Office of Compliance

FY 2004 Annual Report

advancing safety, health, and workplace rights in the legislative branch

January 2005

Office of Compliance

FY 2004 Annual Report

William W. Thompson, II
Executive Director

January 2005

This report is prepared pursuant to Section 301(h) of the Congressional Accountability Act, which requires that the Office of Compliance:

"… compile and publish statistics on the use of the Office by covered employees, including the number and type of contacts made with the Office, on the reason for such contacts, on the number of covered employees who initiated proceedings with the Office under this Act and results of such proceedings, and on the number of covered employees who filed a complaint, the basis for the complaint, and the action taken on the complaint."

All information and statistics in this report, unless otherwise specified, cover the period of October 1, 2003 to September 30, 2004.

The Office of Compliance advances safety, health, and workplace rights in the U.S. Congress and the Legislative Branch. Established as an independent agency by the Congressional Accountability Act of 1995, the Office educates employees and employing offices about their rights and responsibilities under the Act, provides an impartial dispute resolution process, and investigates and remedies violations of the Act.

Board of Directors

The Office of Compliance has a five-member non-partisan Board of Directors appointed by the majority and minority leaders of both the House of Representatives and the Senate. The Board members come from across the United States and are chosen for their expertise in labor and employment law.

Susan S. Robfogel
Chair, Board of Directors

Susan Robfogel is a partner in the Rochester and New York City offices of Nixon Peabody LLP. Since 1984, Mrs. Robfogel has been a Member of the New York State Data Protection Review Board; she chaired the Board in 1990 and currently is its Vice Chair. She is also a fellow of the College of Labor and Employment Lawyers and served three terms as a member of the Federal Service Impasses Board. Mrs. Robfogel has been a member of the New York State Bar Association House of Delegates and is Past Chairman of the New York State Bar's Health Law Committee. She is a fellow of the American Bar Foundation and a member of the Labor Law Section of the New York State and American Bar Associations. Mrs. Robfogel is a graduate of Smith College and holds a J.D. from Cornell Law School. Mrs. Robfogel was first appointed to the Board of Directors of the Office of Compliance in 1999 and was reappointed for a second five-year term in 2004.

Barbara L. Camens
Member, Board of Directors

Barbara L. Camens is the proprietor of the Washington, D.C. law firm of Barr & Camens. Ms. Camens has extensive litigation experience in Federal court before federal administrative agencies and in arbitration. Ms. Camens is a member of the District of Columbia Bar (Labor and Employment Section) and is a frequent speaker on the topics of labor and employment law. Ms. Camens is a graduate of Ohio State University and received her law degree from the University of Pennsylvania Law School. Ms. Camens was appointed to the Board of Directors of the Office of Compliance in 2000.

Alan V. Friedman
Member, Board of Directors

Alan Friedman is a partner in the Los Angeles firm of Munger, Tolles & Olson LLP. Mr. Friedman served in the office of the Solicitor of the U.S. Department of Labor and has chaired the Civil Service Commission of Los Angeles. He was also Labor Relations Counsel to the 1984 Los Angeles Olympic Organizing Committee. Mr. Friedman is a member of the American Bar Association (Labor and Employment Law Section), the California Bar Association, and the Los Angeles County Bar Association (Labor and Employment Law Section). He is a Past President of the Labor Law Section of the Los Angeles County Bar Association. A graduate of the University of Pennsylvania, he received his J.D. from Case Western Reserve University Law School, and an L.L.M. from the Georgetown University Law Center. Mr. Friedman was first appointed to the Board of Directors of the Office

of Compliance in October 1999 and was reappointed for a second five-year term in 2004.

Roberta L. Holzwarth
Member, Board of Directors

Roberta L. Holzwarth is a partner in the Rockford, Illinois law firm of Holmstrom & Kennedy, P.C. She is also a Certified Mediator for the Circuit Court in Winnebago County, Illinois. She has served as the Secretary of the Board of Fire and Police Commissioners of the City of Rockford, Illinois since 1990. Ms. Holzwarth is a member of the Winnebago County Bar Association, where she served as its President from 1999 to 2000. She is a member of the American Bar Association and its Labor and Employment Law Section, as well as the Illinois Bar Association. Ms. Holzwarth graduated from Stanford University with a Bachelors of Arts degree and received her J.D. from the University of Illinois College of Law. Ms. Holzwarth was appointed to the Board of Directors of the Office of Compliance in 2000.

Barbara Childs Wallace
Member, Board of Directors

Barbara Childs Wallace is a shareholder in the Jackson, Mississippi law firm of Wise, Carter, Child & Caraway, where she chairs the firm's labor and employment section. Prior to joining Wise, Carter, Child & Caraway, she served as a law clerk to the Honorable Roger Robb and George E. MacKinnon of the United States Court of Appeals for the District of Columbia Circuit. Ms. Wallace also served for many years as Chairman of the Civil Rights Reviewing Authority for the United States Department of Education. Ms. Wallace is a member of the American Bar Association (Labor and Employment Section), the District of Columbia Bar, and the Hinds County Bar Association. She is the Vice President of the Labor and Employment Section of the Mississippi Bar Association. Ms. Wallace graduated from Purdue University (B.A.), Loyola University of Chicago School of Law (J.D.), and the National Law Center of George Washington University (L.L.M.). Ms. Wallace was first appointed to the Board of Directors of the Office of Compliance in October 1999 and was reappointed for a second five-year term in 2004.

Key Staff

Four statutory employees appointed by the Board of Directors carry out day-to-day management functions of the Office of Compliance. These employees include an Executive Director, two Deputy Executive Directors, and a General Counsel.

William W. Thompson, II
Executive Director

William W. Thompson, II was appointed by the Board of Directors of the Office of Compliance to the position of Executive Director in March 2001. Prior to his appointment as Executive Director, Mr. Thompson served as the President and a principal stockholder of the Washington, D.C. and Northern Virginia law firm of Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, PC. With Zwerdling, Paul since 1986, Mr. Thompson represented

not-for-profit employers, Federal sector, public sector, and private sector employees, and employee organizations throughout the United States. From 1981 to 1986, Mr. Thompson was a principal stockholder with Paul and Thompson, PC, a labor and employment firm in Arlington, VA. Prior to this, he served as General Counsel for the American Federation of School Administrators and was responsible for the overall legal policies, institutional defense, and litigation strategies of the organization. Mr. Thompson graduated from Amherst College and earned his J.D. from Columbia University School of Law.

