Counsel for the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers from 1978-1989, specializing in pay equity cases (including litigation before the Supreme Court), and co-founding the National Committee for Pay Equity. Ms. Wilson was the Executive Assistant to the Assistant Secretary for Employment Standards, U.S. Department of Labor, 1977-1978, where she worked on labor law reform for the Secretary of Labor. She also served as an Assistant General Counsel at the National Labor Relations Board for ten years. Ms. Wilson earned her J.D. from George Washington University Law School, where she was Managing Editor of the George Washington International Law Review, and her Bachelor's degree in Political Science from Vassar College (with distinction on her senior thesis), and where she founded the Vassar Civil Rights Committee.



KEITH D. GREENBERG was appointed to the Board in July 2022. Mr. Greenberg is an arbitrator and mediator of private, public, and federal sector labor and employment disputes. He is a member of the National Academy of Arbitrators and serves on its Board of Governors. Mr. Greenberg serves as the impartial Labor Relations Administrator – responsible for resolving unfair labor practice disputes and overseeing the collective bargaining process – for the Washington Suburban Sanitary Commission; for the city of Richmond, Virginia; and for Loudoun County, Virginia. Among other professional affiliations, he serves as an officer of the Society of Federal Labor and Employee Relations Professionals (SFLERP) and is a past President of the Maryland Chapter of the Labor and Employment Relations Association. Mr. Greenberg received a Bachelor of Science degree from Cornell University’s School of Industrial and Labor Relations, and a J.D. from the University of Michigan Law School.



MAXANNE R. WITKIN was appointed to the Board in February 2023.

She was formerly the Department of Veterans Affairs' Senior Executive responsible for EEO complaint adjudication. During her 11-year tenure, Ms. Witkin oversaw the issuance of over 13,000 decisions, with a reversal rate of less than one percent. She also served as a Chief Administrative Judge in the Merit Systems Protection Board's Denver field office and was the first General Counsel of the Department of

Defense school system. Earlier in her career, she supervised the Department of Navy's EEO complaints processing program and was a staff attorney and litigator in the Department of the Navy's Office of General Counsel. Her professional awards include the Department of Veterans Affairs' Distinguished Career Award, the Department of Navy's Meritorious Civilian Service Award and the Department of Defense's Exceptional and Meritorious Civilian Service Awards. Ms. Witkin is a graduate of Syracuse University and holds a Master of Public Administration and law degree from George Washington University. She currently serves on the City of Alexandria Commission for Women where she provides guidance and advice to local and state officials on legislation and public policies impacting women.

PERSONNEL APPEALS BOARD

Julia A. Clark	<i>Chair</i>
Barbara S. Fredericks	<i>Vice Chair</i>
Carole W. Wilson	<i>Member</i>
Keith D. Greenberg	<i>Member</i>
Maxanne R. Witkin	<i>Member</i>

PERSONNEL APPEALS BOARD STAFF

Stuart G. Melnick	<i>Executive Director</i>
Vanessa Gallagher	<i>Director, EEO Oversight</i>
Kevin P. Wilson	<i>Solicitor</i>
Molly Dennison*	<i>Senior Attorney</i>
Patricia V. Reardon-King	<i>Clerk of the Board</i>
Brian Nuterangelo	<i>General Counsel</i>
Mariama Liverpool	<i>Senior Trial Attorney</i>
William Yon**	<i>Senior Trial Attorney</i>
Darian C. Jackson	<i>Paralegal Specialist</i>

*Molly Dennison joined the PAB in February 2023.

**William Yon joined the PAB/OGC in March 2023.

CHAPTER 1: THE PERSONNEL APPEALS BOARD

Section 1: About the PAB

Under the General Accounting Office Personnel Act of 1980 (GAOPA),¹ the Personnel Appeals Board (PAB or Board) is charged with adjudicating disputes, issuing decisions, and ordering corrective or disciplinary action, when appropriate, in cases alleging prohibited personnel practices, discrimination, prohibited political activity, negotiability, and unfair labor practices involving employees of the U.S. Government Accountability Office (GAO or the Agency), a Legislative branch agency.² The GAOPA also authorizes the Board to oversee GAO's employment regulations, procedures, and practices relating to anti-discrimination laws.³

The PAB's authority combines the adjudicatory functions of its Executive branch counterparts: the U.S. Merit Systems Protection Board (MSPB);⁴ the U.S. Equal

¹ Pub. L. No. 96-191 (Feb. 15, 1980). In July 2004, the Agency's name changed from the U.S. General Accounting Office to the U.S. Government Accountability Office. Pub. L. No. 108-271 (Jul. 7, 2004).

² 31 U.S.C. § 753.

³ 31 U.S.C. § 732(f)(2)(A).

⁴ The MSPB was "created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems." 5 C.F.R. § 1200.1. The PAB has similar jurisdiction to hear and decide matters alleging prohibited personnel practices under 5 U.S.C. § 2302(b). 4 C.F.R. § 28.2(b)(2). The PAB also has similar review and study authority over GAO with regard to assessing the EEO impact of GAO's actions and/or inactions. See *supra*, n.3.

Employment Opportunity Commission (EEOC);⁵ and the U.S. Federal Labor Relations Authority (FLRA).⁶ The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of its Executive branch equivalents, which are the Office of Special Counsel (OSC)⁷ and the EEOC.

The GAOPA provides for a Board comprised of five Members⁸ who serve five-year, staggered, nonrenewable terms. A new Board member is appointed each year, which promotes continuity of Board operations. GAO conducts an annual scheduled Board member recruitment process to minimize, to the extent possible, the duration of Board vacancies.

Candidates for the Board are sought through a process that includes advertising and recruitment efforts that focus on organizations whose members are experienced in the adjudication or arbitration of personnel and labor matters. Applicants are expected to have expertise or litigation experience in the area of federal personnel law,

⁵ The EEOC ensures that personnel actions that affect employees or applicants for employment in the Executive branch "shall be made free from any discrimination based on race, color, religion, sex (including pregnancy), or national origin." 42 U.S.C. § 2000e-16(a) (Title VII). In addition, the EEOC enforces the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, as amended; and the Genetic Information Nondiscrimination Act, 42 U.S.C. § 2000ff *et seq.* The PAB has similar jurisdiction to hear and decide cases alleging discrimination. 4 C.F.R. §§ 28.95-28.99.

⁶ The FLRA protects the "rights of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them." 5 U.S.C. § 7101. The PAB also has the authority to conduct elections, certify collective bargaining representatives and to adjudicate unfair labor practices. 4 C.F.R. §§ 28.110-28.124.

