State of the CONGRESSIONAL WORKPLACE

A REPORT ON SAFETY & HEALTH, ACCESSIBILITY,

AND WORKPLACE RIGHTS UNDER THE

CONGRESSIONAL ACCOUNTABILITY ACT

Office of Compliance

FY 2009 Annual Report

“Congress can make no law which will not have its full operation on themselves and their friends, as well as the great mass of society... if this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature as well as on the people, the people will be prepared to tolerate anything but liberty.”

James Madison in The Federalist, No. 57, as referenced in the August 1994 committee report to accompany H.R. 4822, the Congressional Accountability Act

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COVER: The bronze "Statue of Freedom" by Thomas Crawford, atop the crowning feature of the dome of the United States Capitol

THIS PAGE: "Peace Protecting Genius" by Paul Wayland Bartlett; Marble, 1916, Pediment over the east entrance to the House wing of the U.S. Capitol

Photo Credit: Architect of the Capitol

About This Annual Report

Approximately 15 years ago, Congress passed the Congressional Accountability Act (CAA) with overwhelming bipartisan support. The CAA brings Congress and its agencies under the ambit of workplace rights, occupational safety and health, accessibility, and fair labor standards statutes that apply to most private and public employers. Prior to the passage of the CAA, Congress had exempted itself from the reach of these laws, affording employees no statutory remedy for their violation.

In an effort to bring accountability to Congress and its agencies and to provide an avenue of redress for employees, the CAA established the Office of Compliance (OOC) to administer a dispute resolution program for the resolution of claims by Congressional employees under the CAA; to carry out an education program to inform Congressional Members, employing offices, and Congressional employees about their rights and obligations under the CAA; to inspect Congressional facilities for compliance with safety and health and accessibility laws; and to operate under a Board of Directors that is responsible for, among other things, promulgating regulations and making recommendations for changes to the CAA to keep Congress accountable under the workplace laws that apply to private and public employers.

The CAA was drafted in a manner that demonstrates that Congress intended that there be an ongoing, vigilant review of the workplace laws that apply to Congress and a review of whether Congressional employees are indeed making claims under the CAA, accessing the services of the OOC, and able to make claims against their employers in a similar manner as Federal Executive Branch and private sector employees.

What is the current state of Congressional accountability and compliance under the CAA? This Annual Report provides an analysis of the state of safety & health, accessibility, and workplace rights in Congress during fiscal year 2009 (October 1, 2008–September 30, 2009).

In some instances, the OOC has provided information that became available after fiscal year 2009, but before this Annual Report went to print.

This Annual Report is compiled from two general sources of information. One source is periodic reports that are disclosed to Congress, as required under the CAA. All of our statutory reports are available on the OOC's website at **www.compliance.gov.** The four reports required by the CAA include:

- **OSHA Biennial Inspections Report:** Section 215(e) of the CAA requires the OOC to inspect Legislative

Branch facilities for compliance with occupational safety and health standards under the Occupational Safety and Health Act (OSHA), at least once each Congress. This Annual Report summarizes the OSHA inspections report for the 110th Congress (2007–2008), which was issued by the OOC in FY 2009, and provides projections for the inspections of the 111th Congress (2009–2010) based on information known to the OOC at the time this Annual Report went to print.

- **ADA Biennial Inspections Report:** Section 210(f) of the CAA requires the OOC to conduct biennial inspections of Legislative Branch facilities for compliance with the access to public services and accommodations requirements under the Americans with Disabilities Act (ADA), at least once each Congress. We summarize the ADA inspections report for the 110th Congress (2007–2008), which was completed by the OOC in FY 2009, and provide a glimpse into the more extensive inspections being conducted for the 111th Congress (2009–2010).
- **102(b) Report:** Section 102(b) of the CAA requires the Board of Directors to report whether and to what degree provisions of Federal law, relating to the terms and conditions of employment, and access to public services and accommodations, are applicable or inapplicable to the Legislative Branch and, if inapplicable, whether they should be made applicable. This Annual Report summarizes the 102(b) report issued to Congress in 2008, which made recommendations to the 111th Congress (2009–2010) for changes to the CAA to advance Congressional workplace rights. The Board of Directors highlights sections of the 102(b) report that continue to be priorities.
- **Section 301(h) Statistics:** Section 301(h) of the CAA requires the OOC to publish statistics on the use of the OOC by Congressional employees, including information about the types of claims being made against Congressional Members and employing offices. The OOC's initial publication of FY 2009 statistics is contained in this Annual Report.

The second source is information that does not require disclosure by the CAA, but is helpful in understanding the current status of the Congressional workplace.

For example, one of the statutory roles of the OOC is to educate Congressional Members, employing offices, and Congressional employees about their obligations and rights under the CAA. At the recommendation of the Government Accountability Office in its 2004 Status of Management Control Efforts to Improve Effectiveness, the OOC conducted an independent survey of Congressional employees to determine what they know about the OOC and their workplace rights. The results of this baseline survey, conducted with the assistance of the Congressional Management Foundation (CMF), are summarized in this Annual Report. The OOC also provides recommendations from the CMF about how to improve the OOC's outreach to Congressional employees.

Annual Report Structure

Four sections in this Annual Report include the State of Safety & Health, the State of Access to Public Services & Accommodations, the State of Workplace Rights, and the State of the Office of Compliance. Each section has three major components:

What The Law Requires
A general, background explanation of legal obligations under key provisions of the CAA.

Achievements & Compliance Assessment
An assessment of Congressional compliance with the CAA, including achievements, areas for improvement, and non-compliance with the law.

Parity Gap Analysis
An analysis of the difference between the workplace rights afforded to Congressional employees under the CAA and the workplace rights afforded to employees in the private sector and the Federal Executive Branch. This analysis also contains recommendations from the Board of Directors of the OOC to amend the CAA to advance workplace rights for Congressional employees so that they have similar protections as employees in the private sector and the Federal Executive Branch.

Statement from the Chair of the Board of Directors[1]

Fiscal year 2009 was a very significant year for the advancement of safety, health, and workplace rights in Congress. This Annual Report documents those advancements.

The Office of Compliance's Annual Report—now titled "State of the Congressional Workplace"—has a new format and provides more detailed information to our stakeholders, Congressional employees, and the public about the role the Office of Compliance (OOC) plays in ensuring accountability on Capitol Hill. Within these pages are statutorily required statistical information about the use of the OOC by stakeholders and their staff, the state of safety and health in Congressional workspaces, accessibility to Capitol Hill for disabled workers and visitors, and the advancement of workplace rights for Congressional employees. To help better understand and provide context about the Congressional workplace, this Annual Report includes helpful facts about its demographics, size, historical significance, and the roles played by various legislative agencies.

1 Susan S. Robfogel was Chair of the Board of Directors during fiscal year 2009. She remains on the Board; however, Barbara L. Camens is the current Chair of the Board of Directors.

As explained in this Annual Report, Congressional Members deserve credit for the considerable advancements of workplace rights and safety and health in the Congressional workplace. For example, Congress passed the Genetic Information Nondiscrimination Act (GINA) in fiscal year 2009, and ensured that GINA's protections extended to Congressional employees.

Furthermore, Congress provided funding to the Office of Compliance so that its inspectors could provide technical assistance to employing offices with respect to safety programs, follow up on abatement of high risk hazards, and conduct pre-inspections of the Capitol Visitors Center for safety and health hazards and ADA accessibility barriers. Significant credit for advancing safety and health of Congressional employees must also be given to the House and Senate Employment Counsel, the House Chief Administrative Officer, Office of the Architect of the Capitol, and safety personnel in employing offices. As just one example, these offices were able to cut in half the number of hazards in Member and Committee offices by instituting a proactive, pre-inspection program. This was no small effort in light of the considerable size of Congressional properties and the careful attention that must be paid to maintaining the historical fabric of these landmark buildings when abating such hazards.

But much work remains to make the Congressional workplace safer and more accessible to Congressional employees and visitors. This Annual Report summarizes our findings of unabated workplace hazards, including dangerous hazards that still pose serious risk to the safety and health of Capitol Hill staff and visitors.

Another area where our work continues is obtaining Congressional approval of our adopted regulations concerning employment and benefits for veterans and servicemembers. A function of the Board of Directors is to ensure that when Congress amends the CAA to advance workplace rights, we adopt corresponding regulations that provide Congress and its workers guidance about their obligations and rights under the new law.

By adopting the regulations for the Veterans Employment Opportunities Act in 2008 and by adopting regulations for the Uniformed Services Employment and Reemployment Rights Act at the beginning of 2009, the Board has attempted to secure the rights of veterans and servicemembers. Congress has yet to approve either of these regulations. The Board remains ever vigilant in its efforts to work with our oversight committees in ensuring Congressional approval for these regulations. With great emphasis in the Legislative Branch on veterans' programs, such as the Wounded Warriors Program being carried out by the House Office of the Chief Administrative Officer, the passage of these regulations would be right in step with the attention Congress is giving those individuals who serve our country.

The Board is so proud of the staff of the OOC and their achievements this year. There is much more to do, but it is gratifying to witness such important advancements in the Congressional workplace.

Sincerely,

Susan S. Robfogel, Esq.

Statement from the Executive Director

A core statutory function of the Office of Compliance (OOC) is to engage with, and educate, our stakeholders—Congressional Members, employing offices, employee representatives, and Congressional employees—about their obligations and rights under the Congressional Accountability Act (CAA). Fiscal year 2009 represented our most intensive and far-reaching education effort to date.

Even in an age of electronic communications, technology innovators have been unable to replicate the significance of in-person, face-to-face communication and the effect it has on people. We recognize this effect, and last year we decided to visit all incoming freshman members and their staffs to let them know who we are and what we do. We also visited with incumbent members and their staffs to remind them of our services. During these visits, we offered to provide training about compliance with the CAA and we provided educational materials. Our message—one that is shared by experts in the fields of employment, labor, and safety and health law—that preventing workplace violations of the law through education and training is superior and less costly than inaction, was heard and appreciated by many we visited. The reaction to our efforts has been welcoming and overwhelmingly positive.

During fiscal year 2009, we continued to foster productive relations with other employing offices of Congress—the Congressional Budget Office, the Library of Congress, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the United States Capitol Police—and offered ourselves as a key resource for information and expertise on the issues that affect their employees. We appreciate their openness and willingness to meet with us regularly to discuss workplace issues affecting their employees.

Our personal communications efforts did not stop there. We engaged in other external activities to reach out to Congressional employees and to educate them on their rights and protections under the CAA. During FY 2009, we participated in numerous education and outreach efforts on the Hill.

The OOC continues to work with the Congressional Research Service during their district and state training sessions. Several times a year, the OOC participates in informational presentations for those Congressional employees located in state and district offices. These sessions have served as an important tool to reach not only those employees on Capitol Hill, but also those in the many state and regional offices across the country. Throughout the year, the OOC worked to reach all employees of the Legislative Branch on workplace matters in general, and to inform them of the OOC's services in particular. Over this past year, the OOC participated in the House Safety Fair and the Ford Services Fair. Both events gave employees the chance to have their questions answered and receive our publications, information, and other tools to ensure a fair, safe, and healthy work environment.

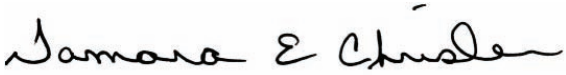
In addition to educational efforts, part of our responsibility under the CAA is to ensure compliance with certain laws that Congress has applied to itself through the CAA. For example, the CAA requires Congressional compliance with the Occupational Safety and Health Act (OSHA). As part of our OSHA responsibilities, the OOC is required to inspect the Congressional workplace to ensure no safety and health hazards exist (such as fire, electrical, and fall threats). Consequently, Congressional members and other employing offices are made aware of where hazards lie in the Congressional workplace and how to fix them. The results of our occupational hazard inspection—that covered over 17 million square feet of Congressional properties in the Washington, DC Metro Area—were released this fiscal year in June 2009 in our "Biennial Report on Occupational Safety and Health Inspections" for the 110th Congress.

As part of the OOC's Dispute Resolution Program and in its adjudicatory role, the Board of Directors looked at several significant legal issues during the fiscal year, including matters relating to the Family Medical Leave Act (FMLA) and Title VII of the Civil Rights Act. Specifically, Board decisions covered such issues as what constitutes a waiver of FMLA rights, what is required to find interference with those same rights, and how retaliation is delineated under the CAA. The Board also considered issues involving the scope of review of arbitrator awards.

This year, we started to implement plans for a revamped website that will be more user-friendly. The new website will roll out in FY 2010, and will provide the Congressional community with helpful educational resources for stakeholders and employees to ensure a better workplace. Significantly, the website will allow for our constituents in the district and state offices to have easier access to our training materials, both printed and electronic. Our site will allow for live web stream to certain seminars and workshops.

Finally, we want to recognize the staff of the Committee on House Administration; House Appropriations Committee, Subcommittee on the Legislative Branch; Senate Rules Committee; Senate Homeland Security and Governmental Affairs Committee; Senate Appropriations Committee, Subcommittee on the Legislative Branch; and the Congressional members who sit on these Committees. We work daily with Committee staff on issues affecting the Congressional workplace. They have steadfastly kept their doors open to us, responded to our concerns, and provided ongoing support to the OOC so that we can advance workplace rights and collaboratively ensure Congressional accountability.

Sincerely,



Tamara E. Chrisler, Esq.

Why We Are Here, What We Do

SECTION HIGHLIGHTS

- History of the Congressional Accountability Act
- Workplace protections for Congressional employees
- Who is covered under the Congressional Accountability Act
- How Congressional employees can seek redress for violations of the law

CONGRESSIONAL ACCOUNTABILITY AND THE OFFICE OF COMPLIANCE

In 1995, Congress passed the Congressional Accountability Act (CAA). The purpose of the CAA was to require Congress and its agencies to follow many of the same employment, labor, accessibility, and safety and health laws that Congress enacted to apply to private business and the rest of the Federal government, and to provide an avenue of recourse for those employees who allege violations of workplace rights.

Until the CAA's passage, Congress had exempted itself from most of these laws. But a growing, collective voice of bipartisan Congressional Members expressed dissatisfaction with such exemptions. They wanted Congress to be held accountable to the same employment, accessibility, and safety laws that Congress enacted to apply to other employers. The CAA was passed to make that happen.

Many of those Congressional Members also felt that the employment enforcement procedures and dispute resolution system that had been in place prior to the passage of the CAA were not effective at protecting and advancing the rights of Congressional employees. Under the CAA, Congress established the Office of Compliance (OOC) to implement an effective dispute resolution system, enforce certain provisions of the CAA, and educate Congress, its employing offices, and Congressional employees of their obligations and rights under the CAA. Furthermore, under Section 301(h) of the CAA, Congress requires the OOC to track and annually report statistical information about the use of the OOC by employees and employing offices of the Legislative Branch.

Under Section 102(b) of the CAA, the OOC is required to report to Congress, on a biennial basis, about any Federal employment, labor, access, and safety and health laws not already made applicable through the CAA. Sections 210(f)(2) and 215(e)(2) of the CAA require that the General Counsel of the OOC submit biennial reports to Congress about compliance inspections conducted under the Americans with Disabilities Act and the Occupational Safety and Health Act, respectively.

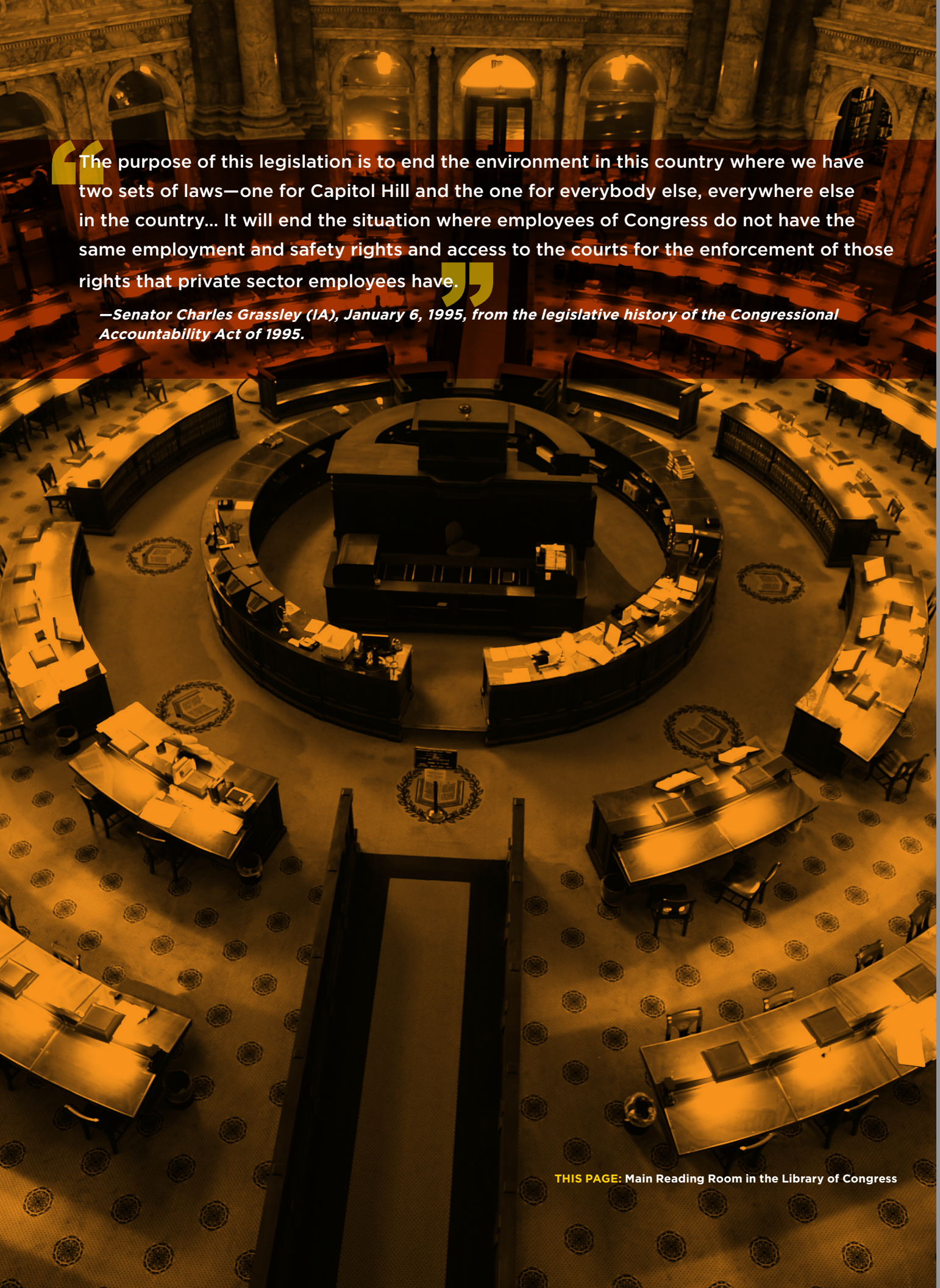
The OOC is an independent, non-partisan agency that is subject to oversight by the Senate Committee on Rules and Administration, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on House Administration.