Peter Ames Eveleth
General Counsel

Peter Eveleth was appointed by the Board of Directors of the Office of Compliance to the position of General Counsel in June 2003. Prior to his appointment, Mr. Eveleth served as Senior Special Counsel to the General Counsel of the National Labor Relations Board (NLRB). During his career with the NLRB, Mr. Eveleth also served as Assistant General Counsel of the Contempt Litigation Branch, the office responsible for assuring nationwide compliance with court-enforced NLRB orders. Prior to 1994, Mr. Eveleth was Of Counsel to the Washington office of Akin, Gump, Strauss, Hauer and Feld where he represented management clients in a broad range of labor and employment matters. Mr. Eveleth is a graduate of Cornell University's School of Industrial and Labor Relations and earned his J.D. from the University of Pennsylvania Law School.

Alma R. Candelaria
Deputy Executive Director for the House

Alma R. Candelaria was appointed by the Board of Directors of the Office of Compliance to serve a five-year term as Deputy Executive Director for the House in September 2001. Prior to joining the Office of Compliance, Ms. Candelaria served as the Senior Advisor to the Associate Deputy Administrator for Management and Administration at the U.S. Small Business Administration and from 1993 through 1999 worked at the U.S. Department of Labor. Other key positions include Legislative Assistant to former Congressman Esteban E. Torres (CA-34), Director of Leadership Development and Government Affairs at the National Association of Latino Elected and Appointed Officials, and Programs Director with the Congressional Hispanic Caucus Institute. Ms. Candelaria received her Bachelor of Arts degree in political science from the University of California, Santa Barbara and is currently a candidate for a Master's Degree in Public Administration at American University.

Deputy Executive Director for the Senate

VACANT

About the Congressional Accountability Act

The Congressional Accountability Act (CAA), enacted in 1995, was the first piece of legislation passed by the 104th Congress. The CAA, which received broad bipartisan support, requires covered Legislative Branch entities to follow many of the same employment and workplace safety laws applied to businesses and the Federal Government. The CAA also established a dispute resolution procedure that emphasizes counseling and mediation for the resolution of disputes.

The CAA applies twelve civil rights, labor, and workplace safety laws to covered Legislative Branch entities. These laws include:

- The Age Discrimination in Employment Act
- The Americans with Disabilities Act
- Title VII of the Civil Rights Act of 1964
- The Employee Polygraph Protection Act
- The Fair Labor Standards Act
- The Family and Medical Leave Act
- The Federal Services Labor-Management Relations Act
- Occupational Safety and Health Act of 1970
- The Rehabilitation Act of 1970
- Veterans' employment and reemployment rights at Chapter 43 of Title 38 of the U.S. Code
- The Worker Adjustment and Retraining Act

The CAA was amended in 1998 to include the provisions of the Veterans Employment Opportunities Act.

The CAA protects over 30,000 employees of the Legislative Branch, including employees of the House of Representatives and the Senate (both Washington, D.C. and state district office staff); the Office of the Architect of the Capitol; the Capitol Police; the Capitol Guide Service; the Congressional Budget Office; the Office of the Attending Physician; and the Office of Compliance. Certain provisions of the CAA also apply to the Government Accountability Office (GAO, formerly General Accounting Office) and to the Library of Congress. The CAA protects both current employees and job applicants, and in certain instances former employees or members of the public may also be covered.

About the Office of Compliance

The Office of Compliance is an independent agency established by the CAA to administer and enforce the Act. The Office of Compliance has a number of primary functional responsibilities:

Dispute Resolution

The Office of Compliance administers the CAA's mandatory dispute resolution process of counseling and mediation for the settling of disputes. If the parties involved are not able to resolve their dispute through counseling and mediation, an employee may either pursue a non-judicial administrative hearing process with the Office of Compliance or file suit in Federal court. The administrative hearing process offers more efficient resolution and greater confidentiality than a Federal civil suit while still offering the same remedies that a court can provide.

Education and Information

The Office of Compliance educates covered employees and employing offices in the Legislative Branch about their rights and responsibilities under the CAA. Education and information activities include developing and distributing written materials and publications; maintaining a web site; conducting briefings; and providing referrals and information to employees and employing offices on an individual or group basis.

Reports and Recommendations to Congress

Section 102(b)(2) of the CAA requires the Board of Directors to submit a biennial report to Congress on the applicability to the Legislative Branch of any employment laws not already made applicable by the CAA. Section 301(h) of the CAA requires an annual report to Congress presenting statistics on the use of the Office of Compliance by covered employees and employing offices in the Legislative Branch.

Periodic Safety and Health Inspections

The CAA requires the General Counsel of the Office of Compliance to inspect facilities in the Legislative Branch for compliance with safety and health standards at least once each Congress and to report those findings to Congressional leadership.

Requests for Safety and Health Inspections

The CAA's safety and health provisions give covered employees and offices the right to request inspections of potentially hazardous conditions in work

areas. When a Request for Inspection is received, the General Counsel of the Office of Compliance initiates an on-site investigation and sends a detailed report to the employing office explaining any steps that may be needed to remedy the problem. If the General Counsel finds a violation, a notification or citation may be issued to the offices responsible for correcting the problem. If the violation is not corrected once a citation has been issued, the General Counsel may file a complaint before an independent Hearing Officer with the Office of Compliance.

Disability Access Inspections

The General Counsel of the Office of Compliance is required to conduct inspections at least once each Congress to determine compliance with the rights and protections against discrimination in the provision of public services and accommodations established by the Americans with Disabilities Act (ADA). The General Counsel is also responsible for investigating charges of disability access discrimination. If an investigation reveals that a violation has occurred, the General Counsel may either request mediation to resolve the dispute or file a complaint before an independent Hearing Officer with the Office of Compliance against the entity responsible for correcting the violation.

Unfair Labor Practices

The General Counsel of the Office of Compliance is responsible for investigating allegations of unfair labor practices and for filing and prosecuting complaints of unfair labor practices before an independent Hearing Officer with the Office of Compliance.