⁷ The OSC investigates and prosecutes allegations of fourteen prohibited personnel practices, with an emphasis on protecting federal whistleblowers at GAO. 5 U.S.C. §§ 1214, 2302(b). The Board's General Counsel investigates and prosecutes allegations of prohibited personnel practices at GAO. 4 C.F.R. § 28.12.

⁸ Member will be referenced throughout the report as Board Member, Administrative Judge, or Presiding Member.

demonstrated ability to arbitrate or adjudicate complex legal matters, or experience at a senior level position in resolving complex legal matters.

GAO establishes a screening panel to review applications for Board Member positions and identify the best qualified candidates.⁹ An interview panel composed of some of the screening panel members, including one employee group member selected by the Employee Advisory Council representatives and one selected by the representatives of the GAO Employees Organization, conducts the personal interviews and reports its results to the full screening panel. The screening panel recommends one or more of the candidates to the Comptroller General, who makes an appointment to the Board after considering the recommended candidates. The Board members elect their own Chair and Vice Chair.

Section 2: Board Staff

The Board's Executive Director manages Board staff and Board operations. The Board's Solicitor and Senior Staff Attorney advise Board members and the Executive Director on legal matters and provide procedural advice to litigants before the Board. The Board's Office of Equal Employment Opportunity (EEO) Oversight reviews equal

⁹ The voting members of the screening panel are three senior management officials designated by the Comptroller General. The nonvoting members are one representative from the Human Capital Office, one representative selected by the Attorney Advisory Board, two representatives selected by the Comptroller General's Employee Advisory Council, and four representatives selected by the GAO Employees Organization, IFPTE, Local 1921. GAO Order 2300.4, Personnel Appeals Board Vacancies, Ch. 1, ¶ 7 (Aug. 24, 2022).

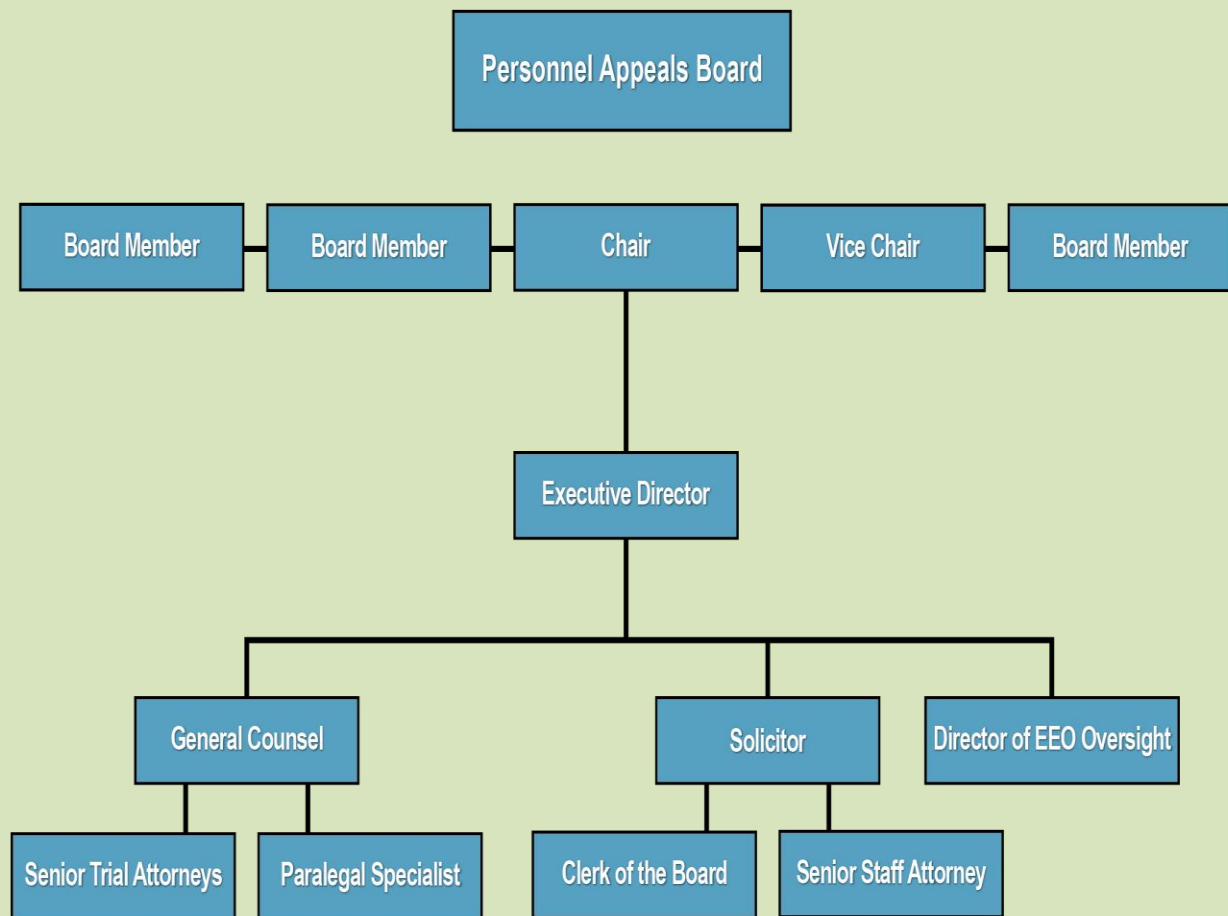
employment opportunity practices and procedures at GAO and issues evaluative reports that contain the Board's findings, conclusions, and recommendations to the Agency.¹⁰ The Clerk of the Board is responsible for receiving filings, distributing Board orders and decisions, and maintaining the Board's official records.

The PAB Office of General Counsel (PAB/OGC) investigates charges of prohibited personnel practices and unfair labor practices filed with its office and, if there is a reasonable basis to believe that a violation of law has occurred, offers to represent the charging party in litigation before the Board. The PAB General Counsel (PAB/GC) supervises the attorneys and paralegal in the conduct of investigations and litigation matters. The Senior Trial Attorneys investigate charges, consult with the General Counsel, and represent employees in litigation before the Board. The Paralegal Specialist assists the attorneys in their investigations and litigation matters.

Figure 1 on the following page shows the organizational make-up of the Personnel Appeals Board.

¹⁰ 31 U.S.C. § 732(f)(2)(A); see 4 C.F.R. §§ 28.91 and 28.92.

Figure 1: PAB Organizational Chart



CHAPTER 2: THE BOARD PROCESS

The Board's litigation process is explained in detail in the *Guide to Practice before the Personnel Appeals Board (Guide to Practice)*.¹¹ A brief summary follows.