The CAA protects over 30,000 employees of the Legislative Branch, including employees of the House of Representatives and the Senate (both Washington, DC and state and district office staff); the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the OOC; the Office of Congressional Accessibility Services; and the United States Capitol Police. Certain provisions of the CAA also apply to the Government Accountability Office and to the Library of Congress. The CAA protects both current employees and job applicants and, in certain instances, former employees and members of the public may also be covered.

LAWS THAT PROTECT CONGRESSIONAL EMPLOYEES UNDER THE CAA

The CAA, which is implemented through the OOC, applies the following employment, labor, accessibility, and workplace safety laws:

- The Age Discrimination in Employment Act of 1967
- The Americans with Disabilities Act of 1990



"The purpose of this legislation is to end the environment in this country where we have two sets of laws—one for Capitol Hill and the one for everybody else, everywhere else in the country... It will end the situation where employees of Congress do not have the same employment and safety rights and access to the courts for the enforcement of those rights that private sector employees have."

—Senator Charles Grassley (IA), January 6, 1995, from the legislative history of the Congressional Accountability Act of 1995.

THIS PAGE: Main Reading Room in the Library of Congress

- Title VII of the Civil Rights Act of 1964
- The Employee Polygraph Protection Act of 1988
- The Fair Labor Standards Act of 1938
- The Family and Medical Leave Act of 1993
- Chapter 71 of the Federal Services Labor-Management Relations Act
- The Occupational Safety and Health Act of 1970
- The Rehabilitation Act of 1973
- Uniformed Services Employment and Reemployment Rights Act of 1994
- The Worker Adjustment and Retraining Notification Act of 1989
- The Veterans Employment Opportunities Act of 1998
- Genetic Information Nondiscrimination Act of 2008

A description of these laws, the procedures for bringing claims under the CAA, and the authority of the General Counsel of the OOC to enforce certain provisions of the CAA are described in detail on our website at **www.compliance.gov**.

The resources on the website are also available for Congressional members and employing offices of the Legislative Branch to use as reference materials for understanding their obligations, best practices in managing their own workplace issues, and the importance of these laws for the protection of themselves, their workers, and their constituents.

EDUCATION & TRAINING: PREVENTING VIOLATIONS OF THE CAA AND ENHANCING THE WORKPLACE

Many employment, labor, and safety and health law experts—whether they defend employers or bring claims on behalf of employees—agree that educating employers about their obligations and employees about their rights is one of the best strategies for preventing violations of employment, labor, accessibility, and safety and health laws. Why? Because employers who do not understand their legal obligations are more likely to run afoul of them. Furthermore, ignoring workplace problems or allowing them to fester without addressing them creates unnecessary workplace conflict that can later lead to liability and undesirable publicity for all parties involved.

Congress recognized this when it passed the CAA. Section 301(h)(1) of the CAA mandates that the OOC "carry out a program of education for Members of Congress and other employing authorities of the legislative branch. . . respecting the laws made applicable to them and a program to inform individuals of their rights under laws applicable to the legislative branch…" See also Section 301(h)(2).

To this end, the OOC created a comprehensive education program that includes:

- developing and distributing written materials and publications;
- maintaining a website with materials about the law and its enforcement;
- conducting briefings, workshops, and conferences about the law and the services the OOC offers to our stakeholders and their employees;
- answering questions from Congressional members, employing offices of the Legislative Branch, and Congressional employees;
- providing training to Congressional members, employing offices of the Legislative Branch, and Congressional employees in a large group setting or, upon request, in a smaller setting tailored towards a particular office; and
- engaging in face-to-face meetings with Congressional members, employing offices, and Congressional employees to offer our employment and occupational safety and health law expertise.

DID YOU KNOW?

Congress employs over 30,000 employees throughout the United States to serve the needs of the American people. Most of these employees are employed in the Washington, DC metropolitan area. Congress is one of the largest employers in the region.

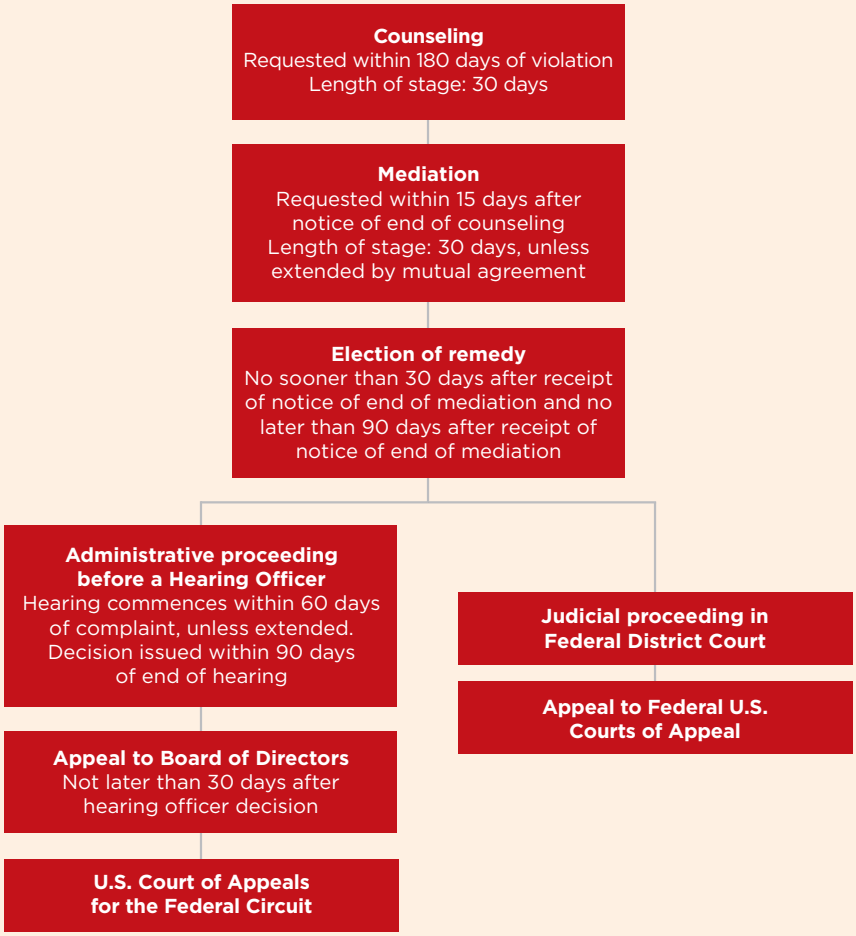
HOW CONGRESSIONAL EMPLOYEES BRING CLAIMS FOR WORKPLACE RIGHTS VIOLATIONS

The following charts explain how Congressional employees, applicants, and former employees may bring claims for workplace rights violations under the CAA. Members of the public may also bring claims for alleged violations of Titles II and III of the Americans with Disabilities Act.

DISPUTE RESOLUTION PROCESS FOR MOST TYPES OF CLAIMS

The CAA provides for mandatory alternative dispute resolution (ADR), which includes confidential 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 OOC or file suit in Federal Court. Some advantages of using the OOC's administrative hearing process, as compared to filing a civil suit, are that it offers faster resolution, greater confidentiality, fewer evidentiary restrictions and lower expense than a court forum, while still offering the same remedies that a court can provide.

The CAA and its ADR process apply to employees of the Legislative Branch, including employees of and job applicants to the House of Representatives and the Senate; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the OOC; the Office of Congressional Accessibility Services; and the United States Capitol Police. In certain instances, former employees may also be protected. Depending on the circumstances, the OOC will provide services locally to process claims brought by district or state office staff, or the OOC will service the needs of the employee through its Washington, DC office.

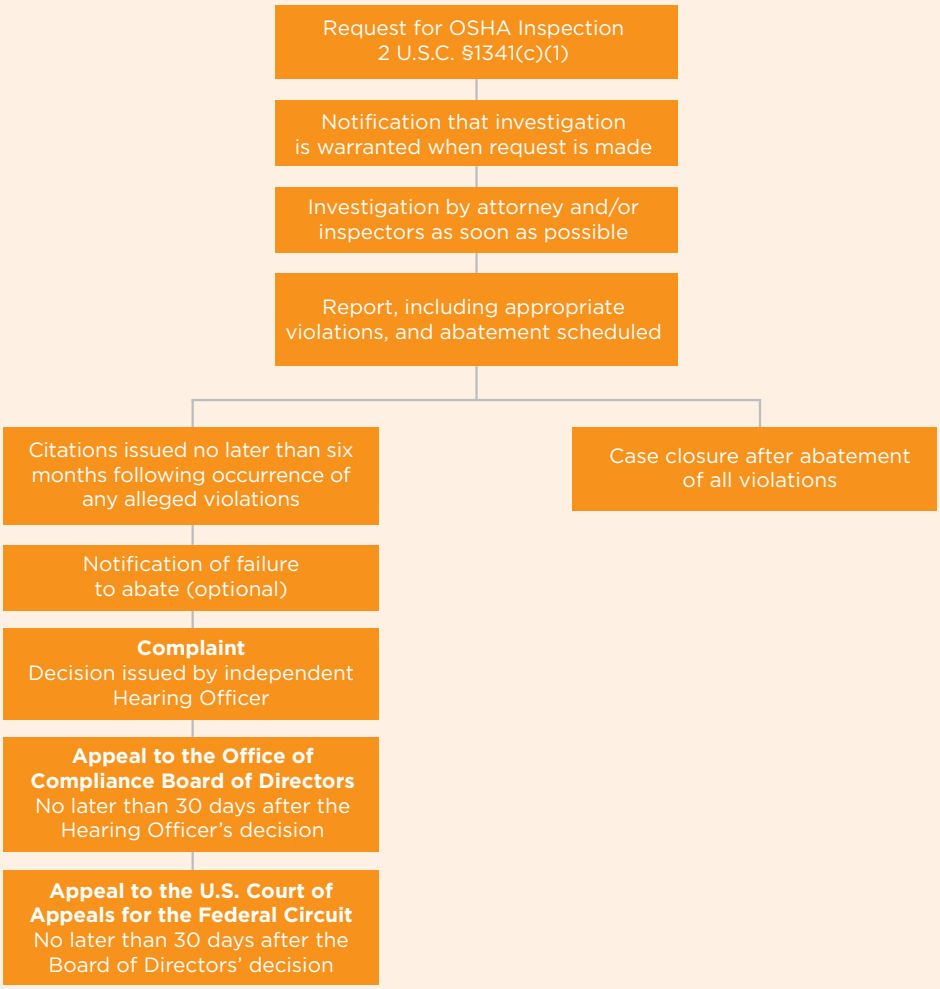


DISPUTE RESOLUTION FOR VIOLATIONS OF OSHA (REQUEST FOR INSPECTION ONLY)

Under the CAA, the Legislative Branch must comply with the Occupational Safety and Health Act (OSHA) and its standards requiring that the workplace be free of recognized hazards that are likely to cause death or serious injury. The General Counsel of the OOC inspects Congressional properties biannually for such violations and reports them to the Speaker of the House and President pro tempore of the Senate.

The CAA also provides that a Congressional employee or employing office may file a Request for Inspection to determine if a dangerous working condition exists. Once the request is filed, the General Counsel is responsible for investigating the suspected unsafe working condition.

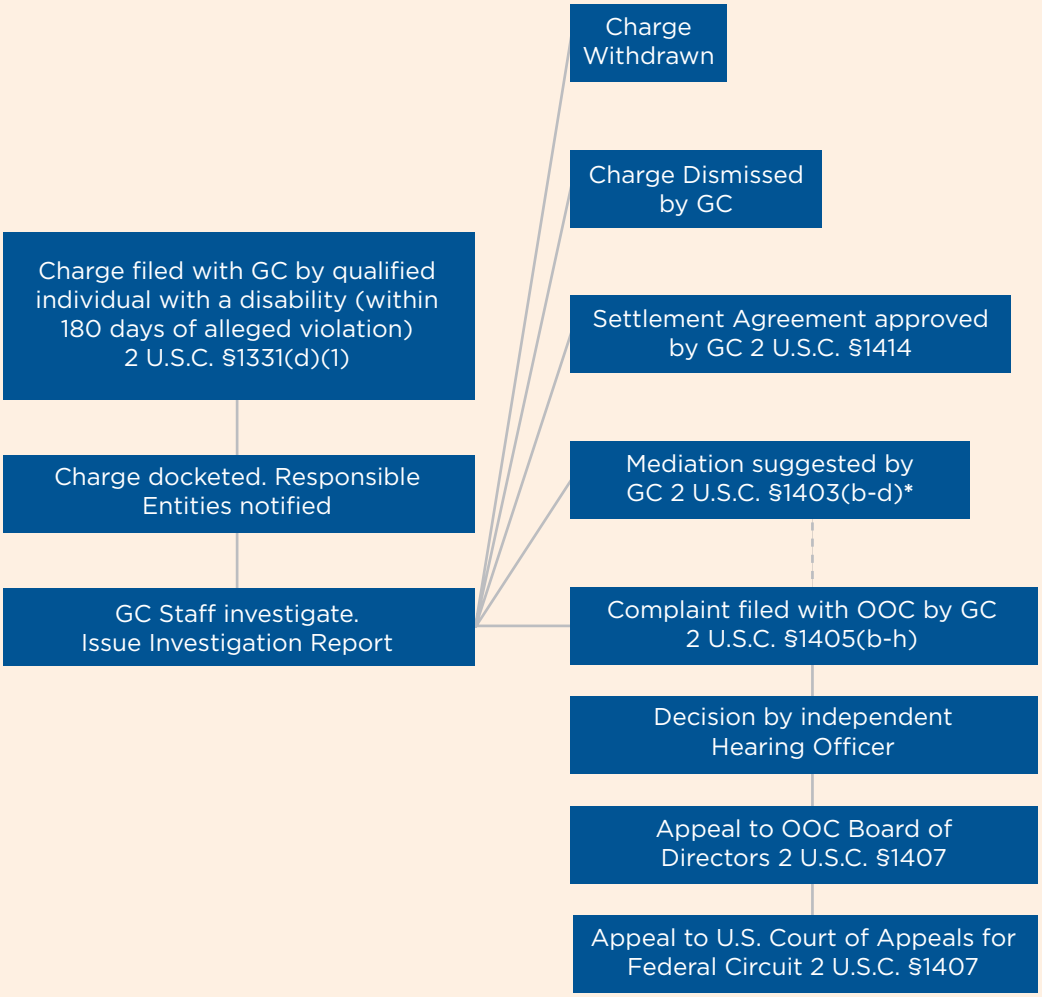
When an investigation reveals a hazardous working condition, the General Counsel may issue a notice or citation to the employing office that has exposed employees to the hazard and/or to the office responsible for correcting the violation. The office or offices are then responsible for taking appropriate action to correct conditions that are in violation of safety and health standards. If a hazardous condition is not corrected despite the issuance of a citation, the General Counsel can file a complaint before a Hearing Officer with the OOC and seek an order mandating the correction of the violation.



DISPUTE RESOLUTION FOR VIOLATIONS OF ADA ACCESSIBILITY LAWS

Under the CAA, the General Counsel of the OOC is required to inspect covered employing office facilities in the Legislative Branch for compliance with the rights and protections against discrimination in the provision of public services and accommodations established by the Americans with Disabilities Act of 1990 (ADA).

The CAA also provides for members of the public to file charges of public access violations under the ADA and for the General Counsel to investigate such charges. If an investigation reveals that a violation occurred, the General Counsel may request mediation to resolve the dispute or may file an administrative complaint with the OOC against the entity responsible for correcting the alleged violation.

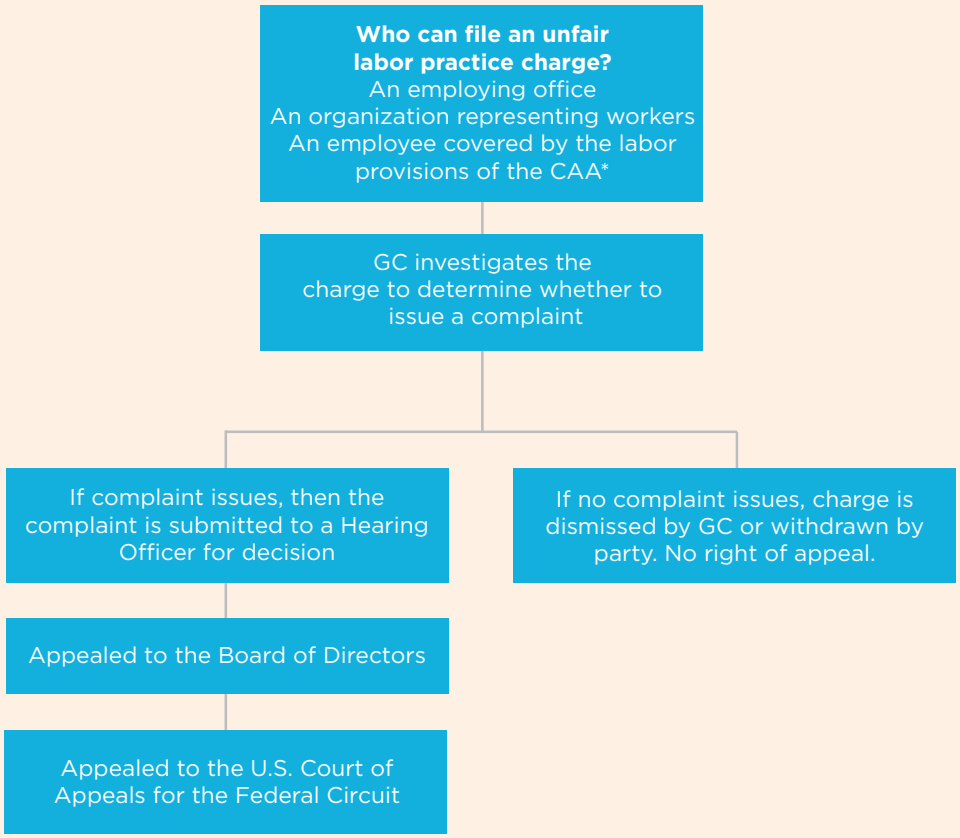


*Mediation is optional and not mandatory

DISPUTE RESOLUTION FOR VIOLATIONS OF FEDERAL LABOR LAWS

The CAA grants some Legislative Branch employees the right to join a labor organization for the purpose of collective bargaining under Chapter 71 of the Federal Services Labor-Management Relations Act. The CAA protects employees' rights to form, join, or assist a labor organization without fear of penalty or reprisal. It also protects those who choose not to join or participate in a labor organization.