FY 2004 in Review

FY 2004 proved to be a significant year for the Office of Compliance. In February 2004, the Government Accountability Office (GAO) issued a major audit report on the Office of Compliance requested in 2002 by the Legislative Branch appropriations subcommittees of the House and Senate. The appropriators specifically asked the GAO to "assess the overall effectiveness and efficiency of the Office of Compliance in fulfilling its responsibilities and role in achieving the overall intent and purposes of the Congressional Accountability Act." *(House Report 107-576)* In its report, the GAO recommended that the Office of Compliance use its completed Strategic Plan as the "basis for [future] budget and staff requests and developing and implementing program efforts and for assessing the contributions of those efforts to results." *(Office of Compliance: Status of Management Control Efforts to Improve Effectiveness, GAO-04-400, February 2004, p. 20)*

As a consequence of the GAO recommendations, the Office of Compliance FY 2005 budget request was submitted entirely in a "zero based" format, which set out the costs in staff, resources, and administrative overhead costs for each of the statutorily mandated activities of the office. In FY 2004 the Office of Compliance also began to implement its Strategic Plan and respond to recommendations included in the GAO report. The Strategic Plan covers FY 2004-2006, and provides three overarching goals:

- Goal One: Protect the health and safety of Legislative Branch employees and assure equal access to individuals with disabilities
- Goal Two: Improve knowledge and understanding of rights and responsibilities under the CAA, and promptly/fairly resolve disputes
- Goal Three: Provide legislative and regulatory recommendations and assistance to Congress to improve the administration of the Congressional Accountability Act

This FY 2004 Annual Report describes the progress of the Office of Compliance in relation to our Strategic Plan. In this report we will describe our strategic goals and each goal's program objectives, then share our strategies and progress in achieving them. By addressing our progress towards achieving each goal in the Strategic Plan, it is hoped that this Annual Report will provide a more comprehensive explanation of what we do, how we do it, and why what we seek to achieve is important.

Finally, this FY 2004 Annual Report includes the information previously submitted in our yearly statistical reports, as required by section 301(h) of the CAA.

Strategic Plan Goal One

Protect the health and safety of Legislative Branch employees and assure equal access to individuals with disabilities, by:

- **Acquiring and installing a new comprehensive record keeping system for OSHA (Occupational Safety and Health Administration) and ADA related cases, and completing input/conversion of prior case data**
- **Completing all required health and safety and public access inspections**
- **Addressing the periodic fluctuation in OSH (Occupational Safety and Health) inspection workload**
- **Providing increased safety and health and ADA technical assistance focusing on the service needs of the regulated community**
- **Facilitating coordination amongst campus-wide agencies for safety and health issues**

Acquiring and Installing a New Comprehensive Record Keeping System for OSHA and ADA Related Cases, and Completing Input/Conversion of Prior Case Data

In May 2003, the Office of Compliance initiated efforts to upgrade its information technology capabilities as they pertain to the Occupational Safety and Health Act and ADA public access and public accommodations-related matters. The focus of this effort was to plan for the acquisition of computer software that will enable the General Counsel to identify and record hazardous conditions, analyze and rank violations according to the seriousness of the identified hazards, and electronically document measures taken to correct hazards. The lack of such electronic capabilities has hampered the General Counsel's inspection, abatement, and enforcement efforts.

After a comparative study of software systems utilized by other government agencies, the Office of Compliance identified a highly sophisticated case-tracking system for purchase and implementation in 2005. This new software will enable the General Counsel to monitor how long it is taking employing offices to correct hazards and will provide support to employing offices in seeking necessary funds to promptly correct identified hazards. This is essential because many violations identified in past years' inspections have still not been corrected after the issuance of citations, despite the requirements of Section 215(c)(6) of the CAA mandating that corrections be made no longer than the end of the fiscal year following the year in which a citation is issued.

Completing All Required Health and Safety and Public Access Inspections

Finding that the Office of Compliance is "facing an increasing workload and scarce resources," the GAO recommended that the Office of Compliance "work with Congress to develop a strategy to ensure that all facilities under [its] jurisdiction and located in the Capitol Hill complex and the surrounding Washington, D.C. area are covered as part of the biennial safety inspections required by the CAA ...." *(GAO, pp. 28, 31)* Attempting to satisfy the mandate to inspect and assure the correction of hazards in the more than 15 million square feet of facilities within the jurisdiction of the Office of Compliance continues to be a major challenge with current resources.

In order to address the mandate more effectively, the General Counsel determined that the inspections of the 108th Congress would serve as a transitional cycle and be both comprehensive and undertaken in a collaborative fashion. Particular priority was given to the inspections of the nearly 25% of covered facilities not inspected during the prior inspection cycle because of a lack of staff resources. This inspection cycle has also seen the development and implementation of a Risk Assessment Code (RAC) in order to classify the severity of the hazards identified and determine the relative priorities for abatement. The new RAC system will help compare conditions in the Legislative Branch with those in other parts of the Federal Government that employ comparable RAC systems.

Since the start of the inspections in early 2004, major facilities have been inspected, including the portions of the House, Senate, and U.S. Capitol maintained by the Architect of the Capitol (AOC); the Day Care Centers; Page Dormitories; GAO; Capitol Police headquarters; and the portions of the Supreme Court that are under AOC's jurisdiction. Thus far, more than 2,000 hazards have been identified during these inspections. The remaining areas to be inspected, representing nearly 50% of the total covered facilities in the Washington D.C. metropolitan area, include Member and Committee offices; the Ford Building; the Library of Congress; and the Capitol Power Plant. These inspections will be completed in the 109th Congress to the extent that adequate resources are available.

During this report period the General Counsel has also been responsible for assessing programs and inspecting covered Legislative Branch facilities for compliance with the public access requirements of Titles II and III of the ADA as required by the CAA. This inspection is being jointly conducted with the U.S. Access Board and assisted by the Disability Rights

Section of the U.S. Department of Justice. These inspections have focused on emergency egress for mobility impaired individuals; effective communications with blind and deaf members of the public; staff knowledge about evacuation plans for disabled visitors; and accessible routes within each building. A physical inspection of the public areas of all Capitol Hill buildings and grounds has also been a part of the inspection process.

During 2004, ADA inspections were conducted covering entrances, exits, areas of rescue assistance, restrooms, and public committee hearing rooms in the Capitol and House and Senate office buildings; public areas of the Ford Building, including the building's restaurant and the offices of the Congressional Budget Office; the Office of Compliance; the Botanic Gardens; areas of the Library of Congress providing public access to the Office of Compliance; and public areas of the Capitol Police headquarters. The General Counsel also distributed questionnaires seeking information about facility access, communications access, and emergency egress for disabled members of the public to all Member and committee offices located on Capitol Hill. Member and committee office inspections will be conducted during the 109th Congress.

The General Counsel will share the findings of the ADA inspections with employing offices for comment and issue a report to Congress upon the completion of the inspections. The ADA report on the 108th Congress will cover only those facilities and areas inspected and programs assessed during 2004.