An employee, a group of employees,¹² a labor organization, or an applicant for employment at GAO may file a Petition with the Board seeking review of an Agency action or inaction that adversely affected them. Such a Petition may arise from:

(1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other covered labor-management relations issue; (4) an action involving prohibited discrimination;¹³ (5) a prohibited political activity; and (6) any other

¹¹ The *Guide to Practice* is available on the PAB's website: <https://pab.gao.gov/procedural-guides/>.

¹² The Board can hear and decide cases filed by a group of petitioners as well as actions filed on behalf of a class.

¹³ The complete procedures for filing a discrimination complaint with the Agency may be found in GAO Order 2713.2, Discrimination Complaint Resolution Process (Dec. 14, 2022) (hereafter GAO Order 2713.2). At GAO, the discrimination complaint process begins when the employee consults with a civil rights counselor in the Agency's Office of Opportunity and Inclusiveness (O&I).

Such contact must occur within 45 calendar days of the alleged incident. If the matter cannot be resolved, the employee may file a formal written complaint with O&I within 15 days of receipt of notice of the right to file a complaint from the counselor. The Director of O&I can either accept or dismiss the complaint. (See GAO Order 2713.2, Ch. 3, ¶ 3 for reasons why a complaint may be dismissed).

If the complaint is accepted, it is investigated and a report of the investigation is submitted to the Director of O&I. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who issues a final Agency decision.

personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

In addition to its litigation activity, the Board is authorized to conduct representation proceedings at GAO, including determining appropriate bargaining units of GAO employees, conducting elections to determine whether employees in any such units wish to select a labor organization to represent them in collective bargaining, and certifying an organization so selected as the designated exclusive bargaining representative.¹⁴ The Board also plays a role in resolving impasses in collective bargaining, as well as in resolving certain negotiability issues.¹⁵

Section 1: Filing with the PAB Office of General Counsel

At GAO, an employee, group of employees, or an applicant for a job may file a charge with the PAB Office of General Counsel to initiate the Board process.¹⁶ The

An individual may seek relief from the PAB by filing a charge with the PAB Office of General Counsel within 30 days of receipt of GAO's final decision or dismissal of the complaint in whole or in part (GAO Order 2713.2, Ch. 4, ¶ 1).

An individual may also bring their case forward to the PAB when more than 120 days have elapsed since the complaint was filed with O&I and GAO has not issued a final decision.

The PAB's review is *de novo*, which means that the PAB will review all the facts and issues and render a decision independent of the final Agency decision, if there is one. Alternatively, an individual may pursue a discrimination complaint by filing a civil action in the appropriate Federal district court instead of filing a charge with the PAB Office of General Counsel.

¹⁴ The Board's *Guide to Labor-Management Relations Practice* is available at <https://pab.gao.gov/procedural-guides/>.

¹⁵ See GAO Order 2711.1, Labor-Management Relations (Aug. 14, 2013); 4 C.F.R. §§ 28.110–28.124.

PAB/OGC has the authority to investigate charges. The PAB/OGC also may represent employees where the General Counsel finds reasonable grounds to believe a charging party's rights have been violated regarding alleged violations of law over which the Board has jurisdiction.

A charge that does not involve discrimination may be filed with the PAB/OGC within 30 calendar days after the effective date of the underlying personnel action or within 30 calendar days after the charging party knew, or should have known, of the action.

An individual may file a charge involving alleged discrimination with the PAB/OGC either within 30 calendar days after receipt of the Agency's Office of Opportunity and Inclusiveness's (O&I's) rejection of the complaint in whole or in part, within 30 calendar days after receipt of the Agency's final decision on the complaint, or when more than 120 days have elapsed since the complaint was filed and O&I has not issued a final decision.¹⁷

Once an individual charge is filed with the PAB/OGC, the charging party is advised of their rights and informed of the Board's mediation program.¹⁸ The PAB/OGC then conducts an independent investigation of the matters raised in the charge to determine whether there are reasonable grounds to believe that the employee's rights under the GAOPA have been violated. This process may include obtaining documents

¹⁶ See <https://pab.gao.gov> under the link labeled "How to File."

¹⁷ GAO Order 2713.2, Ch. 4, ¶ 1.

¹⁸ *A Practice Guide to Mediation of Disputes at the Personnel Appeals Board* is available at <https://pab.gao.gov/procedural-guides/>.

and taking oral statements from persons with knowledge of the circumstances that are involved in the allegations.

Following the investigation, if no settlement occurs, the PAB/OGC issues a Right to Petition Letter notifying the charging party that the investigation has been completed and that the individual has the right to file a Petition with the Board seeking a review of the Agency action or inaction. The PAB/OGC also issues to the charging party alone a confidential Statement of Investigation that includes the results of the investigation and the PAB/OGC's conclusions regarding the legal and factual issues.

If the General Counsel concludes that reasonable grounds exist to believe that a violation of the law has occurred, the General Counsel will offer to represent the charging party in an evidentiary hearing before the Board at no expense to the employee. If the offer of representation is accepted, the PAB/OGC assumes responsibility for the entire case even if the employee has retained private counsel.

If the PAB General Counsel concludes that there are no reasonable grounds to support a claim, the charging party retains the right to file a Petition with the Board and request an evidentiary hearing. A Petitioner may appear *pro se* or retain private counsel before the Board.

Section 2: The Board Case Process

A Petitioner must file their case with the Board within 30 calendar days after service of the Right to Petition Letter from the PAB/OGC. Alternatively, if 180 days have elapsed from the filing of a charge with the PAB/OGC and no Right to Petition Letter has been issued by the General Counsel, the employee may “opt out” of the investigation and file a Petition with the Board. An employee who chooses that route foregoes the opportunity to have the General Counsel present the case to the Board.