The Board of Directors of the OOC has the authority to issue final decisions on union representation and elections issues, questions of arbitrability, and exceptions to arbitrator's awards. The Board also serves as the appellate body that issues decisions on unfair labor practice complaints. The General Counsel is responsible for investigating allegations of unfair labor practices and prosecuting complaints of unfair labor practices before a Hearing Officer and the Board.



***Not all Congressional employees are currently covered by Chapter 71 of the Federal Service Labor-Management Relations Act.**

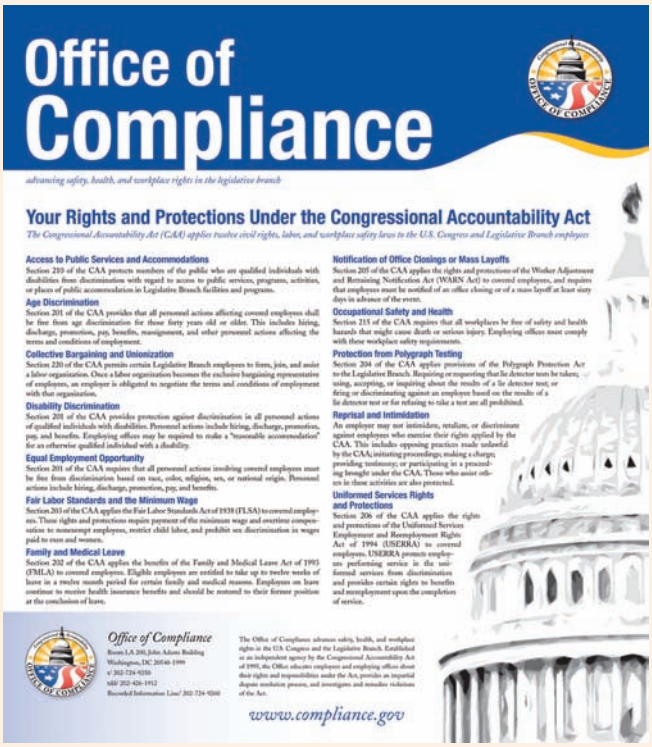
WHAT EMPLOYING OFFICES IN CONGRESS CAN DO TO INFORM EMPLOYEES OF THEIR WORKPLACE RIGHTS UNDER THE CAA

The CAA generally does not require employing offices to inform Congressional employees about their workplace rights. The OOC has produced a poster with the rights and protections afforded to covered employees under the CAA. Although not required, employing offices are encouraged to display the poster where notices for employees are customarily placed.

Employing offices can also distribute the CAA handbook to all employees. The CAA handbook provides useful information about workplace rights and protections, as well as the obligations and responsibilities of employing offices under the CAA.

Employing offices can also request that the OOC provide training to Congressional employees. The OOC provides training about the rights and protections under the CAA and can also provide training about specific topics under the CAA, such as preventing discrimination and harassment in the workplace.

To obtain these educational materials, request training, or if you have questions, please contact the OOC.



Office of Compliance

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

Your Rights and Protections Under the Congressional Accountability Act

The Congressional Accountability Act (CAA) applies twelve civil rights, labor, and workplace safety laws to the U.S. Congress and Legislative Branch employees

Access to Public Services and Accommodations
Section 210 of the CAA protects members of the public who are qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or places of public accommodation in Legislative Branch facilities and programs.

Age Discrimination
Section 201 of the CAA provides that all personnel actions affecting covered employees shall be free from age discrimination for those forty years old or older. This includes hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms and conditions of employment.

Collective Bargaining and Unionization
Section 220 of the CAA permits certain Legislative Branch employees to form, join, and assist a labor organization. Once a labor organization becomes the exclusive bargaining representative of employees, an employer is obligated to negotiate the terms and conditions of employment with that organization.

Disability Discrimination
Section 201 of the CAA provides protection against discrimination in all personnel actions of qualified individuals with disabilities. Personnel actions include hiring, discharge, promotion, pay, and benefits. Employing offices may be required to make a "reasonable accommodation" for an otherwise qualified individual with a disability.

Equal Employment Opportunity
Section 201 of the CAA requires that all personnel actions involving covered employees must be free from discrimination based on race, color, religion, sex, or national origin. Personnel actions include hiring, discharge, promotion, pay, and benefits.

Fair Labor Standards and the Minimum Wage
Section 203 of the CAA applies the Fair Labor Standards Act of 1938 (FLSA) to covered employees. These rights and protections require payment of the minimum wage and overtime compensation to nonexempt employees, restrict child labor, and prohibit sex discrimination in wages paid to men and women.

Family and Medical Leave
Section 202 of the CAA applies the benefits of the Family and Medical Leave Act of 1993 (FMLA) to covered employees. Eligible employees are entitled to take up to twelve weeks of leave in a twelve month period for certain family and medical reasons. Employees on leave continue to receive health insurance benefits and should be restored to their former position at the conclusion of leave.

Notification of Office Closings or Mass Layoffs
Section 205 of the CAA applies the rights and protections of the Worker Adjustment and Retraining Notification Act (WARN Act) to covered employees, and requires that employees must be notified of an office closing or of a mass layoff at least sixty days in advance of the event.

Occupational Safety and Health
Section 215 of the CAA requires that all workplaces be free of safety and health hazards that might cause death or serious injury. Employing offices must comply with these workplace safety requirements.

Protection from Polygraph Testing
Section 204 of the CAA applies provisions of the Polygraph Protection Act to the Legislative Branch. Requiring or requesting that lie detector tests be taken; using, accepting, or inquiring about the results of a lie detector test; or firing or discriminating against an employee based on the results of a lie detector test or for refusing to take a test are all prohibited.

Reprisal and Intimidation
An employer may not intimidate, retaliate, or discriminate against employees who exercise their rights applied by the CAA. This includes opposing practices made unlawful by the CAA; initiating proceedings; making a charge; providing testimony; or participating in a proceeding brought under the CAA. Those who assist others in these activities are also protected.

Uniformed Services Rights and Protections
Section 206 of the CAA applies the rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to covered employees. USERRA protects employees performing service in the uniformed services from discrimination and provides certain rights to benefits and reemployment upon the completion of service.

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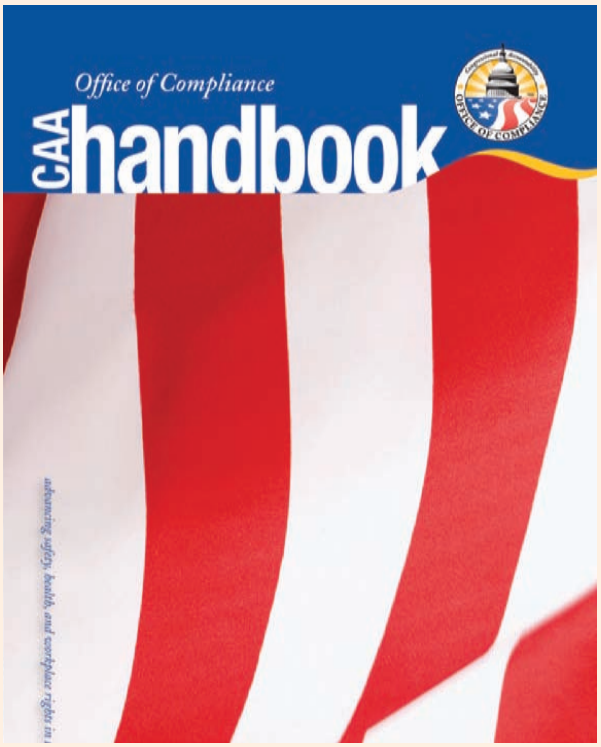
The Office of Compliance advances safety, health, and workplace rights in the U.S. Congress and the Legislative Branch. Established as an independent agency by the Congressional Accountability Act of 1995, the Office educates employees and employing offices about their rights and responsibilities under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

www.compliance.gov



Office of Compliance

CAA handbook

advancing safety, health, and workplace rights in

State Of Safety & Health

SECTION HIGHLIGHTS

- Projections for 111th Congress estimate 6,300 hazards in the Congressional workplace, a 30% reduction from 110th Congress which had 9,250 hazards
- 25% of hazards continue to be high risk to employees and visitors
- 154 Congressional Members received "Safe Office Award" in 111th Congress
- Congressional employees lack important safety & health protections available to employees in the private and public sectors

I. WHAT THE LAW REQUIRES: CONGRESS IS SUBJECT TO OSHA

HOW OSHA IS ENFORCED

The Occupational Safety and Health Act (OSHA) was enacted to prevent workplace injuries and to safeguard employee health. Other than purely humanitarian reasons for such laws, there are economic reasons for preventing workplace injuries. Injury prevention saves money for employers, such as Congress, in several ways such as reducing downtime to recuperate from injury, lost production for an injured employee, replacement, and increased premiums for health care.

Section 215(e)(1) of the Congressional Accountability Act (CAA) requires the General Counsel of the Office of Compliance (OOC) to inspect Legislative Branch facilities for compliance with occupational safety and health standards at least once each Congress. Thereafter, the General Counsel is required to report the results to the Speaker of the House of Representatives, President pro tempore of the Senate, and offices responsible for correcting violations including the Office of Congressional Accessibility Services, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the OOC, the Library of Congress, and the Government Accountability Office.

Finding such hazards is part of the OOC's role in educating Members of Congress and employing offices about the state of safety and health in the Legislative Branch. After all, safety and health hazards cannot be abated until they are identified. The OOC also provides educational materials and technical assistance to Members of Congress and employing offices. For example, in 2009 several Senators and Representatives requested pre-inspections to identify hazards in their offices so they could be fixed as soon as possible, rather than waiting until the next biennial inspection.

This Annual Report summarizes findings of hazards from the OOC inspections for the 110th Congress and provides projections for the 111th Congress based on information known to the OOC when this Annual Report went to print.[1] Biennial OSHA inspection reports are available on our website at **www.compliance.gov**.

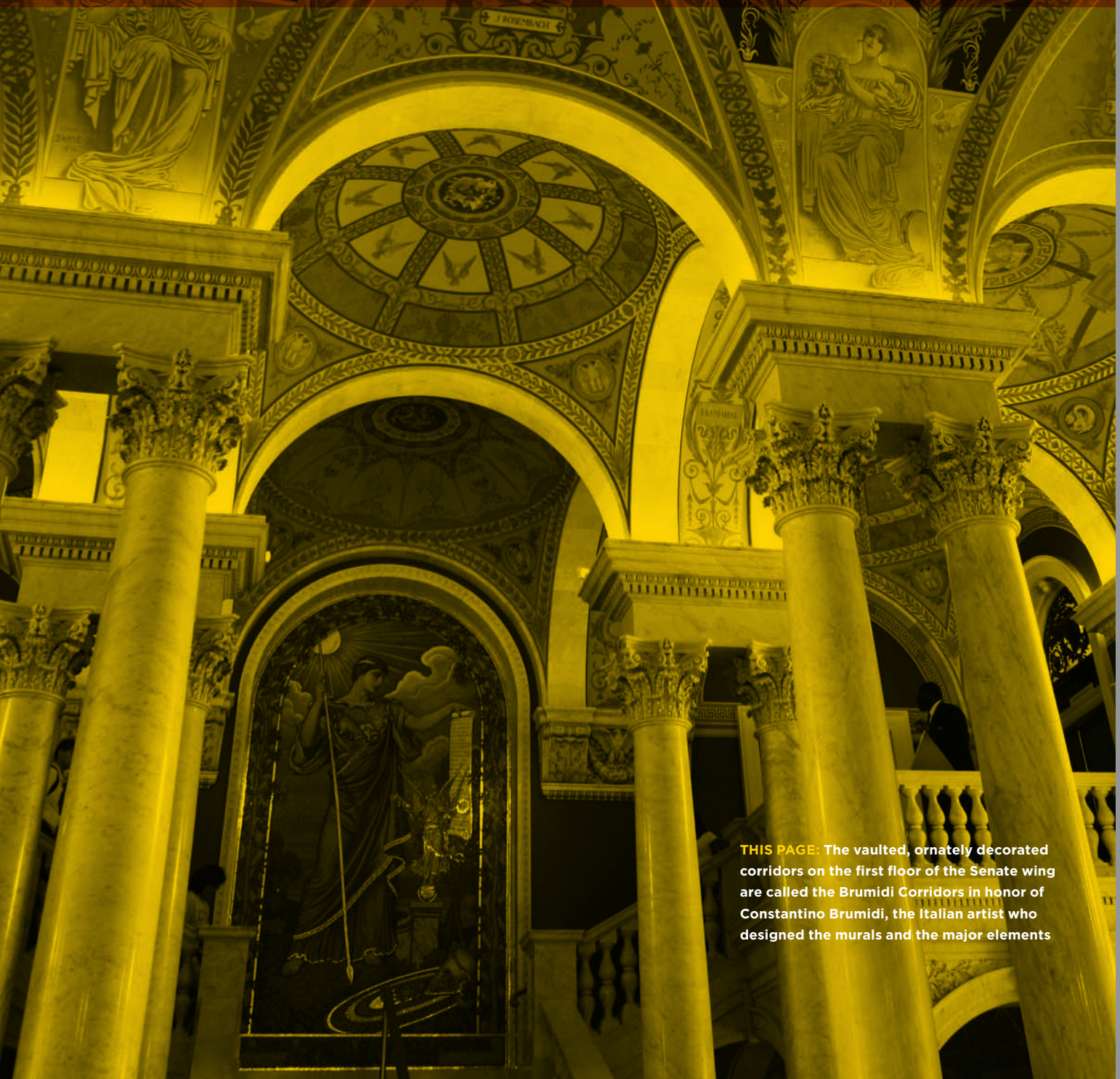
In addition to inspections, the OOC received requests for technical assistance from offices such as the Government Accountability Office (GAO) on issues including fire safety and other concerns. The OOC also accepted a request to participate in a GAO fire drill, assess its evacuation procedures, and evaluate the fire alarm and elevator recall systems activated during the fire drill and provided guidance on compliance.

The CAA allows for Congressional employees, employing offices, and bargaining unit representatives of covered employees to request that the General Counsel of the OOC inspect and investigate places of employment for violations of safety and health laws. These are called "requestor–initiated inspections." This Annual Report summarizes the OOC's findings of requestor–initiated inspections in fiscal year 2009.

1. The projections from the OOC are subject to change and actual findings of hazards may be substantialy less than projected.

"But there is more at stake here than Congress' approval ratings or the symbolism of having Congress abide by the laws it passes. We are talking about the lives of real people... Congress' failure to meet OSHA workplace safety standards means that it is putting the health—and possibly even the lives—of its workers at risk... This state of affairs is not just bad public relations, it is bad government."

—Sen. Joseph Lieberman, February 24, 1994, from the legislative history of the Congressional Accountability Act of 1995.



THIS PAGE: The vaulted, ornately decorated corridors on the first floor of the Senate wing are called the Brumidi Corridors in honor of Constantino Brumidi, the Italian artist who designed the murals and the major elements

DANGER LEVELS: RANKING EACH HAZARD

The OOC ranks hazards according to risk utilizing categories implemented by the Department of Defense Instruction 6055.1. The OOC believes these rankings provide more definitive information for Congressional members and employing offices to understand which safety and health hazards should receive priority because of the severe risk they pose, given the finite financial resources available for abating hazards. These categories are called "Risk Assessment Codes" or RACs.

The OOC inspectors assign a RAC to each hazard encountered during a routine inspection. The RAC describes the relative risk of injury, illness, or premature death that could result from exposure to the hazard. RACs vary from RAC 1 for high risk hazards to RAC 4 for the lowest level of risks.

A RAC is determined by using a combination of two factors: (1) the probability that an employee could be hurt; and (2) the severity of the illness or injury that could occur. OOC also uses two different types of RACs: (1) one for safety hazards, which could result in injuring an employee; and (2) one for health hazards, which are conditions that could cause an occupational illness.

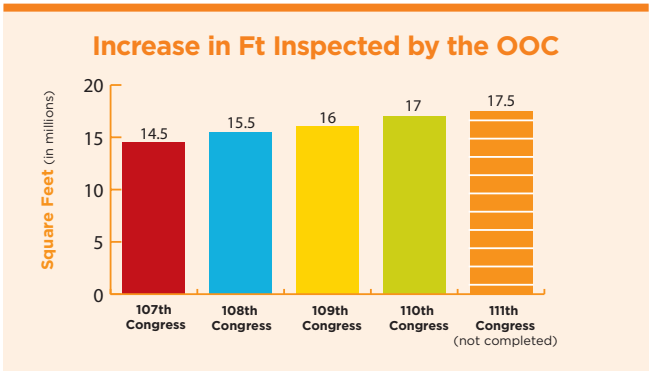
Safety Risk Assessment Code Matrix

	Hazard Severity Categories			
Probability Categories	**I**	**II**	**III**	**IV**
Likely to occur immediately (A)	RAC 1	RAC 1	RAC 2	RAC 3
Probably will occur in time (B)	RAC 1	RAC 2	RAC 3	RAC 4
Possible to occur in time (C)	RAC 2	RAC 3	RAC 4	
Unlikely to occur (D)	RAC 3	RAC 4		

- ***Severity Category I:*** Death or permanent total disability
- ***Severity Category II***: Permanent partial or temporary total disability: off work more than 3 months
- ***Severity Category III:*** Lost workday or compensable injury
- ***Severity Category IV:*** First aid or minor supportive medical treatment

II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: SAFETY & HEALTH HAZARDS IN THE CONGRESSIONAL WORKPLACE

In fiscal year 2009, the OOC completed the inspections for the 110th Congress and released the findings in the Biennial Report on Occupational Safety and Health Inspections. The biennial inspection of the 110th Congress covered over 96% of the 17 million square feet of space occupied by Congress and other Legislative Branch facilities in the Washington, DC Metropolitan Area, including facilities in Maryland and Virginia. It was the OOC's most sweeping inspection to date.[2]



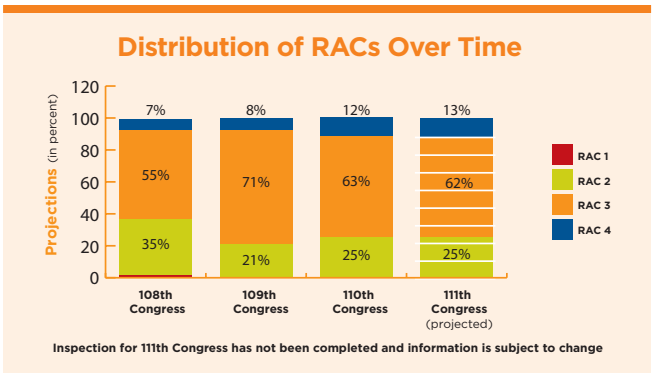
SAFETY AND HEALTH INSPECTION TREND ANALYSIS

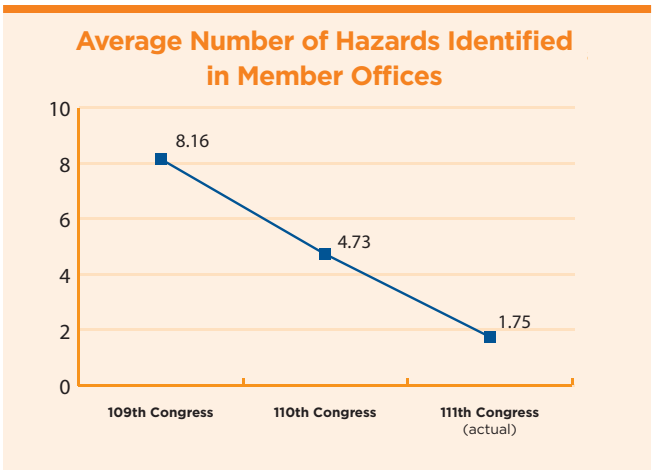
The OOC found 9,200 hazards in the Congressional workplace in the biennial inspection for the 110th Congress, a dramatic reduction of over 30% compared to the biennial inspecion of the 109th Congress, during which 13,140 hazards were identified. Although the biennial inspection for the 111th Congress has not been completed at the time this Annual Report went to print, the OOC projects the number of hazards should be reduced by another 30% during the 111th Congress to approximately 6,300 hazards.