Addressing the Periodic Fluctuation in OSH Inspection Workload

Efforts have been taken by the General Counsel to address fluctuations in the scheduling of periodic inspections. In order to provide more time for all inspections and reduce the schedule compression, the inspections of the 109th Congress will begin soon after the beginning of the new session. In the past, the biennial inspections of all Legislative Branch facilities required by the CAA were conducted during the second year of each session of Congress, severely limiting the time available for staff to conduct requestor-initiated inspections during the same period. As a result, requestor-initiated inspections were deferred and backlogs grew. At the end of FY 2004, there were 61 open inspection cases and hundreds of prior violations requiring abatement being monitored by the Office of Compliance. The delay in disposing of the growing backlog of open cases has prompted criticism from employing offices.

By conducting inspections over a two-year period, the overall quality of all inspections will increase – and with a less compressed schedule –

the need to defer requestor-initiated inspections should decrease. Nevertheless, even with the greater efficiency derived from the longer inspection cycle, the General Counsel will be unable to conduct all periodic and requestor-initiated inspections on a timely basis until adequate additional staff and resources become available. This problem is expected to worsen as the AOC brings under its jurisdiction additional facilities, such as the Capitol Visitors Center.

Providing Increased Safety and Health and ADA Technical Assistance Focusing on the Service Needs of the Regulated Community

The Office of Compliance has undertaken a new program of outreach and cooperation with agencies in the Legislative Branch in order to provide greater technical assistance and advice to the regulated community. In February 2004, the Office of Compliance conducted the first-ever Capitol Hill-wide conference on workplace safety and health in Congress. The conference featured panel discussions and expert speakers, including Assistant Secretary of Labor John L. Henshaw, the administrator of the Occupational Safety and Health Administration. The purpose of the conference was to share best practices, establish a regular forum for exchanging information, and lay the groundwork for a more collaborative environment for safety and health and security issues in Congress.

An outgrowth of the February conference is the Legislative Branch Health and Safety Group. Open to all interested staff having safety and health responsibilities in the Legislative Branch, the Health and Safety group was initiated by the Office of Compliance in order to provide a forum to relay information to employing offices "'at the front end' concerning significant activities and initiatives," as suggested by the GAO. *(GAO, p. 33-34)* The Health and Safety Group meets on a quarterly basis, allowing the Office of Compliance to share information with employing offices on the progress of periodic inspections and common safety deficiencies discovered during inspections. The Health and Safety Group is also an outlet for educational information, such as presentations by the Library of Congress and the Architect of the Capitol regarding the role of Joint Occupational Safety and Health Committees in improving safety and health conditions on Capitol Hill.

As a further part of the effort to provide more technical assistance, the Office of Compliance has continued to pursue its association with OSHA to bring health and safety programs and technical assistance to employing offices in the Legislative Branch. The Office of Compliance recently entered

into discussions with OSHA to make available mentoring services at little or no cost to employing offices in order to assist them in creating or improving their health and safety programs.

Facilitating Coordination Among Campus-wide Agencies for Safety and Health Issues

In order to facilitate greater coordination of safety and health issues among Legislative Branch agencies, the General Counsel will be exploring the formation of a safety management group within Congress. Unlike the Health and Safety Group, which is open to all employees with safety and health responsibilities and largely an information-sharing forum, the new group will be composed entirely of senior level staff from Legislative Branch employing offices and will focus on greater coordination of safety and health efforts at the management level.

Strategic Plan Goal Two

Improve knowledge and understanding of rights and responsibilities under the CAA, and promptly/fairly resolve disputes, by:

- **Administering the Office's dispute resolution process in an efficient and effective manner, and evaluating the effectiveness of the dispute resolution process**
- **Conducting education and outreach efforts to improve the voluntary compliance with workplace laws and to improve the quality of the employing office-employee relationship**
- **Establishing the Office as a repository of information and technical guidance**
- **Promoting mediation as a better, more comprehensive tool for resolving workplace disputes**
- **Undertaking or commissioning studies and research to foster improvements in knowledge and sophistication of the regulated community regarding their rights and responsibilities under statutes applied through the CAA**

Administering the Office's Dispute Resolution Process in an Efficient and Effective Manner, and Evaluating the Effectiveness of the Dispute Resolution Process

During FY 2004, the Office of Compliance maintained the efficiency of the dispute resolution system. Two steps are being taken to build upon and improve this process.

First, the acquisition of an upgraded electronic case tracking system for the counseling, mediation, and administrative hearing system was identified during FY 2004 as a critical need. By upgrading or replacing the current antiquated software, the Office of Compliance will be able to better track ongoing cases, caseload statistics, and improve overall information management. A planning team will be named in 2005 to review needs and options for the acquisition of the new system.

Another step taken to facilitate the dispute resolution process was the initiation of an archival system for document retention. The new archival system will allow for easier retrieval of historical, administrative, and case-specific information.

To evaluate the effectiveness of the dispute resolution process, an in-house study of mediation settlements was initiated to help determine what elements contribute to cases that are successfully resolved during the mediation stage. The study invites participants in the mediation process to complete a voluntary confidential survey in order to provide feedback on their

mediation experience. In use for seven months, the survey has provided useful feedback, but the acquisition of data has been hampered by the refusal of some participants to complete the survey.

Conducting Education and Outreach Efforts to Improve Voluntary Compliance With Workplace Laws and to Improve the Quality of the Employing Office-Employee Relationship

The Office of Compliance provides education and information to covered employees and employing offices in the Legislative Branch in order to facilitate awareness of the CAA and encourage voluntary compliance with the laws. This program is carried out by distributing written materials and publications; conducting briefings; maintaining a web site; and providing referrals and information to employees and employing offices on an individual or group basis.

Over the past two years, a significant overhaul of the education and information program has been initiated. The early efforts focused on providing a new and more coherent organizational identity for the Office of Compliance, including a more distinguishable logo and a new mission statement. Another significant part of the overhaul was the implementation of a "user-friendly" strategy designed to make CAA information more readable and relevant to employees and employing offices. Implementation of this strategy led to the complete redesign of the Office of Compliance web site *(www.compliance.gov)* and all major office publications, including the annual newsletter and brochures.

With the basic steps in place, the education and information program in FY 2004 has focused on expanding its established range of educational materials while emphasizing the increased use of electronic products through the "eResources" initiative. eResources focuses on providing new and established products in electronic formats in order to increase distribution and improve accessibility. eResources has also led to the creation of a suite of compliance tools exclusively available online and to the regular distribution of the Office of Compliance *Bulletin* via e-mail, allowing the informational program to successfully reach district office staff for the first time.