Upon receipt of a Petition, either a single Board member will be appointed to hear and decide the case, or the Board will hear the case *en banc* (by all Board members). The Petition to the Board is not a challenge to, or review of, the conclusions of the PAB/OGC, but a fresh consideration of the Petitioner’s claims. The Board does not have access to the investigative work and conclusions of the PAB/OGC; the Administrative Judge is not informed whether the PAB/OGC found reasonable grounds to believe a violation of law existed in a given case, unless a Petitioner voluntarily discloses this information.¹⁹

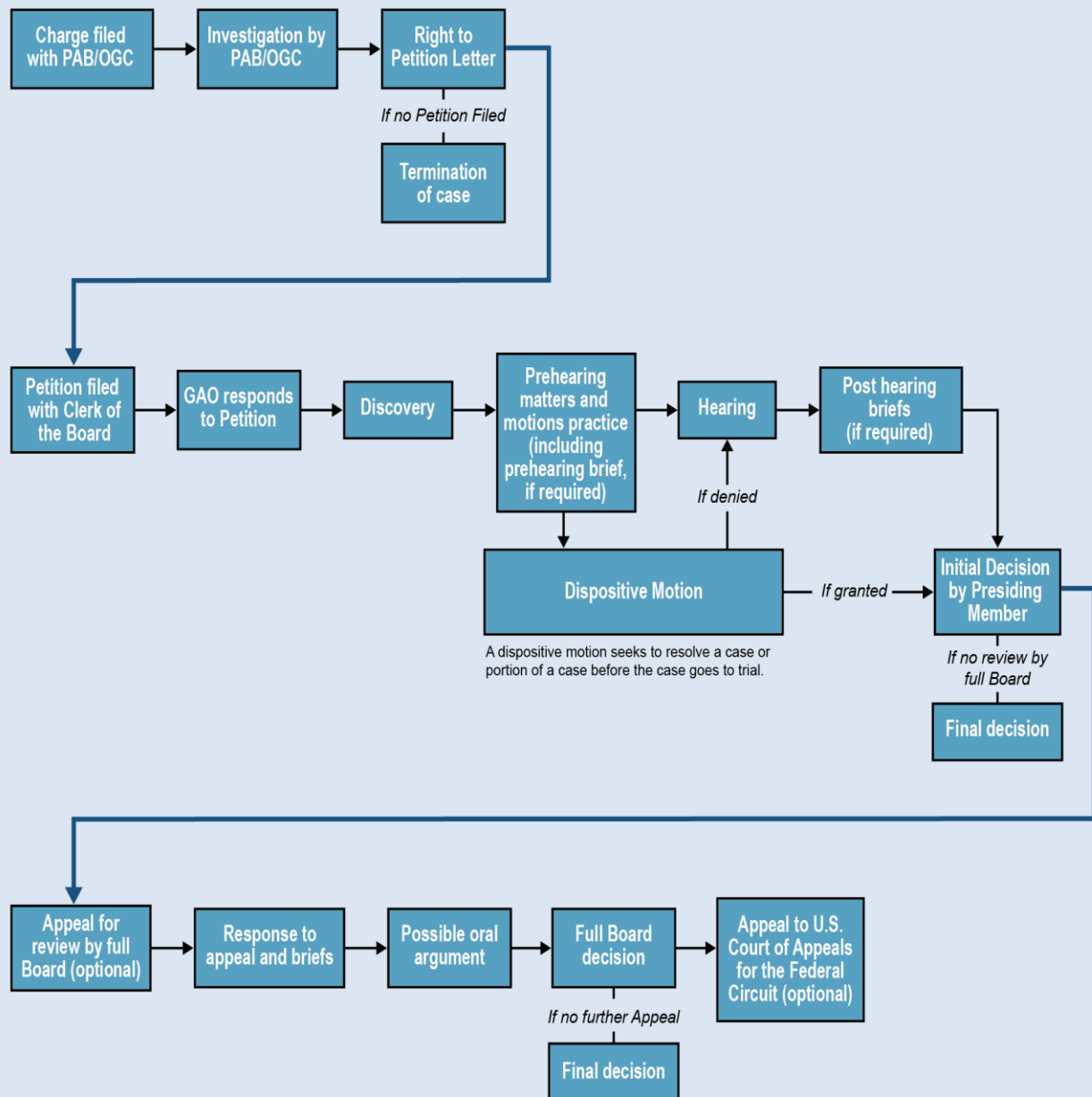
A Board Member’s initial decision is final unless: (1) the Board Member grants a party’s motion to reconsider; (2) the Board, on its own motion, decides to review the initial decision; or (3) a party timely appeals to the Board for full Board review.²⁰ Final

¹⁹ If a Petition is filed *pro se*, or Petitioner is represented by outside counsel, the Board has no information regarding why the PAB/OGC is not representing Petitioner. However, if Petitioner is represented by the PAB/OGC, presumably under the regulations, the General Counsel has determined that there is/are reasonable ground(s) for representation. In any event, Petitioner’s representation is not a factor in the Board’s final decision.

²⁰ See 4 C.F.R. § 28.87 for timelines to seek reconsideration or appeal of an initial decision.

decisions of the Board, with few exceptions, may be appealed to the U.S. Court of Appeals for the Federal Circuit.

The following chart describes the Board process from the time a charge is filed through the completion of all adjudication.



Section 3: PAB Office of General Counsel Authority

a. PAB/OGC Investigative Authority

As discussed above, the PAB/OGC is authorized to conduct independent investigations into matters raised and presented in charges filed by GAO employees or applicants for employment with GAO. This investigative authority represents the vast majority of investigations conducted by the PAB/OGC. In addition to investigations generated by individual or class charges, the PAB/OGC may initiate its own investigations, otherwise known as “corrective actions.”²¹ The PAB/OGC may initiate an investigation upon receipt of information that suggests that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. Under this procedure, if an individual brings an allegation to the attention of the PAB/OGC, that individual may remain anonymous.

If, during an informational investigation, the PAB/OGC determines that there are sufficient grounds to believe that a violation of the law has occurred, or is about to occur, the PAB/OGC will contact the Agency with its findings and recommendation. If the recommendation is not followed within a reasonable period, the PAB/OGC may petition the Board to order corrective action.

b. PAB/GC Stay Requests

The PAB/GC may request that the Board issue an *ex parte* temporary stay, not to exceed 30 calendar days, of any proposed personnel action that, in the PAB/GC’s

²¹ 4 C.F.R. § 28.131.

judgment, may constitute a prohibited personnel practice.²² If the Board Chair grants the request for an *ex parte* stay, the PAB/GC may later request either a further temporary stay or a permanent stay of the proposed action.²³ One or more further temporary stays may be granted if the Board Member designated by the Chair, or the Board *en banc*, determines that, under all of the circumstances, the interests of justice would be served by providing more time for the PAB/OGC to pursue the investigation.²⁴ In considering a request for a permanent stay, the Board will consider (1) whether the proposed personnel action arises out of a prohibited personnel practice and (2) the nature and gravity of any harm that could affect each side as a result of granting or denying the stay. The Board may grant or deny a further temporary stay request, or a permanent stay request based on the initial request and response alone, require further briefing and/or oral argument from the parties, or the Board may elect to conduct an evidentiary hearing on the request.

c. Disciplinary Proceedings

Following an investigation, the PAB/GC is authorized to file a complaint with the Board requesting disciplinary action against an employee when it is determined that such action is warranted. In such cases, the PAB/GC will provide a written complaint,

²² The Board's stay authority does not extend to any reduction in force action. 31 U.S.C. § 753(b).