While there was substantial reduction of the number of hazards found in the Congressional workplace during the inspections for the 110th Congress, roughly 25% of the hazards were classified as "high risk", which have the potential to cause death or serious injury to occupants and/or have a very high likelihood of a less serious injury if not abated. High risk hazards are categorized as RAC 1 and RAC 2.

In the 110th Congress, less than 1% of hazards were RAC 1, representing 19 hazards. However, approximately 25% of the hazards were RAC 2, representing roughly 2,300 hazards, most of which were electrical. Left unabated, these RAC 1

2 The CAA applies to Legislative Branch employees wherever they may work—in the Washington, D.C. metropolitan area or in a facility thousands of miles from the Capitol. Every Member of Congress employs staff in at least one office "back home." At a minimum this would total 535 so-called remote offices. Other Legislative Branch agencies also have staff outside the Washington, D.C. area. Due to fiscal constraints, the OOC cannot even give a precise number of these offices; our best estimate is that it may total over 1,000 sites. Moreover, the OOC lacks the resources to inspect these workplaces to identify safety and health hazards. During fiscal year 2009, the OOC made progress with an online tool by which remote office employees could assess safety conditions in their workplaces. We continue to develop this self–inspection tool and hope to pilot test it during fiscal year 2010.





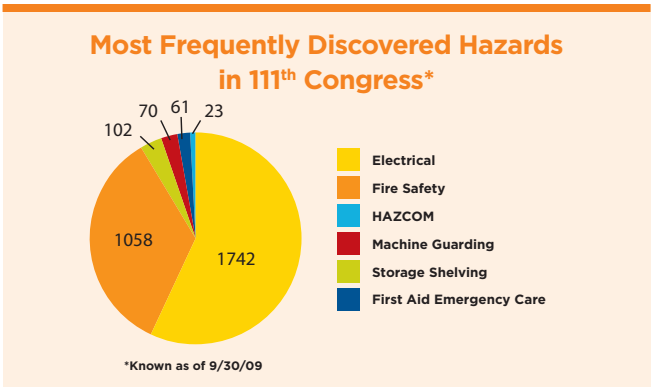
and RAC 2 hazards pose a substantial continuing danger for lawmakers, their employees, and their visitors. Nevertheless, the increased breadth and scope of the 109th and 110th Congress biennial inspections proved to have a significant impact on the reduction of hazards in the Congressional workplace. With the hazards identified, Congressional Members and employing offices moved to abate thousands of hazards.

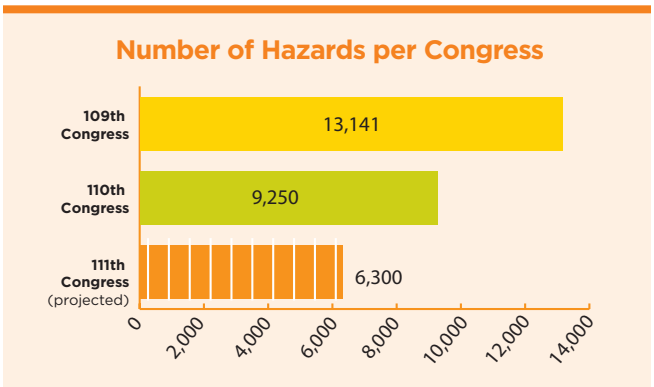
The dramatic reduction in the number of safety and health hazards was due in large measure to an increased emphasis on workplace safety by Congressional Members and employing offices. A significant amount of credit for the reduction in workplace hazards must be attributed to Senate and House Employment Counsel, the Architect of the Capitol, and the Chief Administrative Officer of the House. They instituted new pre-inspection processes in their jurisdictions following the biennial inspection for the 109th Congress. The pre–inspection approach included accompanying safety and health professionals on visits to offices in the Senate and House, notifying Congressional staff of hazards commonly found in such spaces, and encouraging staff to look for and correct hazardous conditions prior to the OOC inspections. As a result of such efforts, the OOC found just half the number of hazards in Congressional Member and Committee offices as had been found in the preceding Congress.

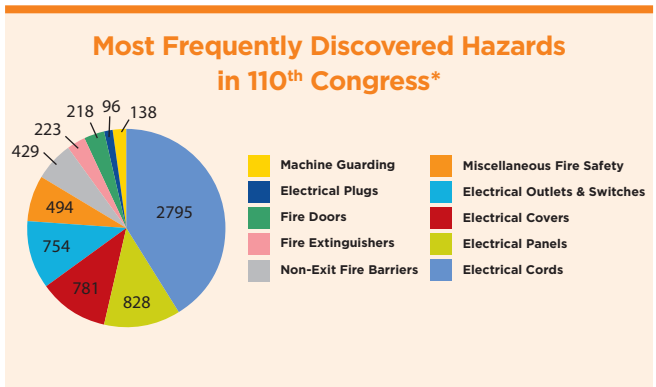
Congressional Members also moved to abate hazards in their workspaces. During the 109th Congress, the OOC awarded Safe Office Awards to seven Congressional Members who maintained hazard–free Congressional offices. Thirty–seven Congressional Members achieved hazard-free offices in the 110th Congress. On March 3, 2010, 154 Congressional Members were awarded the OOC and National Safety Council's *Safe Office Award*.

MOST COMMON HAZARDS

During FY 2009 alone, the OOC inspected roughly 40% of the total area required to be inspected during the 111th







DID YOU KNOW?

The United States Government Accountability Office (GAO) is a non-partisan, independent agency that advises Congress and the Executive Branch about ways to make government more effective, efficient, ethical, equitable, and responsive.

GAO was founded in 1921 because federal financial management was in disarray after World War I. Wartime spending had driven up the national debt, and Congress saw that it needed more information and better control over expenditures. GAO's role has been expanded over the years as the Federal Government often looks to the agency for analysis and advice on issues critical to the public.

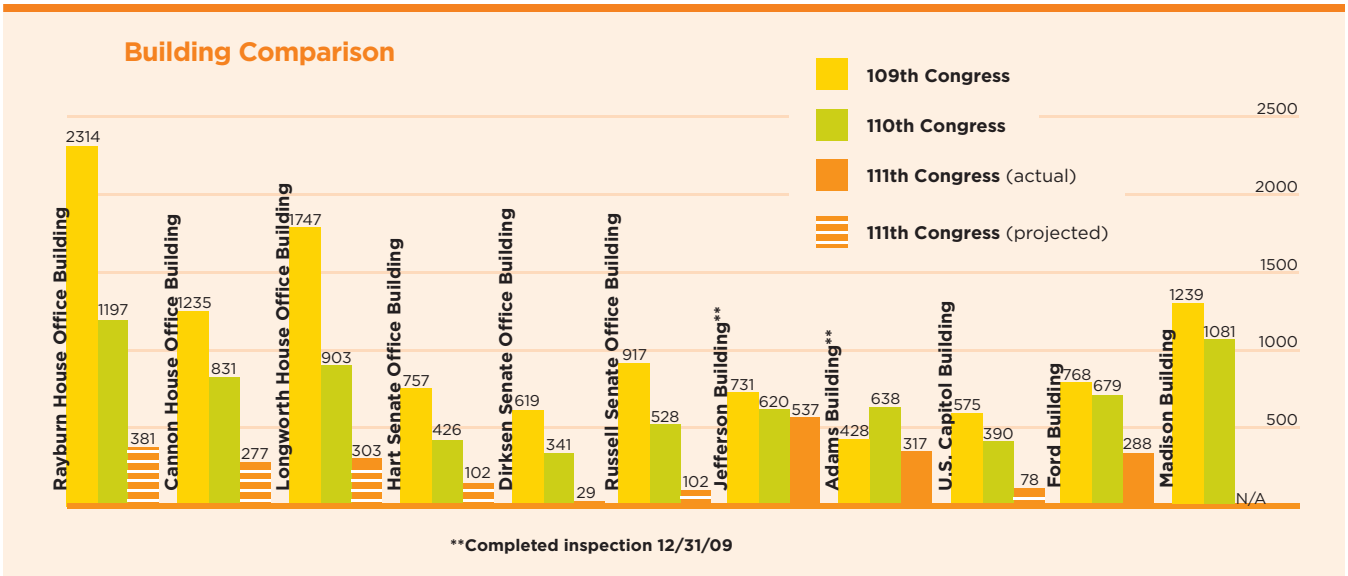
Congress. As with the inspections for the 110th Congress, the OOC found that electrical, fire safety, and fall protection threats were the most common hazards identified during this period.

The hazards in these charts present a wide range of risk: some could result in death or extremely serious injury and/or a very high likelihood of occurrence, while others indicate less serious injury and/or a lower likelihood of occurrence. However, the cumulative effect of this number of hazards—even if each is comparatively low–risk standing alone—may increase the risk of injury to employees and damage to a facility.

HAZARDS BY BUILDING

In the 110th Congress, the highest number of safety and health hazards were located in the largest buildings in the Legislative Branch, i.e., the Rayburn House Office Building (1197), James Madison Memorial Building (1081), and Longworth House Office Building (903). But Rayburn had 47% fewer hazards in the 110th Congress than during the 109th Congress, a reduction of over 1,000 hazards. Substantial reductions also occurred in the Canon and Longworth House Office Buildings. For the 111th Congress, the number of hazards in most of the buildings have or are projected to drop substantially.

The graph below illustrates further progress in the reduction of hazards during the 111th Congress in almost all buildings based on information available to the OOC at the time this Annual Report went to press. The full inspection reports for the 110th Congress and 109th Congress are available on our website at **www.compliance.gov**.

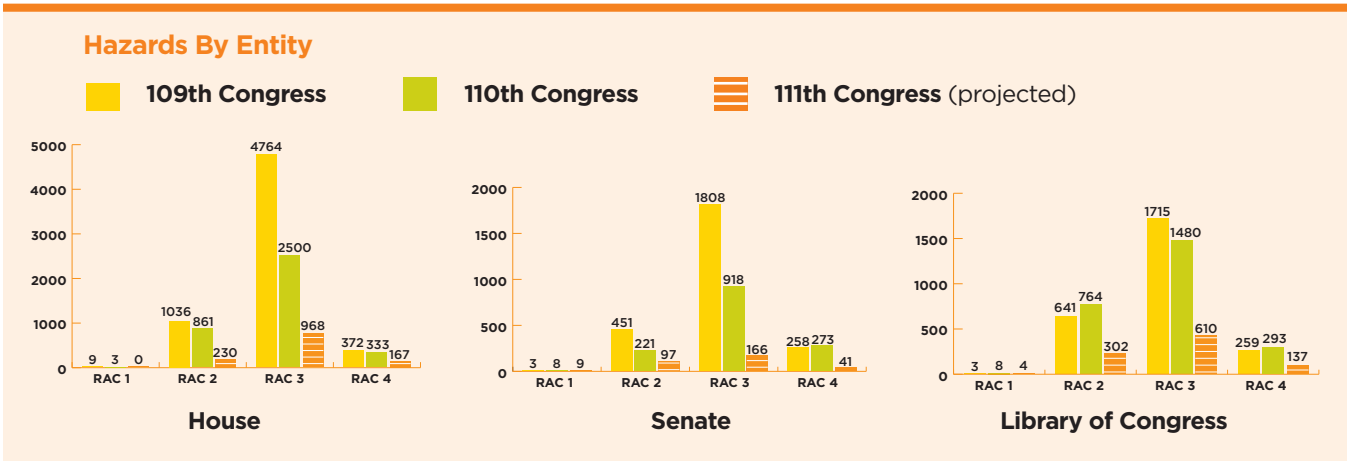


HAZARDS BY ENTITY

The House is projected to have no RAC 1 hazards in the 111th Congress, while the Senate is projected to have nine RAC 1 hazards. The RAC 1 hazards in the Senate are fire hazards that continue to be unabated. The Library of Congress is projected to have four RAC 1 hazards, a 50% decline from the 110th Congress.

A substantial decline in RAC 2 hazards is projected for all three entities in the 111th Congress. RAC 2 hazards are mostly electrical hazards.

improvements, and heat stress reduction. However, substantial abatement work remains. Many design projects are underway for work to be performed during the 111th Congress, including egress installations and upgrades, the completion of asbestos removal, structural improvements, and others. If full funding for AOC's abatement plan continues, the OOC anticipates that the necessary work can be completed and all citations related to the complaint closed by June 2012.



UPDATE ON THE CAPITOL POWER PLANT UTILITY TUNNEL COMPLAINT

In February 2006, the OOC General Counsel filed a first-ever formal complaint regarding potentially life-threatening conditions in the U.S. Capitol Power Plant utility tunnels. The complaint alleged that the office of the Architect of the Capitol (AOC) had failed to correct citations, one dating back to 2000, relating to falling concrete, lack of a reliable communications system to enable monitoring the status of employees working in the tunnels, and insufficient egress points in the tunnels to assure prompt rescue of workers in emergency situations.

A comprehensive settlement was approved in June 2007 by a Hearing Officer and the Executive Director of the OOC. It requires the AOC to abate all high risk (RAC I and RAC 2) hazards in the tunnel system by 2012. Further, it mandates regular inspections and quarterly reports by the AOC, and monitoring by the OOC.

During the 110th Congress, the OOC's monitoring of the settlement agreement revealed significant progress by the AOC in reducing hazards by means of asbestos abatement and removal, concrete repairs, egress

REQUESTOR INITIATED INSPECTIONS

Requestor–initiated inspections are handled differently than biennial inspections. Under the CAA, covered employees, employing offices, and bargaining unit representatives of covered employees may request the General Counsel to inspect and investigate places of employment under the jurisdiction of employing offices to ascertain whether there are violations of OSHA. Most requestor–initiated inspections are filed by employees who are familiar with, or exposed to, hazardous conditions in the Legislative Branch.

Upon receipt of such requests, the General Counsel investigates these allegations, and when hazards are found to exist, the General Counsel issues a report and directs that appropriate abatement be made by the employing office responsible for the correction of the violation. The inspector also may make recommendations based upon "best practices" used in the private sector which, while not required to be followed, would improve safety and health in the Legislative Branch. In response, the employing office may submit comments, agree to abate the hazard, or contest the findings. In the vast majority of cases where a hazard is found, the employing office agrees to abatement.

At the beginning of fiscal year 2007, the OOC had 101 "old" cases and citations, defined as those filed at least 12 months before the start of the fiscal year. By September 30, 2009, the OOC had closed 76 "old" cases and citations. This reduced the OOC's backlog by 75%. The tables below illustrate the improvement in resolving cases through FY 2009:

Number of OSHA Cases

Fiscal Year	FY 2007	FY 2008	FY 2009
Cases open at start of FY	67	38	37
New Cases	22	11	8
Cases Closed (Cases older than 1 year from the start of the FY)	33	5	15
Total Closed during FY	**51**	**12**	**24**

Number of OSHA Citations

Fiscal Year	FY 2007	FY 2008	FY 2009
Citations open at the start of the FY	34	27	20
New Citations	4	1	0
Citations Closed (Citations older than 1 year from the start of FY)	11	7	5
Total Citations Closed in FY	**11**	**8**	**6**

The OOC received fewer requests for inspection during FY 2009. We attribute this drop to employing offices' increased emphasis on safety, as well as to the more comprehensive inspections that the OOC performed during the 109th, 110th, and 111th Congresses. Because of these efforts, Legislative Branch employees and visitors are safer than they once were.

III. PARITY GAP ANALYSIS: CONGRESSIONAL EMPLOYEES SHOULD HAVE THE SAME OSHA PROTECTIONS AS PRIVATE AND PUBLIC SECTOR EMPLOYEES

In enacting the occupational safety and health provisions of the CAA, Congress did not incorporate significant provisions of OSHA that apply to the private sector and other parts of the public sector, provisions that Congress believed were critical to OSHA enforcement. Section 102(b) of the CAA requires the Board of Directors of the OOC to recommend changes to the CAA to advance workplace rights. In past Section 102(b) reports, and in the 2008 recommendations for the 111th Congress, the Board recommended and continues to recommend that the following provisions be made applicable to the Legislative Branch under the CAA.

RECOMMENDATION #1: PROVIDE INVESTIGATIVE SUBPOENA AUTHORITY FOR OSHA CLAIMS[3]

Under the CAA, Congress mandated the General Counsel of the OOC to conduct periodic occupational safety and health inspections in covered employing offices within the Legislative Branch and investigate alleged safety and health violations upon request of covered employees and employing offices. To implement this mandate, Congress granted the General Counsel some, but not all, of the authorities that are provided to the Secretary of Labor under Section 8 of OSHA.

One of the most significant authorities of the Secretary of Labor is the ability to compel the attendance and testimony of witnesses and the production of evidence under oath in the course of conducting inspections and investigations. 29 U. S. C. §657(b). In enacting OSHA, Congress observed that this subpoena power "is customary and necessary for the proper administration and regulation of an occupational safety and health statute." Investigatory subpoena authority is common to other federal agencies that have investigative functions similar to that of the Secretary of Labor under OSHA.

3 The Board of Directors has not requested authority to issue investigative subpoenas to Members of Congress or Congressional Committees.

DID YOU KNOW?