The emphasis on electronic products and online resources has proven successful and resulted in increased use of the Office of Compliance web site. There has been a steady increase in visits to the Office of Compliance home page throughout FY 2004, reversing the decline in web site usage seen each month in 2003. An even better indicator of the success of the eResources initiative and its new products is the increase in downloads of electronic products and online tools from the web site. Online products such

as *Bulletins* and *Safety and Health Fast Facts* – online fact sheets designed to provide quick information about common workplace hazards – have been downloaded thousands of times. There has been a steady upward trend in downloads on the site each month that is expected to continue into FY 2005 as more products are published and new tools are developed.

The Office of Compliance also continues its outreach to employees and employers through attendance at fairs, new employee briefings, and district office seminars. The most notable new effort was the safety and health conference in February, a significant and successful new undertaking. Planning is currently underway for another conference to be conducted in early 2005 focusing on mediation and dispute resolution.

Establishing the Office as a Repository of Information and Technical Guidance

The GAO recommended that the Office of Compliance should explore the possibility of playing a more active role as a central repository for best practices developed by agencies throughout the Legislative Branch on topics covered under the CAA. *(GAO, p. 30)* As a very small agency with a broad substantive mandate, the Office of Compliance actively seeks outside partnerships and assistance in order to leverage resources and increase capabilities. The experience with partners is growing and plans are in place to expand services to the regulated community through linkages with other agencies on the web site; the establishment of an electronic and physical library; and the creation of a speaker's bureau.

Additionally, the Executive Director and the General Counsel have worked to expand limited resources through greater collaboration with Legislative Branch and Executive Branch agencies. Attorneys and an architect with the Disability Rights Section of the U.S. Department of Justice have provided advice and assistance to the General Counsel in connection with the biennial ADA inspections, and an ADA Inspector with the United States Access Board conducted the majority of the ADA inspections carried out by the Office of Compliance.

Promoting Mediation as a Better, More Comprehensive Tool for Resolving Workplace Disputes

In order to promote the use of mediation as a means for resolving workplace disputes, the Office of Compliance is currently planning a conference on dispute resolution techniques for covered Legislative Branch offices. The conference will focus on increasing awareness and utilization of various conflict resolution techniques to promote quick and fair resolution of workplace

disputes, regardless of whether they fall within the parameters of the CAA. Initial steps for this second conference are ongoing, including contracting with a management consultant to help design the program to fit the unique nature of Capitol Hill.

Undertaking or Commissioning Studies and Research to Foster Improvements in Knowledge and Sophistication of the Regulated Community Regarding Their Rights and Responsibilities Under Statutes Applied Through the CAA

The Office of Compliance intends to undertake studies and research to foster improvements in the regulated community's knowledge of their rights and responsibilities under the CAA. While planning and consideration for these studies has been ongoing in FY 2004, financial resources to conduct them have not been available.

Strategic Plan Goal Three

Provide legislative and regulatory recommendations and assistance to Congress to improve the administration of the Congressional Accountability Act, by:

- **Pursuing the implementation of existing reports and recommendations from the Board of Directors to Congress**
- **Monitoring and recommending new legislation to maintain congressional accountability**
- **Completing projects that enhance the Office's interaction with stakeholders**
- **Learning from administrative and regulatory experience to identify any gaps, shortcomings, or barriers in existing and enabling law and regulations**
- **Conducting or commissioning research on workplace practices among employing offices as a basis for future education and recommendations for improvement of workplace practices**

Pursuing the Implementation of Existing Reports and Recommendations From the Board of Directors to Congress

Section 102(b) of the CAA requires the Board of Directors of the Office of Compliance to recommend amendments to the CAA every two years. The last report was issued at the end of calendar year 2002. A new report was issued in December of 2004 which largely repeated the recommendations of the 2002 report.

During FY 2004, the Board of Directors and Executive Director continued to actively pursue the 2002 102(b) Report recommendations. Board Members met with leadership and oversight staff to explain the recommendations and solicit input. In 2004, a bipartisan group of Members introduced H.R. 3963, the "Congressional Accountability Enhancement Act of 2004," which incorporated significant portions of the 2002 Section 102(b) Report. An important section of this legislation is a request to study the issue of expanding the CAA's coverage to the GAO, Government Printing Office (GPO), and the Library of Congress. This legislation was not considered in the 108th Congress and expired at the end of the session.

The Board of Directors has also been active regarding its proposals for regulations to implement certain provisions of the CAA. The Board is amending previously submitted proposed substantive regulations to implement the Veterans Employment Opportunities Act (VEOA) and reviewing the comments from stakeholders. A series of meetings were held with strategic stakeholders to explain the proposed rules and solicit further input. Given the current military deployment in Iraq and Afghani-

stan, the Board of Directors is particularly mindful of the timeliness of the VEOA regulations.

The Board of Directors also submitted proposed amended substantive regulations relating to the new Fair Labor Standards Act (FLSA) exemptions from the payment of overtime. These proposed regulations were prompted by the new Department of Labor overtime exemption regulations. As of this printing, the initial comment period has ended and the Board of Directors is reviewing the comments received.

With the adjournment of the 108th Congress, both the proposed VEOA and FLSA overtime exemption regulations remain pending. The Board of Directors will transmit the proposed final regulations for the VEOA and FLSA for Congressional action soon after the opening of the 109th Congress.

Monitoring and Recommending New Legislation to Maintain Congressional Accountability

The Office of Compliance continues to pursue its careful tracking of legislation introduced in Congress pertaining to the rights and conditions of employment for potential applicability to the Legislative Branch. The current tracking strategy is effective in identifying legislation that should be applied to Congress and identified a number of bills in the 108th Congress that were subsequently amended to include Congressional coverage.

The current "eyeball" method of analysis and tracking, however, is laborious and cannot always identify all relevant legislation due to the sheer volume of bills introduced each year in the House and Senate. If funding permits, a legislative tracking service will be subscribed to in order to automate and refine the process of monitoring new legislation.

Completing Projects That Enhance the Office's Interaction With Stakeholders

The Office of Compliance has been an active participant in both the Legislative Branch Financial Managers Council and the newly formed Chief Administrative Officer's (CAO) group for agencies in the Legislative Branch. Both groups include representatives from the House of Representatives; Senate; Capitol Police; Government Accountability Office; Office of the Architect of the Capitol; Library of Congress; Congressional Budget Office; Government Printing Office; and Office of Compliance. These organizations also comprise our major stakeholders. The Office of Compliance's participation in these two groups has provided an

important platform to raise issues of concern to all Legislative Branch employees.