²³ The purpose of a further temporary stay is to provide the PAB/OGC more time to conduct its investigation. The purpose of a permanent stay is to stay the personnel action until the Board can render a final decision. 4 C.F.R. § 28.133(b).

²⁴ 4 C.F.R. § 28.133(d).

containing a statement of supporting facts, along with supporting documentation to the Board.²⁵ The PAB/GC's authority includes the authority to request disciplinary action for engaging in prohibited political activity.

If, after a hearing, the Board decides discipline is warranted and punishment is appropriate, the Board may order removal, reduction in grade, debarment from GAO employment, reprimand, or an assessment of civil penalty not to exceed \$1,000.

Judicial review of the Board's final order may be obtained in the U.S. Court of Appeals for the Federal Circuit.

d. Labor-Management Relations

The Board's regulations and GAO Order 2711.1 (Labor-Management Relations), authorize the PAB/OGC to process representation petitions filed by a labor organization, an employee or group of employees, or GAO.²⁶ The PAB/OGC reviews the representation petition and coordinates with the parties before preparing a report for the Board, which may recommend approval of appropriate agreements reached during

²⁵ 4 C.F.R. § 28.132.

²⁶ Representation Petitions are initiated when a request is filed with the PAB/OGC who will process and handle the request. The petitions can be filed by the following: 1. A labor organization seeking to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization desiring to replace another labor organization that is currently an exclusive representative; 2. An employee or a group of employees (or an individual on his, her or their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit; 3. GAO, if it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by their current exclusive representative; 4. GAO or a labor organization currently recognized as an exclusive representative desiring the Board to clarify an earlier unit determination or certification; or 5. Any person seeking clarification of, or an amendment to, a certification then in effect or any other matter relating to representation.

consultation with the parties, dismissal of the petition as being without merit, or issuance of a notice of hearing to dispose of unresolved issues raised in the petition. In addition, the PAB/OGC is responsible for investigating unfair labor practice charges filed with the Board.

CHAPTER 3: ACTIVITY OF THE PAB

Section 1: Labor-Management Relations

In the year covered in this report, the Board did not receive any requests from the Union or a GAO Employee on any labor-management relations matters, *i.e.*, Statement of Policy or Guidance, Petition for Clarification, or any other issues.

Section 2: Employment Case Activity

a. Petitions before the Board

In calendar year 2023, there were two (2) employment matters before the Board. The first matter was a Petition pending from the previous calendar year. The second matter involved an *Ex Parte* Request for an Initial Stay of a personnel action. Both matters were resolved by the end of the calendar year.

In the Petition pending from a previous year, the Petitioner had filed a claim that alleged the Agency violated Title VII of the Civil Rights Act when it created a hostile work environment based on her race, color, and/or sex. The Agency filed a Motion to Dismiss in lieu of a Response to the Petition. The AJ denied the Motion to Dismiss on June 30, 2023. On November 1, 2023, the PAB/OGC filed a Notice of Withdrawal with the Board and requested the case be dismissed. The AJ granted the request and dismissed the case with prejudice on November 2, 2023.

b. Stay Requests

The PAB/GC filed one Request for *Ex Parte* Stay with the Board in 2023. The matter involved a request to stay an individual's termination from employment with the Agency, which was to be effective on July 25, 2023. The PAB/GC requested a thirty-day stay to allow time to investigate whether the Agency committed prohibited personnel practices when it decided to terminate the employee, based on a possible violation of 5 U.S.C. § 2302(b)(12). The initial Stay of the employee's termination was granted on July 24, 2023. The PAB/GC later filed a request for an additional 30-day extension of the initial Stay, and that extension was granted on August 22, 2023. No additional filings were made, and the Board closed the matter on October 24, 2023.

c. Other Activity

On November 24, 2023, the Board published a Proposed Rule in the Federal Register to amend its regulations. The Proposed Rule would give the PAB General Counsel authority to process certain Equal Employment Opportunity (EEO)-related retaliation claims that have not first undergone GAO's EEO process and to hold certain non-discrimination claims in abeyance if they are related to a claim pending in GAO's EEO process. The Proposed Rule also would update the definition of prohibited discrimination to be consistent with changes in nondiscrimination laws and replace gendered pronouns with gender-neutral ones throughout the Board's regulations. At the close of 2023, the Board was awaiting receipt of comments from interested parties, which were due January 23, 2024.

Section 3: PAB Office of General Counsel Activity

a. Case Activity

(1) Charges

From January 1, 2023, through December 31, 2023, five (5) charges were filed with the PAB/OGC. Three of the charges alleged more than one violation of law. The categories identified in Figures 3a and 3b list the different allegations presented in the charges filed with the PAB/OGC.

Figure 3a: Legal Allegations Presented in Charges - Prohibited Personnel Practices