The Library of Congress is the largest library in the world. It employs over 3,500 employees who help to maintain, manage, and provide access to library resources for the Federal Government and millions of visitors from the public. The Library of Congress houses a collection of nearly 142 million items including more than 32 million catalogued books and other print materials in 470 languages; more than 62 million manuscripts; the largest rare book collection in North America; and the world's largest collection of legal materials, films, maps, sheet music and sound recordings.

Absent such authority, a recalcitrant employer under investigation could easily delay or even disable a regulatory agency from conducting an adequate investigation. Unlike what was done in OSHA and in similar statutes for other state and federal entities, subpoena authority in aid of investigations was not included in the CAA. This omission considerably limits the General Counsel's ability to promptly and effectively investigate safety and health hazards within the Legislative Branch.

In many, if not most, instances, safety and health inspections and investigations of employment areas must rely on witnesses and the examination of records that are solely within the possession and control of the employing office. Where an employing office refuses to provide pertinent information, the General Counsel may be forced to limit or even abort an inspection or investigation. The absence of investigatory subpoena authority, in some instances, has contributed to protracted delays in investigations. Inordinate delay or provision of only partial information can easily result in faulty witness recollection, the loss of evidence, and untimely completion of inspections.

When cooperation in an investigation is not forthcoming, the only means currently available to the General Counsel to gain access to necessary documents or testimony is to issue a citation, followed by a complaint, and a request to the hearing officer to issue subpoenas or conduct discovery. This option is both costly and time-consuming. The inherent delays of litigation may have the unfortunate effect of prolonging employee exposure to unabated hazards, with potential risk of illness or injury. Investigatory subpoena power would deter unwarranted objections to providing documents or other evidence necessary for an investigation. At the same time, this authority would provide a neutral forum for the timely resolution of legitimate disputes over the production of evidence. Hence, it would enhance the General Counsel's ability to promptly obtain information necessary to ascertain whether further investigation was required, assess whether immediate enforcement action was warranted, or otherwise conclude that no factual basis existed for finding a violation.

RECOMMENDATION #2: REQUIRE SAFETY & HEALTH RECORD-KEEPING[4]

Section 8(c) of OSHA, 29 U.S.C. 657 (c), requires employers to make, keep, preserve, and provide to the Secretary of Labor, records that are necessary and appropriate for the enforcement of OSHA or for developing information regarding the causes and prevention of occupational accidents and illnesses; records on work-related deaths, injuries and illnesses; and records of employee exposure to toxic materials and harmful physical agents. None of these record keeping provisions was adopted by Congress for inclusion in the CAA.

In enacting OSHA for the private and public sector, Congress recognized that "[f]ull and accurate information is a fundamental precondition for meaningful administration of an occupational safety and health program." Congress observed that a record keeping requirement should be included in that legislation because "the Federal government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries, illnesses, and deaths."[5]

4 The Board of Directors has requested that record-keeping requirements apply to employing offices with the exception of Members of Congress and Congressional Committees.

5 Senate Report No. 91-1282 (October 6, 1970) respecting the record-keeping and records provisions of now Section 8(c) of the OSH Act. See also, Report No. 91-1291 of the House Committee on Education and Labor, 91st Congress, 2d Session, p. 30, to accompany H.R 16785 (OSH Act) ("Adequate information is the precondition for responsive administration of practically all sections of this bill.").

With respect to legislative branch workplaces, however, inaccessibility to full and accurate safety and health information continues to impede the OOC's ability to effectively administer the CAA.

Without access to such information, the General Counsel is unable to enforce effectively several critical safety and health standards within the Legislative Branch. Substantive occupational safety and health regulations concerning asbestos in the workplace (29 C.F.R. 1910.1001), providing employees with safety information regarding hazardous chemicals in their workspaces (29 C.F.R. 1910.1200), emergency response procedures for release of hazardous chemicals (29 C.F.R. 1910.120), and several others rely on accurate record keeping to ensure that employees are not

DID YOU KNOW?

Construction of the Capitol started in 1793, but the original building was not completed until 1826. The cast-iron dome of the United States Capitol, constructed between 1855 and 1866, may be the most famous man–made landmark in America. The Capitol complex is the home of the Senate and House of Representatives. Until 1935, the Capitol also housed the United States Supreme Court.

exposed to hazardous materials or conditions. However, because the CAA does not contain Section 8(c)'s record keeping requirements, employing offices may contend that they are not required to maintain or submit such records to OOC for review. We are concerned that absent these requirements, Congress's objective to ensure that all Legislative Branch employees are provided with places of work that meet the occupational safety and health standards that protect their private sector counterparts will not be fulfilled.

Without the benefit of Section 8(c) authority, the General Counsel cannot access records needed to develop information regarding the causes and prevention of occupational injuries and illnesses. See §8(c)(1). As the Department of Labor recognized, "analysis of the data is a widely recognized method for discovering workplace safety and health problems and tracking progress in solving these problems." See, "Frequently asked questions for OSHA's Injury and Illness Record-keeping Rule for Federal Agencies," **www.osha.gov/dep/fap/recordkeeping_faqs.html.**

RECOMMENDATION #3: ALLOW THE OFFICE OF COMPLIANCE TO PROTECT EMPLOYEES FROM RETALIATION FOR REPORTING OSHA VIOLATIONS

Since the enactment of the CAA in 1995, Congressional employees have provided invaluable insight into the existence of hazardous and unhealthful conditions.

The information received from employees has proven essential in advising the General Counsel of the possible existence of serious hazards that may affect the safety and health of employees. The hazards these employees have brought to the General Counsel's attention might not otherwise have been detected. Because of the strong institutional interest in ensuring that this information continues to flow freely, it is critical that the CAA effectively protect employees from reprisal when they exercise their rights to report occupational hazards within the workplace or otherwise cooperate with the OOC on matters relating to occupational safety and health. Investigation and prosecution by the General Counsel of claims of reprisal would more effectively vindicate those rights, deter retaliation, dispel the chilling effect that intimidation and reprisal create, and protect the integrity of the CAA and its processes.

At present, the CAA offers covered employees only limited protection against retaliation for asserting their occupational health and safety rights under the CAA as compared to employees in the private sector and Executive Branch. In a number of instances, employees have expressed to the General Counsel's health and safety inspectors their unwillingness to file a request for inspection or otherwise become involved in an inspection for fear of retaliation by their employers. Section 207 of the CAA prohibits any action by a covered employing office "to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by [the CAA]... or initiated proceedings...or participated in... [a] proceeding..." 2 U.S.C. Sec 1317. Under this provision, if an employee wishes to pursue an OSHA–related retaliation claim, the employee must shoulder the financial and logistical burden of litigating a charge of reprisal without the support of the General Counsel's investigative process and enforcement procedures. Under Section 11(c) of OSHA, the Secretary of Labor has authority to investigate and bring an action with respect to an unlawful discharge or other discrimination against an employee because of the employee's exercise of his rights on behalf of himself or others under that Act. 29 U.S.C. 660(c)(2). In contrast, under the CAA, the General Counsel does not have authority to bring a claim on behalf of an employee who alleges retaliation because he or she cooperated in one of the General Counsel's investigations. Employees have reported to the General Counsel's safety inspectors instances of harassment and other acts of retaliation because they reported hazards. But with few exceptions, they have not initiated Section 207 retaliation claims under the CAA for asserting occupational health and safety rights. Some employees have expressed to the General Counsel great concern about their exposure in coming forward to bring a claim of retaliation; others have indicated their unwillingness to proceed without support of agency investigation and prosecution.

In such event, the General Counsel's inability to prosecute substantiated claims of retaliation can undermine employee confidence in the efficacy of the CAA. Not only is the employee affected, but others may be deterred from reporting a hazard. Employee reluctance to report uncorrected hazardous conditions within the workplace not only undermines the core objective of the CAA—to foster a safe and healthful work environment—but it deprives the Agency of information critical to its mission, as well as potentially exacerbates a condition that may have been easily abated.

All 102(b) reports are available on the OOC's website at **www.compliance.gov.**

State Of Access To Public Services & Accommodations

SECTION HIGHLIGHTS

- One-fifth of Americans live with disabilities and deserve access to their elected officials
- During the 110th Congress, ADA inspections focused on improving access to facilities and programs affecting safety and emergency preparedness
- During the 111th Congress, ADA inspections will focus on improving access to all facilities
- The CAA should include Titles II and III of the Civil Rights Act of 1964 which protects against discrimination on the basis of race, color, religion, or national origin in access to public services and accommodations

I. WHAT THE LAW REQUIRES: ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS IN CONGRESS UNDER THE ADA

GUARANTEED ACCESS

Persons with disabilities are guaranteed access to public services and accommodations provided under the Congressional Accountability Act (CAA), which applies the Americans with Disabilities Act (ADA) to the Legislative Branch. Under the ADA, the right to access also includes the right to be included in the evacuation procedures for Congressional buildings and facilities. Failure to provide access within the meaning of the ADA is discrimination under the law.

Why is access to Legislative Branch buildings so important? One reason is that Legislative Branch employees and Congressional Members who have disabilities should not be denied access to their workplace. Another reason is that Americans with disabilities are entitled to full access to public buildings that they support with their tax dollars. Millions of people, many of whom have disabilities, visit Congress every year to tour its historical buildings, and meet with Congressional Members to voice constituent concerns. Finally, many Americans consider the U.S. Capitol to be one of the most important historical buildings in the United States. Every American should have access to it.

The U.S. Census Bureau reported that almost 55 million Americans—or approximately 19% of the U.S. population—lived with disabilities in 2005. Almost 35 million have severe disabilities. For persons 15 years and older, the Census Bureau reported that almost 15 million people had seeing, hearing or speaking disabilities; over 27 million people had trouble walking or using stairs; over 10 million needed crutches, a cane or walker; and over 3 million needed a wheelchair. Approximately 52 percent of seniors 65 and older—18 million total—had a disability. At some point in their lives, the majority of Americans will have a temporary or permanent disability, whether through birth, disease, age, accident or casualty, among other causes.

WHICH LEGISLATIVE BRANCH OFFICES MUST PROVIDE ACCESS?

The following Legislative Branch offices are required to provide access under the CAA:

- Each Committee;
- Each Joint Committee;
- Each office of the House;
- Each office of the Senate;
- The Congressional Budget Office;
- The Office of Compliance;
- The Office of Congressional Accessibility Services;
- The Office of the Architect of the Capitol;
- The Office of the Attending Physician; and
- The United States Capitol Police.

"I cannot tell you how many times I have had business men and women, men and women in every walk of life complain that Congress passes laws and then simply exempts itself... I want to go home and tell those constituents that have talked to me and to all of you that we have answered their plea. I want to tell them that we meet the same requirements that they do, that we follow the same laws that we ask them to, from OSHA to Fair Labor Standards. I want to tell them that our employees have the same protections theirs do..."

—Representative Steny Hoyer (MD), January 4, 1995, from the legislative history of the Congressional Accountability Act of 1995.

THIS PAGE: King Neptune, the Roman god of the sea and the brother of Minerva in the "Neptune and His Court" fountain in front of the Library of Congress. Sculpted by Roland Hinton Perry in 1895

WHICH PLACES IN LEGISLATIVE BRANCH FACILITIES MUST BE ADA ACCESSIBLE?

The CAA guarantees access to Legislative Branch facilities by requiring compliance with Titles II and III of the ADA. Title II guarantees access by providing that no person with a disability can be excluded from participation in, or denied the benefits of the services, programs or activities of a public entity. Under this Title, Legislative Branch offices must provide access to their services, programs and activities; consequently, they must modify their facilities as necessary to provide such access.

Under Title III, Legislative Branch offices must provide access to "places of public accommodation." Guidance for interpreting the phrase "places of public accommodation" can be found in the regulations promulgated by the Department of Justice that are the basis for the regulations and interpretations issued under the CAA. See CAA §§ 210(e)(2) & 411; 2 U.S.C. §§ 1331(e)(2) & 1411. Under 28 C.F.R. § 36.104, "a place of public accommodation" is a facility which provides the following:

- Lodging (such as dormitories and other transitory lodging places);
- Food or drink (such as cafeterias and restaurants);
- Exhibition or entertainment (such as theaters and concert halls);
- Public gatherings (such as lecture halls, hearing rooms, and auditoriums);
- Sales or retail shops (such as gift stores and food shops);
- Commercial or professional services (such as banks, barber and beauty shops, dry cleaners, travel agencies, shoe cleaning and repair shops, and medical, accounting and legal offices);
- Public transportation (such as terminals and stations);
- Public displays or collections (such as libraries, galleries and museums);
- Recreation (such as gardens and parks);
- Education;
- Social services (such as day care and senior citizen centers); or
- Exercise or recreation (such as pools, gyms, or health clubs).

WHAT DOES ACCESSIBILITY MEAN?

Under the ADA, access means three things:

- **ELIGIBILITY.** A person with a disability cannot be deemed ineligible for a service or accommodation because of the disability.

  Example: *An office that provides tours of its facilities to constituents cannot refuse to provide the tour to a constituent with a disability because of the disability.*

- **MEANINGFUL PARTICIPATION.** A person with a communication impairment (such as limited hearing, seeing, and speaking abilities) must be furnished with an auxiliary aid, if needed, to ensure that he or she can participate meaningfully in the program, service or activity.

  Example: *An office that assists constituents with complaints against federal agencies may need to furnish an American Sign Language (ASL) interpreter to facilitate face-to-face-communication with a person whose principal language is ASL because of a hearing impairment.*

- **PHYSICAL ACCESS.** Physical access to an accommodation or a service will often require removal

DID YOU KNOW?

The Office of the Attending Physician has broad responsibilities with regard to protecting the medical welfare of thousands of Congressional employees as well as Members of Congress and the United States Supreme Court. OAP was established in 1928. The first Attending Physician was Dr. George Calver, who served Congress for approximately 37 years.

of structural barriers. Structural barriers can include manually operated doors, narrow doorways, stairs without ramps, sidewalks without curb cuts, and other obstacles to physical access. The regulations regarding removal of structural barriers are different depending upon whether the barrier exists in an existing building or in new construction. For the distinction, see the following section on "What Are Structural Barriers?"

Example: *An office located in a building with stairs to all of its entrances may need to install a ramp to provide access to people who use wheelchairs because of mobility impairments.*

- Access **does not mean** that the nature of a service must be changed for a person with a disability.

  Example: *An office that provides services exclusively to constituents residing within a particular voting district does not need to provide those services to a person with a disability residing outside of the voting district merely because the individual has a disability.*

WHAT ARE STRUCTURAL BARRIERS?

Structural barriers are obstacles that impede access for individuals with disabilities to services and accommodations. Whether the ADA requires removal of a structural barrier is often dependent upon whether the barrier is in an existing building or in new construction (including alterations).

In existing buildings, removal of structural barriers is required if such removal is "readily achievable." Examples of "readily achievable" barrier removal includes installing ramps, making curb cuts in sidewalks and entrances, and widening doors.

In new construction, facilities must comply with the requirements promulgated by the United States Access Board (**http://www.access-board.gov**) which provide full access for individuals with disabilities.

WHERE ARE THE MOST COMMON BARRIERS?

Generally, the most common barriers can be found:

- At building entrances;
- Within emergency procedures;
- In signage;
- When assessing whether equal access to services, programs and activities is being provided; and
- Within restrooms.

THE CHALLENGES WITH HISTORICAL BUILDINGS

The ADA was enacted in 1990 in part to ensure that buildings built after its passage were accessible to people with disabilities to the greatest extent possible. The ADA did not exempt buildings built prior to its passage from accessibility requirements. It did, however, recognize that, if following the standards would threaten or destroy the historic significance of a building's feature, alternatives can be considered and implemented to provide at least a minimum level of access.

In addition to the architectural challenges of complying with ADA requirements, cost and coordinating efforts are also major obstacles. While Congress is working hard towards compliance and updating its facilities, these changes cannot happen overnight or all at once.

II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: IMPROVEMENTS CONTINUE, BUT SUBSTANTIAL BARRIERS TO ACCESSIBILITY FOUND

INSPECTION FINDINGS

During the 110th Congress, the ADA inspections focused on improving access to facilities and programs affecting safety and emergency preparedness. The inspections for the 110th Congress were primarily conducted during fiscal year 2008 and the findings were made available to the covered offices during fiscal year 2009 in our biennial ADA inspection report for the 110th Congress. Biennial ADA inspection reports are available on our website at **www.compliance.gov**.

New accessibility ramps have been installed at the U.S. Capitol, Jefferson, Madison, Longworth and other buildings on campus; however, some of the new and existing ramps and curb cuts, have slopes that exceed the specifications contained in the ADA regulations. Other curb cuts have been placed outside of the marked crosswalks contrary to the ADA

regulations. Additional efforts are now being made to enhance safe access to Capitol Hill buildings for those with mobility impairments by correcting sidewalk and curb–cut slopes and other non–compliant accessibility features.

The OOC found much improvement in emergency action and evacuation plans for persons with disabilities. The OOC has worked cooperatively with the Senate Office of Security and Emergency Preparedness; the House Office of Emergency Planning, Preparedness and Operations; the U.S. Capitol Police's Emergency Management Division; the Office of the Architect of the Capitol's staff; and others to develop Emergency Action Plans for the protection of all Legislative Branch employees, including those with disabilities. Improvements have been made in planning, training, facilities and equipment. Emergency-preparedness measures have been implemented to address all potential emergencies on the Capitol grounds, whether they are man-made, accidental or natural. Both building evacuation and shelter-in-place procedures for each major campus building have been established. Training for new employees regarding the plans and duties applicable to them is continuing.

The OOC also found certain routes to be inaccessible because the clear widths are too narrow (the regulations require accessible paths to be at least 36 inches wide) or the doors along the routes are too difficult to open. As a result, efforts are being made to increase clear widths by widening doorways and removing obstructions. In addition, access through doorways is improving as more electronic door openers are being installed and as manual doors become easier to open because of adjustments to or replacement of door hardware. The House of Representatives implemented a hallway policy in all of the House office buildings during 2008. This policy has improved ADA access in the hallways as well as egress in the event of an emergency. ADA signage for emergency staging areas and wayfaring has also been much improved in the House office buildings. Additional work needs to be done to ensure that signs are adjusted to the right height, are not blocked by items placed near the signs, and contain an accurate Braille translation with the numeric indicator. Signage in other buildings will improve as the program to upgrade signage continues.

"Push-to-Talk" devices have been installed in the U.S. Capitol and are being installed throughout the campus as funds become available. These devices are used primarily by individuals with mobility and communication impairments. Each device provides the specific location of the person activating it directly to the United States Capitol Police. This type of emergency communication device allows even those who are mute to communicate their location to the police.