Learning From Administrative and Regulatory Experience to Identify Any Gaps, Shortcomings, or Barriers in Existing and Enabling Law and Regulations

The Office of Compliance identified issues in the Board's 2002 Section 102(b) Report for inclusion in the 2004 Section 102(b) Report released in December 2004.

Conducting or Commissioning Research on Workplace Practices Among Employing Offices as a Basis for Future Education and Recommendations for Improvement of Workplace Practices

No activity to report in this area during FY 2004.

Internal Office Initiatives

In addition to the Strategic Plan's three overarching performance goals, the Office of Compliance has undertaken a number of initiatives regarding its internal processes during FY 2004. While not a formal part of the Strategic Plan, these initiatives are central to the continued successful functioning of the Office of Compliance and will have a long-term impact on administrative functions.

The first of these initiatives was the switch by the Office of Compliance to a zero-based budget submission, marking a significant change in how budgets are determined and resources allocated. Each full time equivalent (FTE) position was allocated to one of several functional areas based on estimates. A process of statistical sampling – in which individual employees filled out time sheets to allocate their own time on a quarterly basis in two-week increments – was initiated in order to better inform FTE allocation in subsequent budget requests. New cost accounting procedures were also instituted to better allocate indirect costs in next year's submission, including accounting cost centers, allocation of supplies, and allocation of copying costs.

Another significant internal initiative was the transition to "Momentum," the new web-based accounting system shared with the Library of Congress and the Congressional Budget Office. This system came online for the Office of Compliance on October 1, 2004. Momentum is the culmination of three years of planning, needs assessment, documentation, and training. The new paperless system is web-based and is one of only a handful of accounting systems that is certified to be compliant with all JFMIP (Joint Financial Management Improvement Program) requirements.

The third internal initiative undertaken during the fiscal year was the creation of an Information Technology (IT) Task Force to help better integrate technology into the overall operations of the Office of Compliance. The IT Task Force began the groundwork needed to address Congressional interest in systematic planning and investment management to maximize value and minimize risks of IT investment. In FY 2004, the IT Task Force made progress in planning for three of the six overarching areas identified for consideration. Significant work is still required in FY 2005 to address the further steps needed to make effective use of IT and computer systems. As with most major initiatives, our success in this area is subject to sufficient funding.

Plans for Next Year

As FY 2004 drew to a close, Congress enacted and President Bush signed legislation amending the Congressional Accountability Act to permit members of the Board of Directors of the Office of Compliance to serve two five-year terms, enacting one of the key recommendations made by GAO in its report on the Office of Compliance. The chair and two members of the

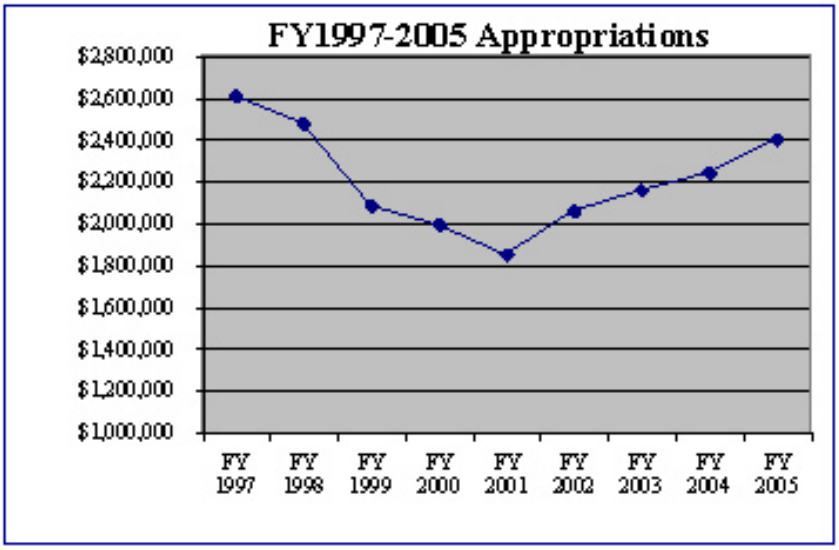
Board of Directors whose terms ended on October 1, 2004 have now been reappointed to second terms, and the remaining two Board members are expected to be reappointed when their terms expire in May 2005.

Congress' passage of this legislation marks a turning point in the effort to achieve greater management stability and institutional "memory" within the Office of Compliance. To continue this progress, the Board of Directors strongly supports another key recommendation made by GAO – removing the one-term limit for the executive staff of the Office of Compliance.

During FY 2005, the Office of Compliance will continue to develop a transparent "line of sight" between the Strategic Plan, an Annual Plan that is planned for FY 2006, and the performance evaluations system for all staff. As of January 2005, the Executive Director and General Counsel will also have formal performance agreements with the Board of Directors.

The Office of Compliance continues to strive to implement the goals of the Strategic Plan and will continue to seek to implement all of the GAO report recommendations, most of which dovetail with the Strategic Plan. This agency continues to carry out the statutory mandates of the CAA as efficiently as possible with a funding level that has dropped almost 40% between FY 1997 and FY 2001. Although the level of appropriations has increased since FY 2001, it still remains below the level of FY 1997.

Year	Funding Level
FY 1997	$2,609,000
FY 1998	$2,479,000
FY 1999	$2,086,000
FY 2000	$1,992,400
FY 2001	$1,850,996
FY 2002	$2,059,000
FY 2003	$2,156,616
FY 2004	$2,241,695
FY 2005	$2,401,632



Statistics on the Use of the Office of Compliance in FY 2004

These statistics are provided pursuant to Section 301(h) of the Congressional Accountability Act, which requires that the Office of Compliance compile and publish statistics on the use of the office by covered employees. It is important to mention that this is the first Office of Compliance Annual Report to provide statistical data on a fiscal year – rather than calendar year – basis. Please note that because of the change in reporting periods, last year's Annual Report overlaps slightly with this year's report. Some statistics included in this report were also included in the Office of Compliance 2003 Annual Report.

Summary of Office Contacts

Employees and employing offices covered under the CAA may contact the Office of Compliance in person or by telephone to receive informal advice and information on the procedures of the office and learn about the rights, protections, and responsibilities afforded them under the CAA.

Alternative means of contact are also available. The Office of Compliance's web site is the most complete resource for information on the CAA for employees and employers. An automated telephone information line with recorded information about the CAA and the Office of Compliance is also available for those who do not have ready access to the internet.