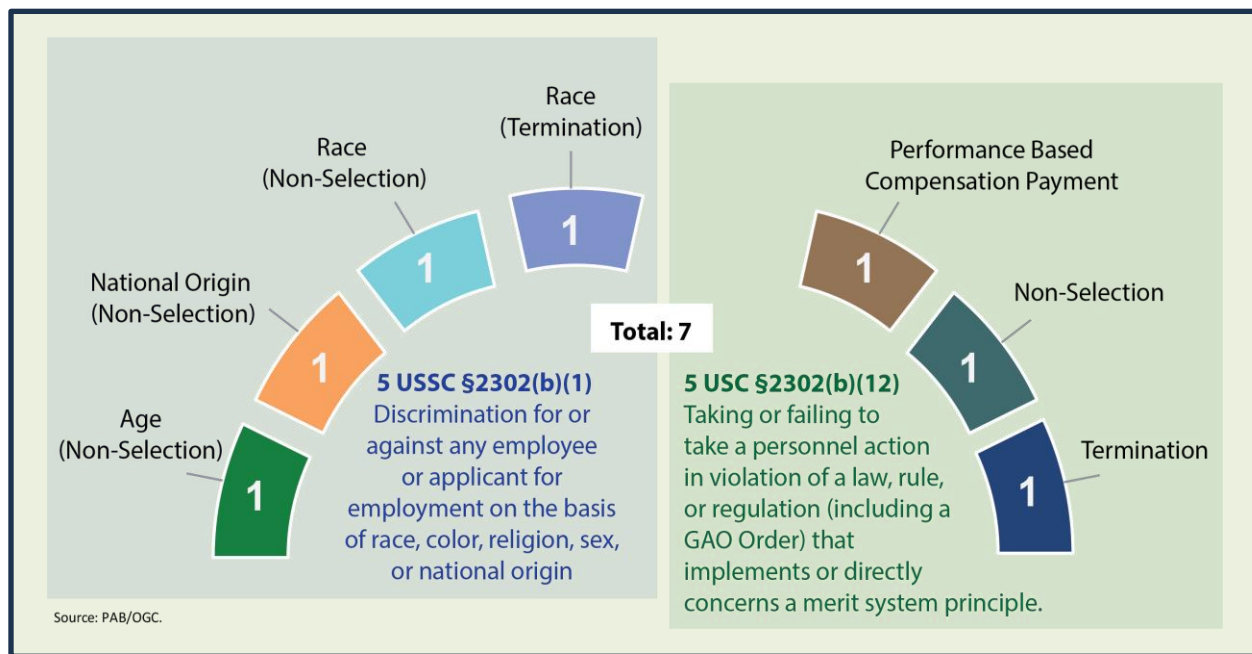
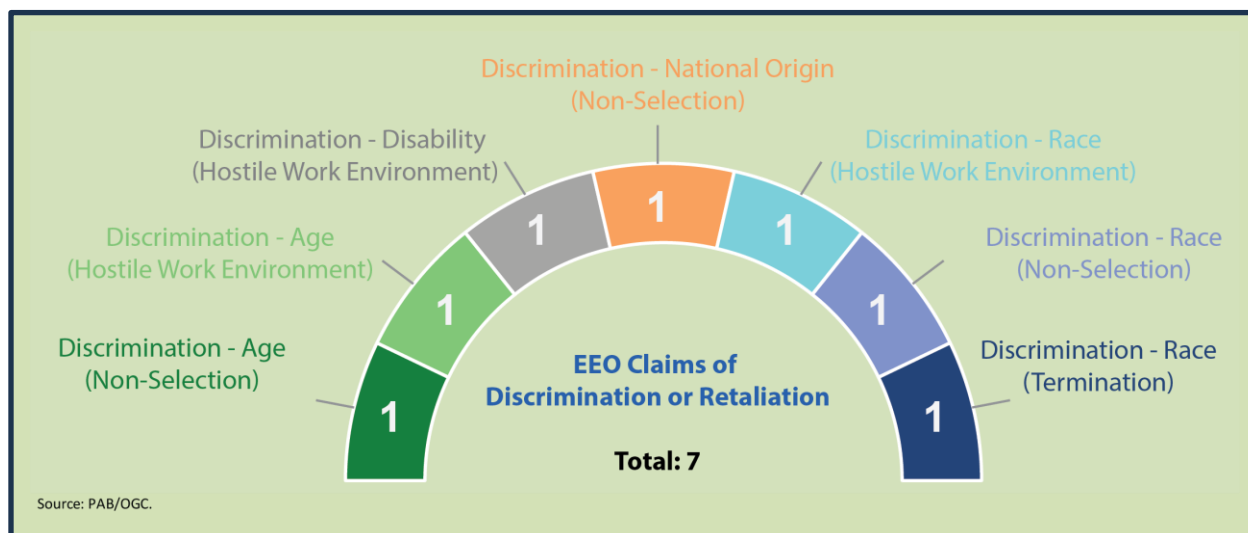


Figure 3b: Legal Allegations Presented in Charges - Discrimination or Retaliation



During 2023, the PAB/OGC had a total of ten (10) open cases, including investigation and litigation matters, on its case docket. By the end of the year, the PAB/OGC closed all ten (10) of the investigation and litigation matters. The PAB/OGC resolved three (3) investigation and litigation matters through settlement. The first settlement occurred during the investigation stage after the PAB/OGC had requested and reviewed documents from GAO and had started witness interviews. The parties reached an agreement and the matter closed in May 2023. The second settlement, which also occurred during the investigation stage, involved a stay of termination of employment. The settlement occurred after the PAB/OGC had requested documents and information and had conducted multiple witness interviews, and the matter was closed in September 2023. The third settlement occurred after a Petition was filed with the PAB. The parties were simultaneously engaged in the discovery process as well as in settlement negotiations. The parties reached an agreement, and the Petition was dismissed in November 2023.

(2) Investigation and Litigation

During calendar year 2023, the PAB/OGC participated in two cases before the Board. The first case the PAB/OGC participated in before the Board involved a Petitioner who alleged the Agency violated Title VII of the Civil Rights Act when it created a hostile work environment based on Petitioner's race, color, and/or sex. This case was held in abeyance while the parties engaged in mediation. The mediation concluded without reaching a settlement. The Agency filed a Motion to Dismiss and the PAB/OGC filed an opposition, followed by a sur-reply filed by the Agency. The Board denied the Agency's Motion to Dismiss on June 30, 2023. The parties participated in the discovery process and entered into settlement negotiations for several weeks before reaching an agreement. The case was dismissed on November 2, 2023. The second case in 2023 involved a Request for *Ex Parte* Stay with the Board. The PAB/OGC's initial Request for *Ex Parte* Stay of the employee's termination was granted on July 24, 2023. The Board granted an extension on August 22, 2023, and shortly thereafter the parties reached a settlement agreement. The matter was closed on October 24, 2023.

The PAB/OGC initiated one informational investigation in 2023, which involved an allegation of a prohibited personnel practice concerning the compensation of employees in GAO staff offices. The PAB/OGC did not make any corrective action recommendations to the Agency, and the investigation was closed on June 8, 2023. The PAB/OGC did not seek any disciplinary actions during calendar year 2023.