LOOKING FORWARD: A MORE COMPREHENSIVE INSPECTION REPORT WILL BE PRESENTED TO CONGRESS IN THE 111TH CONGRESS

During the 111th Congress, ADA inspections will focus on improving access to all facilities.

In an effort to better map accessible routes for individuals with disabilities and to otherwise encourage improvement of exterior accessibility features, the OOC will be inspecting sidewalks, curb cuts, and parking garages

DID YOU KNOW?

The Office of the Architect of the Capitol maintains, operates, develops and preserves more than 16.5 million square feet of Congressional buildings and over 450 acres of land. The Architect is also responsible for upkeep and improvement of the Capitol grounds and the arrangement of inaugural ceremonies. The first Architect of the Capitol was Dr. William Thornton, whose design for the Capitol was selected by the first President of the United States, George Washington, after a national architectural competition in 1793.

throughout the campus and will be reporting its findings in the biennial report.

Because the ADA requires strict compliance with the ADA Accessibility Guidelines during new construction, the OOC also intends to inspect comprehensively those buildings scheduled for major renovations and work cooperatively with the AOC during the design phase to help ensure that barriers to access are sufficiently addressed in the renovation plans. The OOC intends to continue to work with all of the covered offices to improve access (within existing budget constraints) by helping to identify, plan, and prioritize access projects. The overall goal is to provide the most access at the least cost. The OOC believes that, with the continued support of the covered offices, this goal is achievable.

The OOC will continue to provide educational programs and technical assistance in matters relating to ADA access. The OOC anticipates that access to services and accommodations will continue to improve as knowledge and awareness of the ADA access requirements increase.

III. PARITY GAP ANALYSIS: CONGRESS SHOULD PROVIDE PROTECTIONS UNDER TITLES II & III OF THE CIVIL RIGHTS ACT OF 1964 AND SECTION 508 OF THE REHABILITATION ACT OF 1973

RECOMMENDATION #1: PROVIDE PROTECTIONS UNDER TITLES II AND III OF THE CIVIL RIGHTS ACT OF 1964

Titles II and III of the Civil Rights Act of 1964 prohibit discrimination or segregation on the basis of race, color, religion, or national origin regarding the goods, services, facilities, privileges, advantages, and accommodations of "any place of public accommodation" engaged in commerce. Similarly, Title III of the Civil Rights Act of 1964 prohibits state and municipal governments from denying access to public facilities on the grounds of race, color, religion, or national origin. Although the CAA incorporated the protections of Titles II and III of the ADA, which prohibit discrimination on the basis of disability with respect to access to public services and accommodations, it does not extend protection against discrimination based upon race, color, religion, or national origin with respect to access to public services and accommodations. The OOC Board of Directors has taken the position in its Section 102(b) Reports, that the rights and protections afforded by Titles II and III of the Civil Rights Act of 1964 against discrimination with respect to places of public accommodation should be applied to the Legislative Branch.

RECOMMENDATION #2: SECTION 508 COMPLIANCE FOR ELECTRONIC AND INFORMATION TECHNOLOGY FOR THE DISABLED

In November 2001, the OOC submitted an Interim Section 102(b) Report to Congress regarding the 1998 amendments to the Rehabilitation Act of 1973 in which the OOC urged Congress to make Section 508 applicable to itself and the Legislative Branch. Currently, only Executive Branch agencies and the Postal Service must comply with Section 508. The purpose of Section 508 is to:

> *require each Federal agency to procure, maintain, and use electronic and information technology that allows individuals with disabilities the same access to technology as individuals without disabilities. [Senate Report on S. 1579, March 1998]*

As of this time, software and other equipment which is "508 compliant" is readily available and in use by many employing offices. The OOC, however, encourages consistent use of these technologies so that individuals with impairments may have the same opportunities to access materials as others.

All 102(b) reports are available on the OOC's website at **www.compliance.gov.**

State Of Workplace Rights

SECTION HIGHLIGHTS

- Congressional employees and applicants are protected from genetic information discrimination
- Unpaid leave rights have been expanded for military family leave
- Congress should approve OOC regulations so that veterans' employment rights take effect in the Congressional workplace

I. WHAT THE LAW REQUIRES: ADVANCEMENT OF WORKPLACE RIGHTS WITH PRIVATE AND PUBLIC SECTORS AND RECOMMENDED CHANGES TO THE CAA

ADVANCEMENT OF CONGRESSIONAL WORKPLACE RIGHTS WITH PRIVATE AND PUBLIC SECTORS

In 1995, the Congressional Accountability Act (CAA) was passed to apply employment, labor, access, and safety & health laws to the Congressional workplace. Today those laws include:

- The Age Discrimination in Employment Act of 1967
- The Americans with Disabilities Act of 1990
- Title VII of the Civil Rights Act of 1964
- The Employee Polygraph Protection Act of 1988
- The Fair Labor Standards Act of 1938
- The Family and Medical Leave Act of 1993
- Chapter 71 of the Federal Services Labor-Management Relations Act
- The Occupational Safety and Health Act of 1970
- The Rehabilitation Act of 1973
- Uniformed Services Employment and Reemployment Rights Act of 1994
- The Worker Adjustment and Retraining Notification Act of 1989
- The Veterans Employment Opportunities Act of 1998
- Genetic Information Nondiscrimination Act of 2008

To advance the rights of Congressional employees with their counterparts in the private and public sectors, the CAA requires that when Congress passes laws related to employment, safety and health, or public access, it must consider whether to apply such laws to the Legislative Branch, or explain why it should not apply. Section 102(b)(3) of the CAA requires, in part that:

> "[e]ach report accompanying any bill or joint resolution relating to terms and conditions of employment or access to public services or accommodations reported by a committee of the House of Representatives or the Senate shall –
>
> (A) describe the manner in which provisions of the bill or joint resolution apply to the legislative branch; or
>
> (B) in the case of a provision not applicable to the legislative branch, include a statement of the reasons the provision does not apply.
>
> On the objection of any Member, it shall not be in order for the Senate or House of Representatives to consider any such bill or joint resolution if the report of the committee on such bill or joint resolution does not comply with the provisions of this paragraph. This paragraph may be waived in either House by majority vote of that House."

"We will take a big step forward toward restoring the confidence in this institution if we make ourselves subject to the same legal framework that we impose upon every other American. Americans want to know that we are not above the law. It's more than just a question of right and wrong. It's a question of basic fairness and decency..."

—Senator Barbara Mikulski (MD), June 29, 1994, from the legislative history of the Congressional Accountability Act of 1995

THIS PAGE: In the center—under the Capitol's dome—is the Rotunda, a circular ceremonial space that also serves as a gallery of paintings and sculpture depicting significant people and events in the nation's history

As discussed in our Achievements & Compliance Assessment, two major employment laws passed by Congress in FY 2009—one banning genetic information discrimination and one broadening leave rights—were made applicable to the Congressional workplace.

RECOMMENDED ADVANCEMENTS BY THE OOC BOARD OF DIRECTORS

Another mechanism that Congress has developed to ensure that Congressional employees are extended the same rights as private and public sector employees is that Section 102(b)(2) of the CAA requires the Board of Directors of the OOC to issue a report biennially that recommends changes to the CAA to advance workplace rights for Congressional employees and provide them with the same protections as private and public sector employees. Section 102(b)(2) states in pertinent part:

> Beginning on December 31, 1996, and every 2 years thereafter, the Board shall report on (A) whether or to what degree [provisions of Federal law (including regulations) relating to (A) the terms and conditions of employment (including hiring, promotion, demotion, termination, salary, wages, overtime compensation, benefits, work assignments or reassignments, grievance and disciplinary procedures, protection from discrimination in personnel actions, occupational health and safety, and family and medical and other leave) of employees; and (B) access to public services and accommodations]... are applicable or inapplicable to the legislative branch, and (B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch. The presiding officers of the House of Representatives and the Senate shall cause each such report to be printed in the Congressional Record and each such report shall be referred to the committees of the House of Representatives and the Senate with jurisdiction.

II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: GENETIC INFORMATION PROTECTIONS AND EXPANDED FAMILY MEDICAL LEAVE RIGHTS

GENETIC INFORMATION NONDISCRIMINATION ACT PROTECTIONS

Effective November 21, 2009, all employees in Congress are protected by the Genetic Information Nondiscrimination Act of 2008 (GINA), as applied by the CAA. The purpose of GINA is to protect employees from discrimination and denial of health care insurance based on genetic information.

Genetic science is rapidly evolving and advancing. In recent years, science has discerned new ways to map, decode, and discover the human genome. These discoveries have opened up a broader understanding of medicine and how genetics can create or affect medical conditions. But such discoveries could also give rise to the potential misuse of genetic information for the purpose of employment discrimination. Recent cases concerning genetic discrimination in the workplace led Congress to believe that there was a compelling public interest to act in this area to avoid potential discrimination.

GINA offers protections for employees, should any discrimination occur due to their genetic information, including an employing office's knowledge of the employee's family medical history. It also limits the employing office's right to unlawfully acquire genetic information about employees and places confidentiality requirements on any information that can be acquired.

FAMILY MEDICAL LEAVE ACT EXPANDED FOR MILITARY FAMILY LEAVE PROTECTIONS

The Family Medical Leave Act (FMLA) was expanded to extend rights and protections for covered military members. The FMLA now allows eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" that arises because a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The FMLA also now allows eligible employees to take up to 26 weeks of job-protected leave in a "single 12–month period" to care for a covered service member with a serious injury or illness.

The OOC has developed educational materials to assist Congressional Members and employees to understand their obligations and rights under the new requirements of the FMLA. The Board of Directors of the OOC will amend its current regulations to be consistent with the changes to the law.

III. PARITY GAP ANALYSIS: CONGRESSIONAL EMPLOYEES LACK VETERANS' EMPLOYMENT RIGHTS

RECOMMENDATION #1: APPROVE OOC REGULATIONS TO PROVIDE CONGRESSIONAL EMPLOYEES AND APPLICANTS WITH VETERANS' EMPLOYMENT RIGHTS

While the Veterans' Employment Opportunities Act of 1998 (VEOA) was made applicable to Congress, the CAA and the VEOA both mandate that the VEOA statutory rights will not take effect until Congress approves regulations promulgated and adopted by the Board of Directors of the OOC. On March 14 and 21, 2008, after receiving comments from Congress and employing offices, and based in large part on the veterans' preference regulations in effect for employees of the Executive Branch, the Board of Directors adopted regulations to implement the protections provided by the VEOA. Those regulations have not been approved by Congress as of the time this Report went to print.

This is an opportunity for Congress to set an example in providing opportunities to veterans. Successful and substantive voluntary programs have been created by Congress, such as the Wounded Warrior Program established by House Leadership and implemented by the Office of the Chief Administrative Officer, which provides fellowship opportunities to veterans wounded in the wars in Iraq and Afghanistan. But the VEOA legal protections for veterans should also apply, just like they do in the Executive Branch. Therefore, the Board recommends that Congress approve the pending regulations. *See next page for full discussion of the VEOA legal requirements.*

RECOMMENDATION #2: APPROVE OOC REGULATIONS TO PROVIDE SERVICEMEMBERS EMPLOYMENT AND REEMPLOYMENT RIGHTS

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides certain leave and reemployment rights for those who have served in the uniformed services. Unlike the VEOA, however, the USERRA regulations promulgated by the U.S. Department of Labor (DOL) will serve as the "default" regulations until the USERRA regulations adopted by the Board of Directors for the OOC are approved by Congress. These regulations were submitted to Congress for approval on January 26, 2009, but Congress has not yet approved them. The DOL regulations will have the full force and application of law to Congressional employees in the meantime.

Although based on the DOL regulations, the regulations adopted by the OOC differ in their coverage of Congressional employees in a number of significant ways. For example, the adopted USERRA regulations recognize that there are different methods for making appointments and selections in the Legislative Branch. Similarly, the adopted regulations reflect that while there are certain remedies that are available to private sector and Executive Branch employees, some of these are not available to Congressional employees.

All 102(b) reports are available on the OOC's website at **www.compliance.gov.**

DID YOU KNOW?

Congress and the Legislative Branch occupy over 17 million square feet of property in the Washington, DC Metropolitan Area alone. Congress also occupies building space in each of the 50 states and U.S. territories.

HOW THE VEOA WOULD APPLY TO CONGRESS AFTER REGULATIONS ARE APPROVED

The VEOA gives veterans improved access to Federal job opportunities and establishes a redress system for preference eligibles in the event that their veterans' preference rights are violated. Section 4(c) of VEOA applies those rights and protections afforded to veterans in the Executive Branch to certain veterans in the Legislative Branch.

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to Federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to disabled veterans.

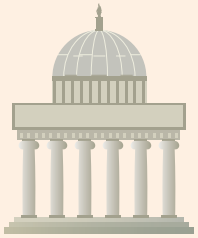
Veterans' preference is not so much a reward for being in uniform as it is a way to help make up for the economic loss suffered by those who answered the nation's call to arms. Historically, preference has been reserved by Congress for those who were either disabled or who served in combat areas. Eligible veterans receive many advantages in Federal employment, including preference for initial employment and a higher retention standing in the event of layoffs. However, the veterans' preference laws do not guarantee the veteran a job, nor do they give veterans preference in internal agency actions such as promotion, transfer, reassignment, and reinstatement.

WHO QUALIFIES AS A "PREFERENCE ELIGIBLE"?	WHO IS COVERED? CERTAIN PREFERENCE-ELIGIBLE	WHO IS NOT COVERED?
▸ Veterans who have served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized or during particular defined periods and have been separated from the armed forces under honorable conditions; ▸ Disabled veterans; ▸ The mother, spouse, or unmarried widow or widower of certain veterans; or ▸ Retired members of the armed forces are generally excluded from the definition of "preference eligible" unless they qualify as disabled veterans or retired below the rank of major.	Employees of: ▸ Achitect of the Capitol ▸ Capitol Police ▸ Congressional Budget Office ▸ House of Representatives (limited) ▸ Office of Compliance ▸ Office of Congressional Accessibility Services ▸ Office of the Attending Physician ▸ Senate (limited)	▸ Employees appointed by a Member of Congress; ▸ Employees appointed by a committee or subcommittee of Congress or a joint committee of the House of Representatives and the Senate; or ▸ Employees who are appointed to positions that are equivalent to Senior Executive Service positions. ▸ Employing Offices who have no employees covered by the VEOA.

WHERE IS VETERANS' PREFERENCE A FACTOR?

- For hiring, veterans' preference is an "affirmative factor" that must be considered if the applicant is otherwise qualified for the position.
- Where the employing office has not adopted a numerical rating system, consideration of veterans' preference will be part of a subjective evaluation of applicants.
- Where there are qualified preference-eligible applicants for custodian, elevator operator, guard, or messenger positions, competition for those jobs is limited to those applicants.
- For reductions in force (RIF), qualified veterans are given preference over all other employees in their "competitive area" who are impacted by a RIF.

HOW REGULATIONS TAKE EFFECT UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT*



STEP 1

Congress passes workplace rights statute that protects Congressional employees. Sometimes, the new statute mandates that regulations be promulgated to implement the statutory provisions.

STEP 2

Board of Directors of OOC drafts and adopts (after considering comments submitted by stakeholders) regulations tailored to the Congressional workplace. In most circumstances, existing regulations from the Executive Branch serve as "default" regulations for the Congressional workplace until Step #3 is met.

STEP 3

Congress approves the OOC regulations. The regulations are then issued and have legal effect in the Congressional workplace.

*Some statutary protections under the CAA, such as the VEOA, will not take effect until Congress approves the regulations (Step #3). As of the publication of this Annual Report, Congress had not approved the VEOA regulations adopted by the Board of Directors. As a result, veterans do not yet have VEOA rights in Congress.

State Of The Office Of Compliance

SECTION HIGHLIGHTS

- Most Congressional employees have limited or no understanding of their workplace rights
- Most common types of claims raised by Congressional employees are related to discrimination and harassment
- Board of Directors recommends that Congress require posting of workplace rights and record-keeping

I. WHAT THE LAW REQUIRES: EDUCATION & OUTREACH AND STATISTICS ABOUT THE USE OF THE OOC BY CONGRESSIONAL EMPLOYEES

The Congressional Accountability Act (CAA) requires the Office of Compliance (OOC) to carry out an education and outreach program to inform Congressional Members, employing offices, and Congressional employees about their rights and obligations under the thirteen employment, labor, access, and safety and health laws made applicable to Congress by the CAA. See CAA Section 301(h)(1)&(2). In addition, the CAA requires that the OOC compile and publish statistics on the use of the OOC by covered employees, including statistics about "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...and the result 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." See Section 301(h)(3)

This section—the State of the Office of Compliance—discusses how we perform our role of informing Congressional Members, employing offices, and Congressional employees about their rights and obligations under the CAA, provides statistical information on the use of the OOC by the covered community; and provides a summary of whether we met the goals of our Strategic Plan.