During FY 2004, the Office of Compliance received 439 contacts by covered employees, employing offices, unions, and the public requesting information. Contacts were made both in person and by phone.

Employees	286
Employing Office	36
Public	111
Union	6
Total	439

(Note: These figures do not include contacts made directly with the General Counsel of the Office of Compliance, visits to the Office of Compliance web site, or calls to the telephone information line.)

Contacts by Section of the Law

Employees contact the Office of Compliance for a variety of reasons. They may have questions concerning the application of particular provisions of the law, or they may wish to discuss matters they believe constitute a violation of the CAA. Each individual contact may involve several distinct portions of the law.

In FY 2004, the covered employees who contacted the Office of Compliance discussed the following sections of the law:

Section	Description	Requests
201	Rights and protections under title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; and title I of the Americans with Disabilities Act of 1990	142
202	Rights and protections under the Family and Medical Leave Act	31
203	Rights and protections under the Fair Labor Standards Act	13
207	Prohibition of intimidation or reprisal	34
210	Public Access and Accommodations under the Americans with Disabilities Act of 1990	1
215	Occupational Safety and Health Act of 1970	4
220	Unfair Labor Practices under chapter 71 of Title 5, U.S. Code	11
---	CAA General	21
---	Questions not relevant to the CAA	70

(Note: Aggregate numbers will not necessarily match category totals as a single contact may involve more than one issue or alleged violation. These figures do not include contacts made directly with the General Counsel of the Office of Compliance. For statistics on contacts with the General Counsel, refer to p. 29.)

Contacts By Issue

Employees typically contact the Office of Compliance with questions concerning the application of the CAA to specific work issues. The employee contacts during the covered period raised the following issues:

Assignments	5
Benefits	3
Compensatory Time	2
Compensation	23
Demotion	14
Discipline	24
Disparate Treatment	2
Equal Pay	2
Harassment	72
Hiring	10
Hostile Work Environment	1
Leave	28
Overtime Pay	9
Promotion	4
Reasonable Accommodation	14
Reinstatement	1
Selection	6
Termination	49
Terms & Conditions of Employment	45

(Note: Aggregate numbers will not necessarily match category totals as a single contact may involve more than one issue or alleged violation)

The Dispute Resolution Process

The CAA mandates a dispute resolution process of counseling and mediation for the settling of disputes. If the parties involved are not able to resolve their dispute through counseling and mediation, an employee may either pursue a non-judicial administrative hearing process before an independent Hearing Officer with the Office of Compliance or file suit in Federal court.

Final decisions of Hearing Officers may be appealed to the Board of Directors of the Office of Compliance for review. Upon review, the Board issues a written decision along with its reasons. A party dissatisfied with the decision of the Board may file a petition for review with the U.S. Court of Appeals for the Federal Circuit.

Counseling

A total of 95 cases were in counseling during FY 2004. This figure includes 84 requests for counseling and 11 cases pending in counseling from the previous fiscal year.

Pending in counseling as of 10/1/03	11
Counseling requests received	84
Total	95

Counseling Results

Closed during or after counseling but before mediation		12
Settled	*0*	
No further action	*12*	
Mediation requests received		76
Pending in counseling and will continue into next report period		7

Mediation

A total of 127 cases reached mediation during FY 2004. This figure includes 76 new requests for mediation filed during FY 2004, 33 cases pending at the beginning of this report period, and 18 cases that had completed mediation but were still within the time period for filing a complaint on September 30, 2004.

Pending in mediation on 10/1/03	33
Pending in open period for filing a complaint on 9/30/04	18
Mediation requests received	76
Total	127

Mediation Results

Closed during or after mediation		79
Settled	*15*	
No further action	*51*	
District Court Suit	*13*	
Administrative complaints filed after mediation ended		14
Mediation completed but still within the open period to file a complaint on 9/30/04		10
Pending in mediation on 9/30/04		24

Complaints

The 19 administrative complaints active during FY 2004, which includes 14 new complaints filed and 5 that were pending from the previous fiscal year, had the following outcomes:

Complaints	
Pending on 10/1/03	5
Filed during FY 2004	14
Hearings	
Cases in which Hearing Officer's decision issued	8
Resolutions w/o Hearing Officer decision	1
Complaints pending on 9/30/04	10
Board Action	
Cases in which appeals pending on 10/1/03	3
Cases in which appeals filed	6
Cases in which Board decisions issued	4
Pending on appeal	5
Judicial Review	
Petitions for review filed during FY 2004	6
Petitions for review pending on 9/30/04	9

Additional Statistics on Proceedings

The following are additional statistics on cases handled by the Office of Compliance FY 2004.

Total Requests for Counseling by Office/Organization

Office of the Architect of the Capitol	23
Capitol Police	37
House (Not including Members' personal staff)	8
House (Members' personal staff)	8
Office of the Attending Physician	2
Senate	6

Requests for Counseling by Section of the Law

Section	Description	Requests
201	Rights and protections under title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990;	515
202	Rights and protections under the Family and Medical Leave Act	19
203	Rights and protections under the Fair Labor Standards Act	26
206	Rights and protections relating to veterans' employment and reemployment	4
207	Prohibition of intimidation or reprisal	210

(Note: Aggregate numbers will not necessarily match category totals as a single request for counseling may involve more than one issue or alleged violation)

Issues Raised By Employees Seeking Counseling

Assignments	10
Benefits	1
Compensation	10
Demotion	6
Discharge	1
Discipline	32
Disparate Treatment	12
Evaluation	2
Harassment	34
Hiring	5
Hostile Work Environment	36
Leave	8
Office Operations	4
Overtime Pay	4
Promotion	28
Reasonable Accommodations	4
Reinstatement	3
Termination	34
Terms and Conditions	65

(Note: Aggregate numbers will not necessarily match category totals as a single request for counseling may involve more than one issue or alleged violation)

Bases of Administrative Complaints During FY 2004

There were a total of 19 administrative complaints in process during FY 2004. The bases of these complaints included:

- Alleged unfair application of sick leave benefits because of reprisal
- Alleged harassment and termination because of race, gender and reprisal
- Alleged harassment, hostile work environment and denial of reasonable accommodation because of sex and disability
- Alleged termination based on race
- Alleged harassment, unfair terms and conditions, and denial of overtime pay be cause of sex and reprisal, and in violation of the Fair Labor Standards Act
- Alleged failure to hire because of race, color, age, sex, and disability
- Alleged unfair discipline and demotion based on race, age and reprisal
- Alleged failure to hire because of age and sex
- Alleged harassment due to reprisal
- Alleged denial of reasonable accommodation and termination because of disability and reprisal
- Alleged failure to promote because of race
- Alleged intimidation, interference and misrepresentation because of race and reprisal

Labor Management Relations

The Office of Compliance carries out the Board of Director's investigative authorities under Section 220 of the CAA, involving issues concerning the appropriateness of bargaining units for labor organization representation, the duty to bargain, and exceptions to arbitrator's awards. The Board exercises adjudicatory authority over those matters, as well as unfair labor practice complaints at the appellate stage.