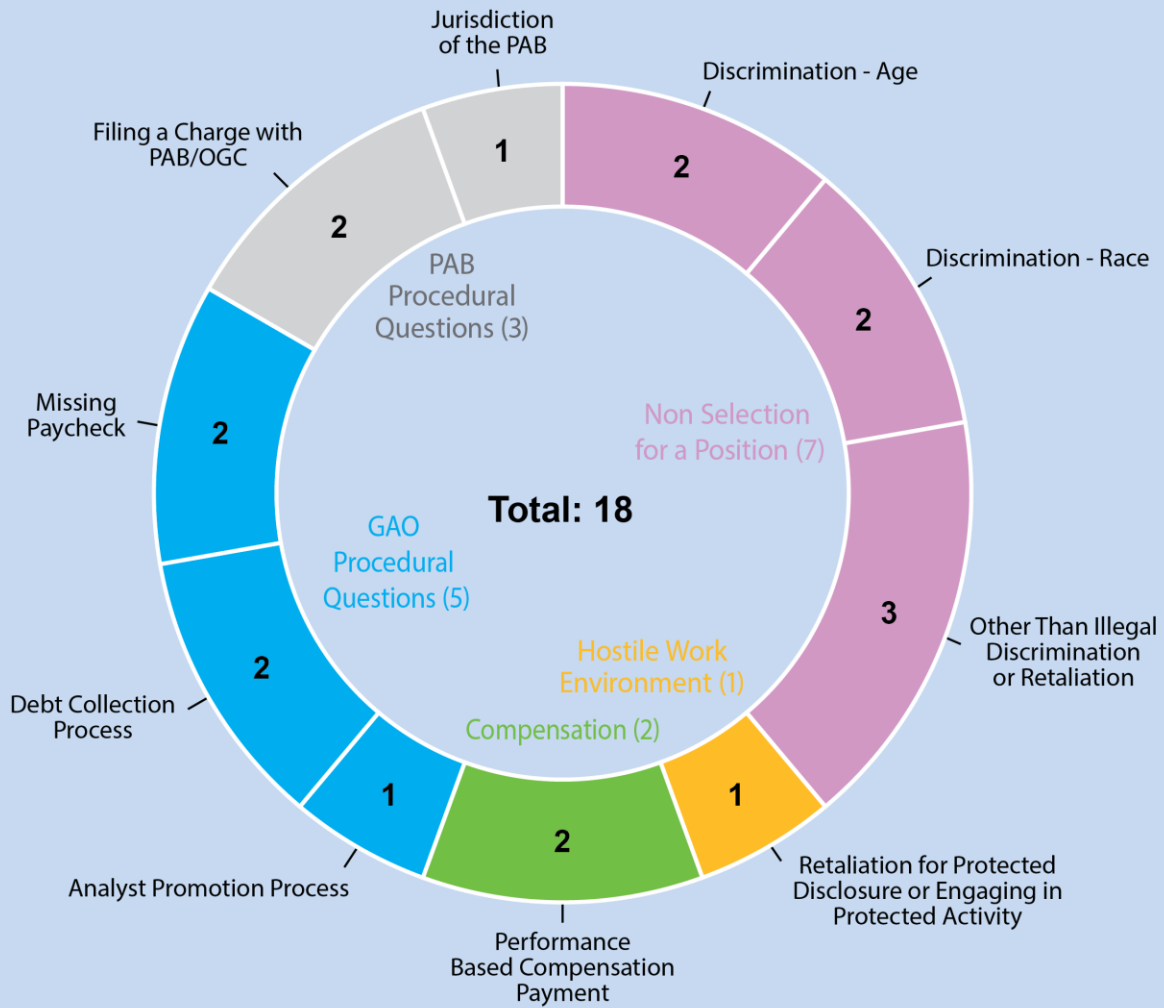
b. Other Activity

In 2023, the PAB/GC spoke with members of the GAO Employees Organization's Dispute Resolution Committee regarding the ADA accommodations process at GAO. A senior trial attorney from the PAB/OGC gave a presentation regarding the prohibited personnel practices to the officers and assembly delegates of the GAO Employees Organization, and the PAB/OGC participated in the Diversity Advisory's Council's Virtual DEIA Open House and Hallway Fair. In addition, the PAB/OGC submitted comments to the Board regarding changes to its regulations.

The PAB/OGC revised the PAB/OGC Charge Form as well as assisted in updating information on the PAB website. The PAB/OGC also worked with PAB staff and the Learning Center on the development of an online employee training course concerning the PAB and PAB/OGC.

The PAB/OGC regularly provides information or informal advice to GAO employees about their personnel, labor, and equal employment opportunity rights. This is accomplished by responding to informational inquiries received by phone, email, or through an in-person meeting. In calendar year 2023, the PAB/OGC fielded twelve (12) informational inquiries containing a total of eighteen (18) questions covering various topics. The topics of those questions are shown below in Figure 4.

Figure 4: Informational Inquires' Topics



Source: PAB/OGC.

Section 4: Office of EEO Oversight Activity

The GAOPA authorizes the Personnel Appeals Board to oversee equal employment opportunity at GAO through review and evaluation of GAO's procedures, policies, and practices.²⁷ To fulfill this mandate, the Board established an Office of EEO Oversight to conduct studies of selected issues and prepare evaluative reports of the Board's findings and conclusions, as well as its recommendations to the Agency.²⁸

In 2023, the Board's Oversight Office continued its work on a study of GAO's Office of Opportunity and Inclusiveness (O&I) and O&I's implementation of GAO procedures, policies, and practices that allow for compliance with the requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174, as amended by the Elijah E. Cummings Federal Employee Anti-Discrimination Act of 2020 (Cummings Act), Pub. L. 116-283, contained in Title XI, Subtitle B, Sect. 1131-1138 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA).

By mid-2023, the majority of the Board's composition had changed. With its new composition, the Board wished to change its approach regarding the study. The Board directed the Oversight Office to prepare a new proposal for a broader study on GAO's equal employment opportunity programs to be conducted in lieu of the Office's current work on a study of GAO's Office of Opportunity and Inclusiveness and the No FEAR Act.

²⁷ 31 U.S.C. § 732(f)(2)(A); see applicable regulations at 4 C.F.R. §§ 28.91, 28.92.

²⁸ The Board's Oversight Studies are available at <https://pab.gao.gov/> under Publications.

Accordingly, the Oversight Office prepared a proposal for the Board to conduct a study to review GAO's commitment to equal employment opportunity, as evidenced through the Agency's policies, procedures, and practices, and as compared with selected elements of Management Directive 715 (MD-715) issued by the United States Equal Employment Opportunity Commission (EEOC) on October 1, 2003. The elements of the MD-715 provide guidance for federal agencies to achieve model EEO programs and implement the No FEAR Act, as amended. This new proposal was submitted to the Board in December 2023 and is currently under advisement.

In 2023, the Board also received briefings and met periodically with GAO leadership regarding the Agency's responsiveness to PAB Recommendations issued in the Board's 2019 *Study on Disability and Reasonable Accommodation in the GAO Workforce*, including GAO's work on a forthcoming Disability Plan.

Section 5: Administrative and Outreach Activity

a. Mediation Program

The mediation program established by the Board provides parties to claims and complaints with an alternative avenue for resolving disputes.²⁹ The mediator is a facilitator who has no power or role to impose a specific resolution but is a neutral party trained to assist opposing parties in resolving their disputes without having to pursue litigation. The parties that participate in mediation have the option to meet separately and/or jointly with a mediator to work towards the goal of reaching a voluntary, mutually satisfactory resolution. Further information about the mediation program can be found on the Board's website. The Board had one (1) mediation during calendar year 2023, which was carried over from 2022.

b. Website Developments

In February 2023, the Board launched its redesigned and modernized PAB website to make it more user-friendly and accessible while continuing to provide necessary and helpful information to visitors.³⁰ The redesigned website continues to allow individuals to research Board decisions by using various search terms within a decision. The PAB's Annual Report and EEO Oversight Reports are available exclusively on the website. The website is managed and updated frequently to capture

²⁹ See the Board's *A Practice Guide to Mediation of Disputes at the Personnel Appeals Board*, which can be found at <https://pab.gao.gov/procedural-guides>.