II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: BASELINE SURVEY FINDINGS, STATISTICAL INFORMATION ABOUT THE USE OF THE AGENCY BY EMPLOYEES, AND RESULTS OF STRATEGIC PLAN GOALS

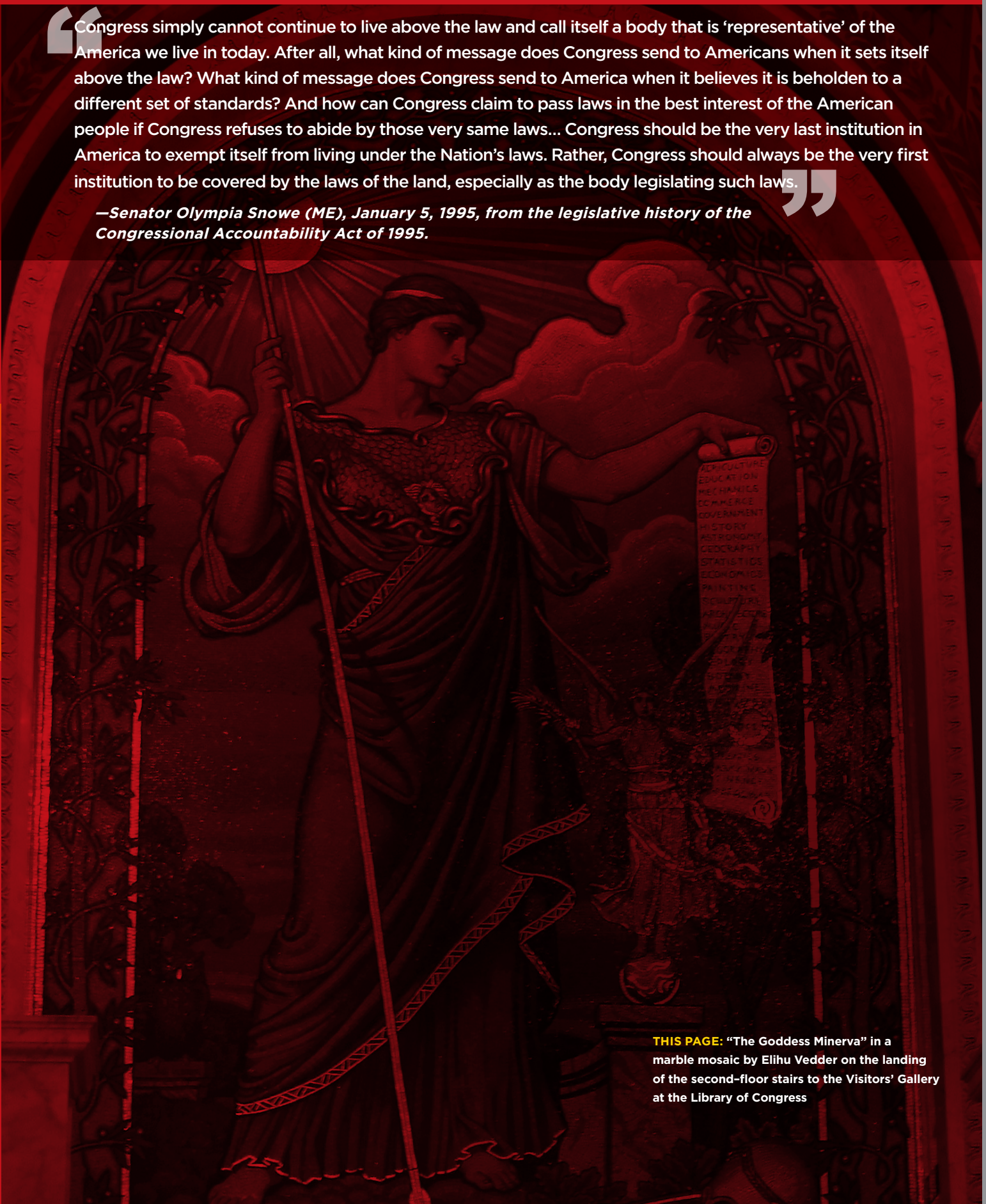
DO CONGRESSIONAL EMPLOYEES KNOW ABOUT THE OOC AND THEIR WORKPLACE RIGHTS?

BACKGROUND AND HISTORY OF THE BASELINE SURVEY

As we have explained in prior Annual Reports, the OOC contracted with the Congressional Management Foundation (CMF) to create and administer its first ever baseline survey of Legislative Branch employees at the recommendation of the Government Accountability Office in its 2004 Status of Management Control Efforts to Improve Effectiveness. The survey forms and the results were kept confidential so as to ensure employees' comfort in responding to the survey. The CMF was chosen to assist the OOC because it has over 30 years of experience surveying Congressional employees including lessons learned from previous institution–wide

"Congress simply cannot continue to live above the law and call itself a body that is 'representative' of the America we live in today. After all, what kind of message does Congress send to Americans when it sets itself above the law? What kind of message does Congress send to America when it believes it is beholden to a different set of standards? And how can Congress claim to pass laws in the best interest of the American people if Congress refuses to abide by those very same laws... Congress should be the very last institution in America to exempt itself from living under the Nation's laws. Rather, Congress should always be the very first institution to be covered by the laws of the land, especially as the body legislating such laws."

—Senator Olympia Snowe (ME), January 5, 1995, from the legislative history of the Congressional Accountability Act of 1995.



THIS PAGE: "The Goddess Minerva" in a marble mosaic by Elihu Vedder on the landing of the second-floor stairs to the Visitors' Gallery at the Library of Congress

surveys, particularly those conducted by the GAO and the Chief Administrative Officer of the House.

The purpose of the survey was to measure Legislative Branch employees' understanding of the workplace rights and protections covered under the CAA. By soliciting feedback from as many congresional employees as possible, the OOC plans to use the findings to generate strategies for improving outreach to employees.

The survey was completed in September 2009 after years of gathering information and attempting to reach as many employees as possible given the OOC's limited resources and access to Congressional employees. In FY 2006, we began developing and implementing the baseline survey. With limited funds and staff, the OOC approached the project in phases, beginning with House and Senate personnel and committee staffs. In FY 2007, the OOC commenced work with representatives from the CMF to craft the text for the survey utilizing recognized survey methods. The OOC also shared sample surveys with a focus group, comprised of a representative group of Capitol Hill employees. They provided the OOC with valuable insight and a perspective that neither the OOC nor the CMF could have otherwise obtained.

During FY 2008, the OOC attempted to send the survey to its first intended recipients—House and Senate employees—via electronic means. Indeed, language in the House Appropriations Committee Report accompanying the proposed Fiscal Year 2008 Legislative Branch Appropriations Bill encouraged use of electronic communications as both "cost effective and environmentally friendly" and "direct[ed] the Office of Compliance to work with the appropriate oversight committees of the House and Senate to achieve workplace electronic email accessibility" (House Report 110-198, 110th Congress., 1st Session., June 19, 2007). Unfortunately, despite both security and confidentiality provisions built into the survey by the CMF, the OOC was unable to secure email addresses for any group of Legislative Branch employees from internal databases. As a result, the OOC had to contract with Congress Plus, a reputable, external online database containing contact information of most mid–to senior–level Congressional staff in the House and Senate. Like other third party databases, however, Congress Plus did not contain the contact information for all staff. Third party databases are often not updated in real-time and have difficulty keeping up with the current make-up of House and Senate offices due to high turnover of staff. While the service successfully boosted participation rates, the limitations inherent in using third party vendors prevented the CMF from reaching every covered employee in the House and Senate.

In addition to emailing the survey using the limited database of contacts, the survey was mailed in a newsletter to all Congressional employees and handed out at various events on Capitol Hill. However, the majority of responses received (61%) learned of the survey through email as opposed to other means.

SUMMARY OF FINDINGS

Without access to the email addresses of all employees, the survey results were statistically insignificant. The OOC baseline survey was open for 260 days from July 29, 2008 until April 14, 2009. The OOC received 892 responses from Legislative Branch employees, the vast majority of respondents being House and Senate employees. A higher response rate would have undoubtedly resulted from direct emails to all Congressional employees.

Nevertheless, the survey yielded helpful data and findings that serve as a road map for promoting awareness of the OOC and the CAA among Congressional employees. Through their answers to the survey questions, respondents indicated their current methods for learning about the OOC (i.e. through email) and their preferences for receiving communications and educational materials from the OOC. The OOC can use this data to guide its interactions with Congressional employees and to plan education and outreach efforts as mandated by the CAA. The survey results can also be used as a baseline from which to measure the effectiveness of future education and outreach efforts by the OOC. Respondents answered questions that gauged their level of general awareness of the OOC and the CAA, as well as their knowledge of specific rights, protections, and processes the OOC utilizes. The OOC can use this data after significant milestones or communications efforts have been completed to determine its effect on the knowledge and awareness of Congressional employees of their rights and the actions of the OOC.

Analysis of the survey response and data cuts yielded five major findings by the CMF:

1. Many of the survey respondents had heard of the OOC, but most knew little about its purpose and the services it provides, or their rights under the CAA.
2. Most survey respondents had not dealt with the OOC or reviewed its materials, but those who had generally found the staff and information to be helpful.

3. Survey respondents learned about the OOC and the CAA from a variety of sources.

4. Survey respondents clearly preferred that the OOC send updates and materials to their official work email address.

5. Respondents had different levels of familiarity with the OOC depending on their place of employment.

Based on the findings, four major recommendations from the CMF emerged:

1. The OOC should undertake a comprehensive outreach effort to educate Legislative Branch employees about the OOC, its purpose, and the services it provides.

2. The OOC should use Legislative Branch employees' official email addresses (to which the OOC is currently not permitted access) as the primary vehicle for communications, but should leverage a variety of communications platforms to maximize its visibility, effectiveness, and impact.

3. Due to the diverse workplace environments within the Legislative Branch, the OOC should consider tailoring its outreach efforts to the specific subsets of the branch the employees work in.

4. The OOC should track the progress of its communication and outreach efforts, and re-evaluate the helpfulness and effectiveness of its materials and efforts.

The OOC will be integrating these recommendations into its Strategic Plan to set its outreach and education goals for the next three fiscal years (FY 2010-2012).

STATISTICAL INFORMATION ABOUT THE USE OF OOC SERVICES

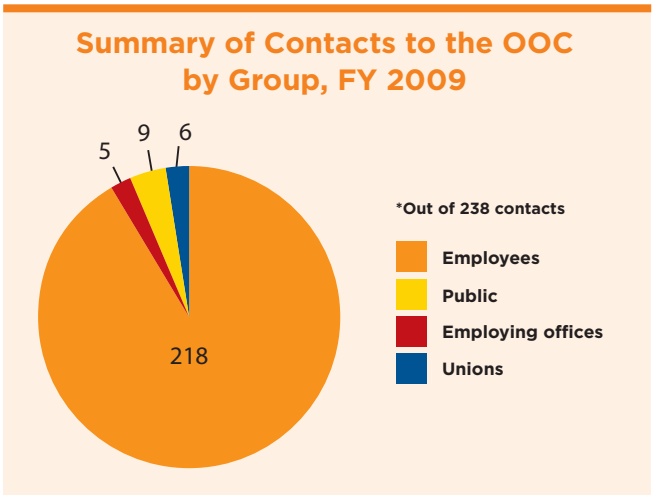
During the hearings that led to the passage of the CAA, some Congressional Members voiced concern that while the passage of workplace rights laws to protect Congressional employees is important, the laws mean little if employees do not have an effective forum to bring claims for alleged violations of such laws or if they do not feel comfortable asking about their rights. As a result, Section 301(h) of the CAA requires the OOC to compile and publish statistics on the use of the OOC by Congressional employees so that Congress can assess whether Congressional employees are indeed exercising their rights and getting the information they need. In this section, we provide information about the use of the OOC by Congressional employees to enforce their workplace rights under the CAA.

SUMMARY OF CONTACTS TO THE OOC

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

The OOC's website is the most complete resource for information on the CAA for employees and employing offices. An automated telephone information line with recorded information about the CAA and the OOC is also available at (202) 724-9260 for those who do not have ready access to the Internet.

During FY 2009, the OOC received 238 contacts from covered employees, employing offices, unions, and the public requesting information. Contacts were made both in person and by phone.



The OOC's website also receives hundreds of thousands of hits each year.

SUMMARY OF AUTOMATED CONTACTS TO THE OOC, FY 2009

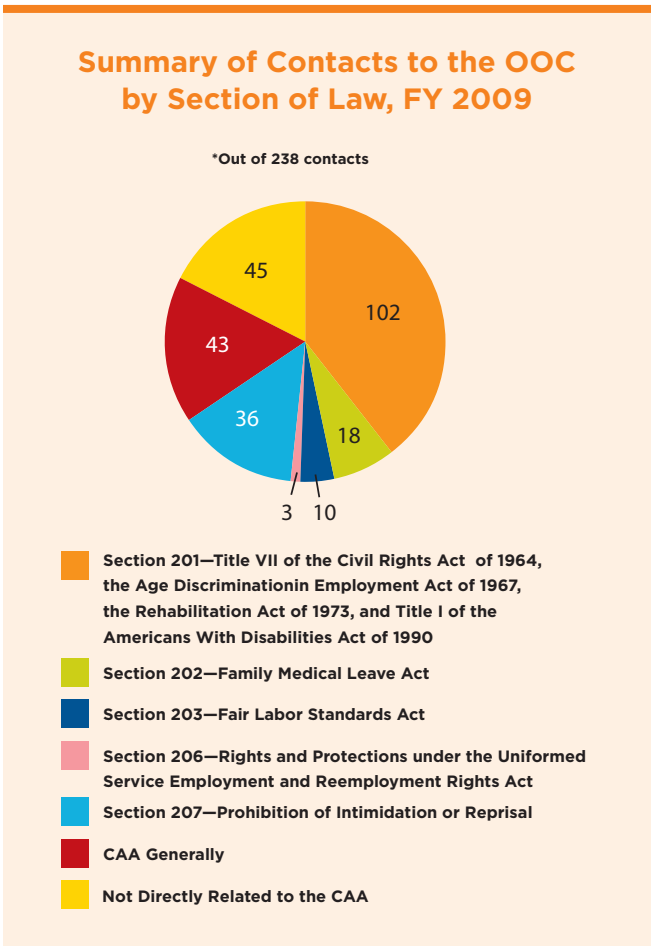
Automated Contacts	Number of Contacts
Website "hits" (6 months/average per month)	212,372
Website Downloads (6 months/average per month)	258,984

CONTACTS BY SECTION OF THE LAW

Employees contacted the OOC for a variety of reasons in FY 2009, from questions concerning the application of particular provisions of the law, to matters that may

constitute a violation of the CAA. Each single contact may involve several distinct provisions of the law, which is why the total number in this section is higher than the total number of contacts in the "Contacts by Group" section.

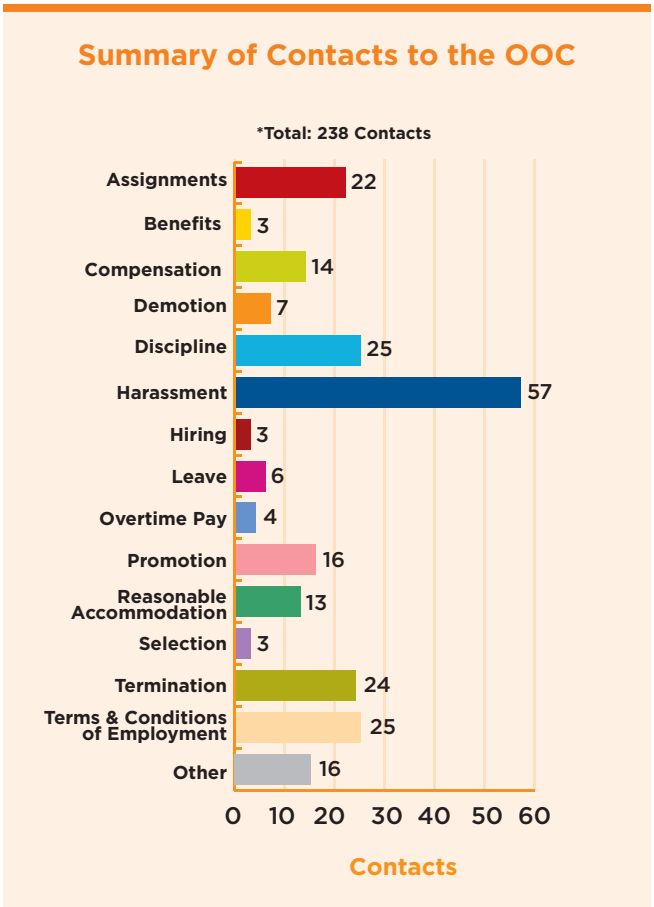
Of the 238 contacts, approximately 43% had questions relating to discrimination based on a protected trait such as sex, race, national origin, age, and/or disability, among others; 15% had questions related to intimidation or reprisal for exercising rights under the CAA; and 8% had questions related to leave rights. In FY 2009, the covered employees who contacted the OOC discussed sections of the law as illustrated below:



CONTACTS BY ISSUE

Employees typically contact the OOC with questions ranging from the application of the CAA to specific work issues.

Common issues relate to discipline, terms and conditions of employment, terminations, and assignments. The most common issue was harassment, including sexual harassment and harassment based on other protected traits. Of the 238 contacts, 24% of the issues raised were related to harassment. Employee contacts in FY 2009 raised issues as illustrated right:



RESULTS OF ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS

The CAA mandates a dispute resolution process of counseling and mediation for the prompt resolution of disputes. If the parties involved do not resolve their dispute during counseling and mediation, an employee may either pursue claims in an administrative hearing process before an independent Hearing Officer with the OOC or file suit in Federal court. Final decisions of hearing officers may be appealed to the Board of Directors of the OOC for review. Upon review, the Board issues a written decision along with its analysis and evaluation of the facts and issues. A party dissatisfied with the decision of the Board may file a petition for review of the Board's decision with the U.S. Court of Appeals for the Federal Circuit.

There were 108 new counseling requests in FY 2009 and 72 new requests for mediation.

Most requests for counseling came from employees, former employees, or applicants in the U.S. Capitol Police (44%), the Office of the Architect of the Capitol (28%), the House (20%), and the Senate (6%).

During counseling, the most common workplace issues raised were harassment and/or hostile work environment,

terms and conditions of employment, and termination. The most common alleged violations of the CAA related to discrimination based on a protected trait such as sex, race, age, and/or disability under Section 201 of the CAA. Approximately 65% of the allegations raised during counseling related to Section 201.