Board Action Under Section 220

- The Board issued a decision on a negotiability appeal holding that a bargaining proposal was negotiable. The employing office filed a Motion for Reconsideration which is presently before the Board for decision.
- A labor organization sought to be the exclusive representative of a bargaining unit; an election was conducted and the labor organization did not receive the majority of votes cast.
- A negotiability appeal filed by a labor organization was decided by the Board of Directors. The Board held that the labor organization's disputed bargaining proposal was negotiable under the CAA.
- The Board granted the petition of a labor organization to amend the Certification of Representative in a covered collective bargaining unit.
- A labor organization filed a petition to amend the Certificate of Representative in a covered collective bargaining unit. In a Supplemental Decision and Order, the Board dismissed the petition.

OSHA, ADA, and Unfair Labor Practice Proceedings

The General Counsel of the Office of Compliance is responsible for matters arising under three sections of the CAA: Section 210 (Public Services and Accommodations under the Americans with Disabilities Act of 1990); Section 215 (Occupational Safety and Health Act of 1970); and Section 220 (Unfair Labor Practices under chapter 71, of title 5, United States Code).

Total Requests for Information and Assistance by Section of the CAA

Section	Description	Requests
210	Public Access and Accommodations under the Americans with Disabilities Act of 1990	1
215	Occupational Safety and Health Act of 1970	253
220	Unfair Labor Practices under chapter 71 of Title 5, U.S. Code	2

(Note: These figures include only contacts made directly with the General Counsel of the Office of Compliance)

Access to Public Services and Accommodations

Section 210 of the CAA protects qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or places of public accommodation in covered locations and offices. Offices of the Senate and the House of Representatives; joint committees of Congress; the Capitol Police; the Congressional Budget Office; the Capitol Guide Service; the Office of the Architect of the Capitol; the Office of the Attending Physician; and the Office of Compliance all must comply with Section 210's requirements in their dealings with the public.

Individuals who feel their rights under this provision have been violated can file a charge of discrimination with the General Counsel of the Office of Compliance. This charge must be filed within 180 days of the alleged discrimination. After a charge is filed, the General Counsel will conduct an investigation. If the investigation reveals that a violation has occurred, the General Counsel may either request mediation to resolve the dispute or file a complaint before an independent Hearing Officer with the Office of Compliance.

Action Under Section 210

Charges filed	1
Cases closed	0
Cases pending as of 9/30/04	2

Occupational Safety and Health

Section 215 of the CAA requires that Legislative Branch workplaces be free of safety and health hazards likely to cause death or serious injury. Employing offices must comply with all applicable occupational safety and health standards. An employing office may be responsible for correcting a violation even if it does not have an employment relationship with the employees who are exposed to the hazard.

When a Request for Inspection is received, the General Counsel of the Office of Compliance initiates an on-site investigation and sends a detailed report to the employing office explaining any steps that may be needed to remedy the problem. If the General Counsel finds a violation, a notification or citation may be issued to the offices responsible for correcting the problem. If the violation is not corrected once a citation has been issued, the General Counsel may file a complaint before an independent Hearing Officer with the Office of Compliance.

Action Under Section 215

Requests for Inspection filed	24
Citations issued	5
Cases closed	22
Cases pending as of 9/30/04	61

Inspection by Category

Requests for inspections can be broken down into four main categories: health hazards; fire safety; physical hazards; and emergency response.[1] Each inspection is a multi-part effort involving opening and closing conferences with the affected employing offices; conducting research on the hazards found; taking environmental samples and having them analyzed; explaining to employing offices what the regulations and codes require; preparing comprehensive reports of the results of the inspections, the violations found, and the steps required for abatement; and following up with the employing offices to assure that the violations have been abated.

Health Hazards	12
Fire Safety	4
Physical Hazards	3
Emergency Response	5

(Note: Aggregate numbers do not match total requests for inspection because individual requests for inspection can involve more than one category)

[1] *Health hazards* includes potential exposures to airborne asbestos fibers, lead, and bloodborne pathogens. *Fire safety hazards* include life safety issues, such as deficient building design, sprinkler systems, and fire alarm problems. *Physical hazards* include the operation of powered industrial trucks, lack of machinery guards, or cold and heat stress. *Emergency response* includes the lack of an emergency action plan, deficiencies in emergency response, and plans and procedures for chemical or biological hazards.

Unfair Labor Practices

Section 220 of the Congressional Accountability Act (CAA) prohibits unfair labor practices by both employing offices and labor organizations. The General Counsel of the Office of Compliance is responsible for processing charges that allege an unfair labor practice. If a person believes that an unfair labor practice has been committed, he or she must file a complaint with the General Counsel who will then conduct a thorough investigation of the charge. If the General Counsel believes that an unfair labor practice has occurred, a complaint will be filed and prosecuted before an Independent Hearing Officer with the Office of Compliance.

Action Under Section 220

Unfair Labor Practice Charges filed	14
Complaints issued	0
Board decisions issued	0
Cases closed	13
Cases pending as of 9/30/04	17

Staff of the Office of Compliance

James Abbott
Deputy General Counsel

Selviana Bates
Staff Assistant

Sarah Buckbee
Assistant Systems Administrator

Eilin Chiang
Staff Attorney

Carol Griffith
Administrative Assistant to the General Counsel

Kisha Harley
Hearings Clerk

Beth Hughes-Brown
Budget and Administative Officer

Teresa James
Director of Counseling,
Acting Deputy Executive Director for the Senate

Willie King
Finance Officer

Stephen Mallinger
Special Assistant to the General Counsel,
Lead Safety and Health Inspector

Jonathan Orr
Director of Communications

Kate Tapley
Senior Attorney

G Ann Woodbury
Case Processing Manager

Contact Information:

Office of Compliance

Room LA 200, John Adams Building
110 Second Street, SE
Washington, DC 20540-1999

t/ 202-724-9250
tdd/ 202-426-1912
f/ 202-426-1913
Recorded Information Line/ 202-724-9260
www.compliance.gov