³⁰ The website can be found at <https://pab.gao.gov>.

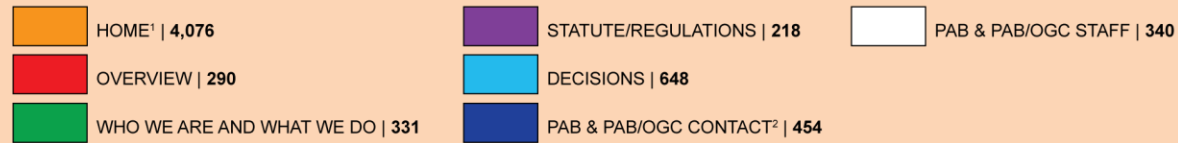
new decisions, reports, Board announcements, and updates. The website also includes information regarding the procedures for filing documents with the Board and filing charges with the PAB/OGC.

The Board tracks usage of the website for informational purposes only. It does not gather personal data in doing so. The data in the chart below captures the usage of the redesigned PAB website between February 2023 and December 2023.³¹

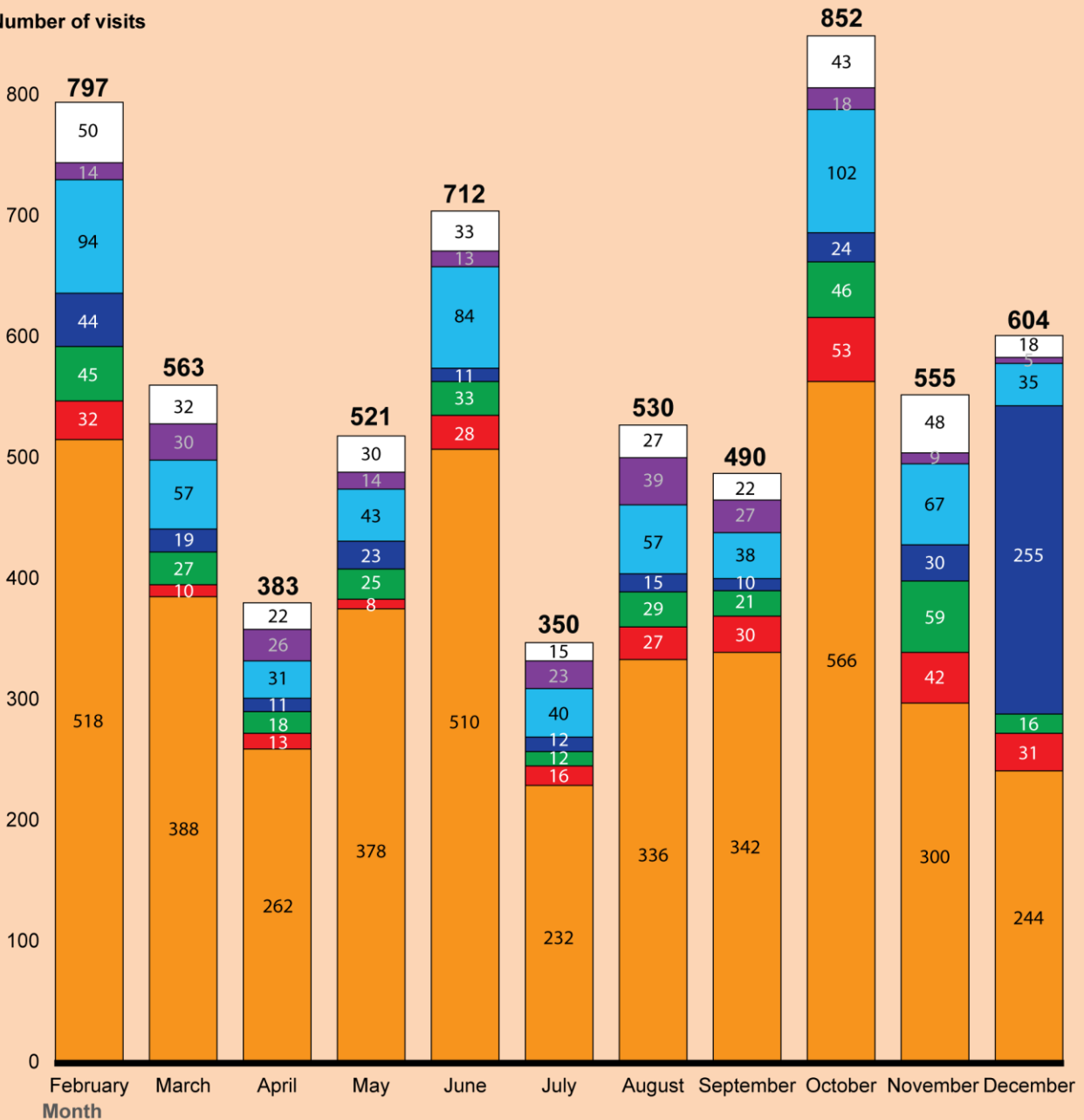
³¹ Some pages on the previous design of the PAB's website do not correspond to pages on the redesigned website. Therefore, the statistics of website visitors to the previous version of the site are not directly comparable to visitors to the redesigned site. In January 2023, the PAB website had 438 visitors to the home page, 24 visitors to the About page, 37 visitors to the Decisions page, 35 visitors to the Regulations page, and 18 visitors to the Contacts page.

Figure 5: Number of Website Visits

Web page | Total number of visits



Number of visits



¹The titles of the web pages in this table differ from those in previous PAB Annual Reports due to the redesign of the PAB website.

²The new PAB website provides the PAB's and the PAB/OGC's contact information on separate web pages. The numbers for the PAB & PAB/OGC Contact reflect the sum of the visitors to these two web pages in a given month.

Source: PAB/OGC.

c. Other Activity

The Board continued to conduct most of its operations via telework in 2023. Board staff frequently went into the office to work on case-related matters as well as administrative and organizational projects designed to facilitate internal research and referencing of Board history. These projects included organizing and consolidating case files and overhauling the existing administrative filing system to become a more modern, automated, and efficient system to better meet the needs of a telework-friendly environment. In 2023, the Board published a proposed Rule in the Federal Register, which remained open for comment at the beginning of 2024. The Board is also currently designing an online training course to educate GAO employees on their rights and the PAB's and PAB/OGC's roles in protecting those rights. The course will be accessible to GAO employees through the GAO Grow application.