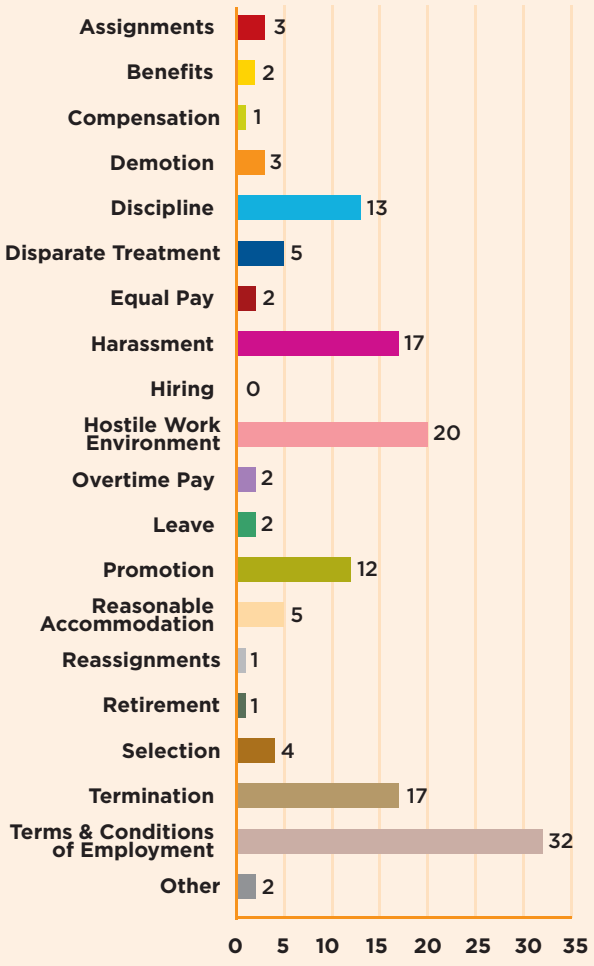
Counseling Proceedings

Note: Report includes results of processes carried-over from prior reporting periods

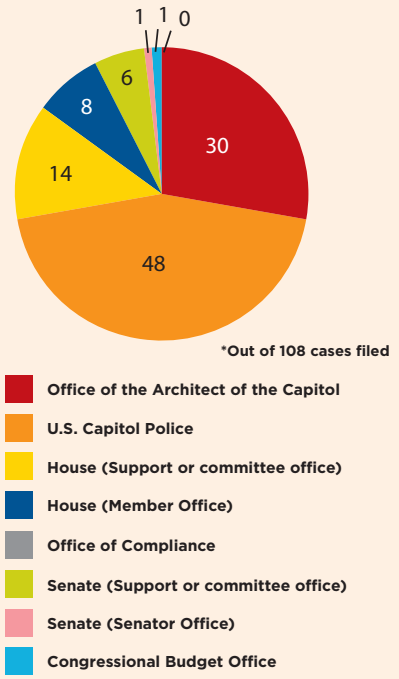
New Requests for Counseling Filed in FY09	108
Matters Resolved during Counseling in FY09	51
Matters Pending in Counseling on Sept. 30, 2009	5

Workplace Issues Raised with the OOC by Employees Requesting Counseling

*Note: A single request for counseling may involve more than one issue

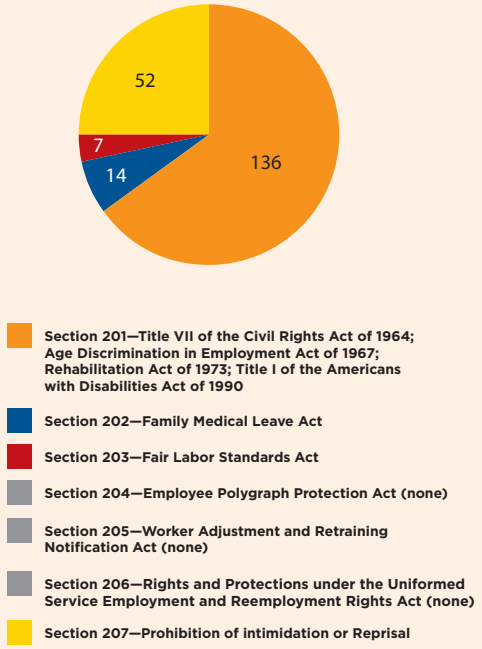


Requests for Counseling Filed in FY 2009 by Office and Agency



Requests for Counseling Alleging Violations Under Sections of the CAA during FY 2009

(Note: A single request for counseling may allege a violation of more than one section of the CAA)



Mediation Proceedings

Note: Report includes results of processes carried-over from prior reporting periods.

New Requests for Mediation Filed in FY09	72
Matters Resolved by Formal Settlement in FY09	12
Pending in Mediation on Sept. 30, 2009	2

There were a total of ten Administrative Complaints filed in 2009. Complaints included allegations of violations of the Family and Medical Leave Act, The Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, and protection against retaliation under the CAA.

Administrative Complaint Proceedings

New Complaints Filed in FY09	10
Matters Formally Settled in FY09	4
Hearing Officer Decisions Issued	5
Pending in Hearing	5

The Board of Directors, the OOC's appellate body, issues decisions, resolving matters on review from Hearing Officer decisions, and on exceptions to Arbitrators Awards filed pursuant to the Labor-Management provisions of the CAA. In FY09, in addition to the decisions noted below, the Board issued three decisions on Exceptions to Arbitrator's Awards.

Petitions for Board Review of Hearing Officers' Decisions

New Petitions Filed in FY09	3
Petitions Settled/Withdrawn	0
Board Decisions Issued	2
Pending Board Review	1

The General Counsel of the OOC represents the OOC in matters appealed to the United States Court of Appeals for the Federal Circuit. In FY 2009, in addition to the Petition for Judicial Review noted below, the General Counsel represented the OOC in 1 additional matter pending review by the Federal Circuit filed pursuant to the Labor-Management provisions of the CAA.

Judicial Review of Final Decisions Issued by the Board

New Petitions for Judicial Review Filed in FY09	1
Petition Settled/Withdrawn	0
Decision Issued	0
Pending Judicial Review	1

OFFICE OF COMPLIANCE BOARD OF DIRECTORS ACTION UNDER SECTION 220, FY 2009 (LABOR MANAGEMENT RELATIONS)

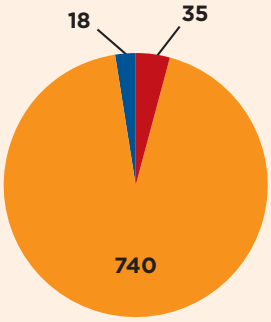
In FY 2009, a representation petition filed in 2008 resulted in a secret ballot election conducted by the Office of Compliance in January 2009. The labor organization received the majority of the votes cast, and was certified by the OOC as the exclusive representative of the employees in the unit seeking representation.

Also in 2009, as stated above, the Board of Directors issued three decisions resolving Exceptions to Arbitrator's Awards. In these cases, the Board upheld the awards made by the Arbitrators.

OSHA, ADA, AND UNFAIR LABOR PRACTICE PROCEEDINGS

The General Counsel of the OOC 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). Employees and employing offices frequently request information, advice, and technical assistance from the General Counsel. For example, the General Counsel has been asked to do pre-inspections of offices, address use of Segways by persons with mobility impairments, provide assistance in developing safety procedures for operating electric carts in hallways, and fixing mold problems in the Russell building.

Total Requests to the General Counsel for Information and Assistance by Section of the CAA FY 2009



*Total: 793 Requests

- Section 201—Public access and accomodation under the Americans with Disabilities Act of 1990
- Section 215—Occupational Safety and Health Act of 1990
- Section 220—Unfair Labor Practices under Chapter 71 of Title 5, U.S. Code

STRATEGIC PLAN: GOALS & ACHIEVEMENTS

Every three years, the OOC prepares a strategic plan to chart the direction of the OOC's initiatives. Please see Appendix B for the OOC's goals and achievements under the strategic plan.

III. PARITY GAP ANALYSIS: AMEND THE CAA TO REQUIRE OOC POSTINGS OF WORKPLACE RIGHTS IN ALL EMPLOYING OFFICES AND MANDATE RECORD-KEEPING

RECOMMENDATION: REQUIRE NOTICE-POSTING OF EMPLOYEE RIGHTS AND RECORD-KEEPING

Experience in the administration of the CAA leads the Board of Directors of the OOC to recommend that currently inapplicable notice-posting and record-keeping provisions be made applicable under the CAA. The Board further recommends that the OOC be granted the authority to require that notices be posted and records be kept in the same manner as required by the agencies that enforce the provisions of law made applicable by the CAA in the private sector.

Most of the laws made generally applicable by the CAA authorize the enforcing agency to require the posting of notices in the workplace to inform employees about their rights. The Board believes that part of the reason employees do not know about their rights under the CAA is because such postings are not required in every employing office.

Furthermore, our experience has demonstrated that where employing offices have voluntarily kept records, these records have greatly assisted in the speedy resolution of disputed matters. Especially where the law has not been violated, employing offices can more readily demonstrate compliance if adequate records have been made and preserved. Moreover, based upon its experience and expertise, the Board has concluded that effective record keeping is not only beneficial to the employer, but in many cases is necessary to the effective vindication of the rights of employees.

Additionally, living with similar notice-posting and record-keeping requirements as applied in the private sector will give Congress the practical knowledge of the costs and benefits of these requirements. Congress will be able to determine experientially whether the benefits of each notice-posting and record-keeping requirement outweighs the burdens. Application of the notice-posting and record-keeping requirements will thus achieve one of the primary goals of the CAA, that the Legislative Branch live under the same laws as the rest of the nation's citizens.

All 102(b) reports are available on the OOC's website at **www.compliance.gov.**

Appendix A: Acronyms

Alternative Dispute Resolution: **ADR**

Americans with Disabilities Act: **ADA**

Architect of the Capitol: **AOC**

Capitol Visitor Center: **CVC**

Congressional Accountability Act of 1995: **CAA**

Congressional Budget Office: **CBO**

Congressional Management Foundation: **CMF**

Family Medical Leave Act: **FMLA**

General Counsel of the Office of Compliance: **GC**

Genetic Information Nondiscrimination Act: **GINA**

Government Printing Office: **GPO**

Government Accountability Office: **GAO**

Library of Congress: **LOC**

Occupational Safety and Health Act: **OSHA**

Occupational Safety and Health: **OSH**

Office of Compliance: **OOC**

Risk Assessment Code: **RAC**

Uniformed Servicemembers Employment and Reemployment Rights Act: **USERRA**

Veterans' Employment Opportunities Act: **VEOA**

Appendix B: Strategic Plan (2006–2009)

GOALS & ACCOMPLISHMENTS

Every three years, the Office of Compliance prepares a strategic plan to chart the direction of the Agency's initiatives. Measurements are incorporated into the Strategic Plan to help ensure that the initiatives are accomplished to the extent possible. The Strategic Plan is adjusted periodically to fit changing priorities and circumstances. The OOC summarizes its goals, initiatives, measurements, and accomplishments from October 1, 2008 to September 30, 2009.

GOAL I

Protect the health and safety of Legislative Branch employees, assure equal access for individuals with disabilities, and provide for the prompt and fair resolution of labor relations disputes.

INITIATIVES

A. Improve overall case-handling effectiveness and monitoring abatement of inspection violations.

B. Maintain and enhance the existing Occupational Safety and Health Act (OSHA) and Americans with Disabilities Act (ADA) violation record-keeping system, and complete data input/conversion of prior case data.

C. Expand the scope of the data monitored to improve compliance with safety and health and disability access requirements.

D. Provide increased safety and health and ADA technical assistance, focusing on the service needs of the regulated community.

MEASURES

By the end of FY 2007, reduce by 25% the number of OSH and ADA requestor-initiated cases and citations that are open for 12 months or more from the FY 2006 total, and resolve (through abatement, closure, dismissal or other dispositive action) all such backlogged cases and citations by the end of FY 2009.

SUMMARY OF ACCOMPLISHMENTS

On October 1, 2006, we had 101 "old" cases and citations (defined as those filed at least 12 months before the start of the fiscal year). By September 30, 2009, we had closed 76 "old" cases and citations. This reduced our back log by 75%.

Nineteen of the open "old" cases/citations are in the process of being resolved and/or are awaiting funding for abatement measures. These include:

- 4 "old" citations and 3 "old" cases involving the Capitol Power Plant Utility Tunnels; pursuant to the Settlement Agreement, these will be abated no later than June 11, 2012.
- 7 "old" citations address serious structural fire safety violations. We have approved the AOC's abatement plans.
- 2 "old" citations and 3 "old" cases are presently being resolved pursuant to RFMAs.
- Only 8 "old" cases/citations do not have approved abatement plans – just 8% of the matters pending in October 2006.

GOAL II

Assist employees and employing offices to achieve the model workplace envisioned by the Congressional Accountability Act by fairly and promptly resolving disputes.

INITIATIVES

A. Utilize the new dispute resolution case tracking system to increase case processing efficiency and better direct resources.

B. Assist disputants in successfully resolving workplace disputes at the earliest possible step in the Alternative Dispute Resolution (ADR) process. Early resolution reduces the stress on the disputants, eases tension in the workplace, and saves tax-payer dollars.

C. Continue to survey the stakeholders who have participated in the ADR process to obtain information on the administration of the dispute resolution program.

D. Endorse and enhance the ADR program to support the recent increase in mediated settlement agreements.

E. Realize the Board of Directors' rule making authority by monitoring its existing procedural rules and recommending substantive regulations for approval by Congress.

MEASURES

In FY 2009, the OOC will increase by 10% the number of participants who report the mediation process to be "fair" or "very fair," as measured against the FY 2007 survey responses. In 2009, the OOC saw a decrease of 25% in the total number of participant surveys completed over the 2008 response rate. However, of the responses received, there was an 11% increase in the number of participants reporting the mediation process to be "fair" or "very fair" against the FY 2008 survey responses.

SUMMARY OF ACCOMPLISHMENTS

In 2009, the OOC implemented a new case tracking system, I-Sight, to improve the efficiency and effectiveness of its ADR program. In addition to tracking case data, the new system provides the OOC with ability to track expenditures, an important management tool in determining how best to allocate our resources. The added functionality of the new system also maximizes efficiency in the administration of the ADR program by utilizing tools to streamline workflow and spot subject matter trends, facilitating our ability to target educational activities where they are most needed.

The OOC began utilizing the I-Sight system in 2009. Configuring the system to meet the specific needs is an on-going and time-consuming process. While its full capacities have not yet been realized, the OOC continues to work with the vendor to obtain full customization of the product and maximize its benefit to the OOC.

The OOC also utilized its personal and professional resources to assist parties in resolving workplace disputes before they escalate. By providing advice, information, and education to the covered community, the OOC sought to encourage voluntary compliance with the provisions of the CAA. Employees who filed a Request for Counseling with the OOC were given information on their rights and responsibilities under the CAA and the OOC's procedures. At mediation, the OOC provided a safe and level playing field for disputants to discuss and resolve employment disputes. The OOC encouraged negotiated settlements at the hearing stage before a decision by the Hearing Officer was rendered. However, complaints were resolved by decisions of Hearing Officers, where earlier settlement attempts had failed. In 2009, the number of counseling requests filed with the OOC remained largely consistent with previous years, as did the number of negotiated settlements. The OOC issued five hearing officer decisions, and five Board decisions in FY 2009. These decisions reflect the Board's review of Hearing Officer decisions, as well as Arbitrator Awards.

Over the course of many years, the OOC has sought to survey mediation participants to obtain feedback on the mediation process. The purpose was to cull data in hopes of identifying barriers to the successful resolution of disputes during mediation. However, the survey response rate was consistently low and the information provided was relatively sparse. After utilizing mediation surveys over a five year period, the OOC has determined not to continue to use them to obtain a baseline for evaluating the program. However, the OOC will continue to survey mediation participants to encourage them to provide feedback on their experience with the program. The OOC will not be expanding the use of surveys to all areas of the alternative dispute resolution program because experience has shown that participants are more likely to call the OOC and speak to staff directly regarding an issue or concern they may have with the program than respond through a survey.

To promote awareness and voluntary compliance with the provisions of the CAA, the OOC continued to educate the covered community on the benefits and opportunities of ADR, and provided targeted training to legislative offices concerning specific issues or provisions of the Act. In addition to participating in quarterly briefings for State and District staff sponsored by the Congressional Research Service, the OOC appeared on FedTalk, a radio program for federal sector employees, and presented at the Federal Dispute Resolution conference. The OOC also succeeded in getting final decisions issued by its Board of Directors published on Westlaw, facilitating research by practitioners and researchers interested in following this landmark legislation.

The Board of Directors pursued implementation of its existing legislative recommendations to Congress, and monitored legislation that may impact workplace rights and responsibilities within the covered community. In 2009, the Board adopted substantive regulations to implement provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), and began the process to amend its procedural rules. The Board filed an amicus curiae brief with the United States Court of Appeals to clarify the OOC's procedures.

The OOC continues to find ways to enhance the impact of its relatively small staff in the administration and enforcement of the CAA. To that end, the OOC participated in the Legislative Branch Diversity Council and convened the Employment Dispute Resolution Council to promote compliance with employment rights legislation, share resources, and reduce costs among Legislative Branch agencies. Similarly, the OOC has entered into Memoranda of Understanding with other Federal agencies to share intellectual resources and reduce costs while fully pursuing its mission.

GOAL III

Improve knowledge of rights and responsibilities under the CAA, both on Capitol Hill and in state or district offices throughout the country.

INITIATIVES

A. Complete and implement Phase I of a baseline survey to gauge the needs of stakeholders and shape future education and outreach efforts.

B. Increase the overall visibility of the Office of Compliance.

C. Prioritize communication and outreach to all state or district offices.

MEASURES

A. Increase by 5% from the previous fiscal year the number of hits to our website.

B. Increase by 5% from the previous fiscal year the number of Fast Facts produced and published on the website.

SUMMARY OF ACCOMPLISHMENTS

Member visits continued throughout the year. In January 2009, the OOC engaged in a grassroots effort to reach all new members of Congress. We went to each new office and introduced ourselves and provided staffers with informational publications and resources. Additionally, the Board met with several new members who had been assigned to Committees relevant to the OOC. One successful outcome of these meetings was the relationship forged with Congressman Gregg Harper, who was featured in our Annual Newsletter regarding passage of Genetic Information Nondiscrimination Act of 2008. We also began to meet monthly with staffers from the

Committee on House Administration, bridging the goals that both the Committee and our Agency seek to achieve. We continue to reach out and cultivate relationships with members of both the House and Senate, committee staff and leadership.

In addition to our outreach efforts, we have also worked to update prior *Fast Facts*. Striving to provide the most useful and relevant health and safety information to both employees and employers, we have revamped many existing publications. We have also produced *Fast Facts* on current situations, such as the H1N1 outbreak.

Throughout FY 2009, the OOC provided training on employee workplace rights and the services offered by the OOC at all Congressional Research Services courses for new House and Senate staffers. The OOC also distributed thousands of CAA handbooks to the homes of new employees. The CAA handbooks provide comprehensive information about workplace rights under the CAA. The OOC also mailed its annual newsletter to the homes of Congressional employees to update them on new changes to the CAA and to inform them of the OOC's activities.

GOAL IV

Foster employee satisfaction and employee capability in order to enhance productivity.

INITIATIVES

A. Develop and implement a clearly defined Human Capital Plan.

B. Enhance organizational efficiency and effectiveness through the acquisition of technological equipment and tools required to enhance the Office of Compliance's competitive edge as an employer and the efficiency of its day-to-day operations.

C. Maximize employees' capabilities through training, development, and opportunities to facilitate upward mobility.

D. Enhance the working environment of the Office of Compliance to maximize organizational efficiency and effectiveness and employee satisfaction.

E. Develop and implement the use of telework and alternative work schedule arrangements.

SUMMARY OF ACCOMPLISHMENTS

The Human Capital Plan, telework policy, and alternative work schedule polices were developed with employee input and implemented before September 2009. The IT department has received many hardware and software updates to allow for increased efficiencies. Each employee received external training at the end of the fiscal year, and internal cross-training where necessary. The Agency continues in its efforts to acquire additional work space.

The Human Capital Plan was implemented in September 2009. It contains a clearly defined pay plan with accompanying considerations for managers. Through the appropriations process, we have requested additional positions and funding to address the operational needs of the OOC.

We have transitioned to Microsoft Office, provided desktop internet access to all employees, and have acquired updated hardware.

The Board was successful in seeking legislative change to allow for internal promotions to appointed positions within the OOC. Individual work plans for all employees are linked through their manager to the strategic plan. Cross-training and outside training has been emphasized to ensure knowledge of industry standards and to facilitate continuity of operations.

The new employee orientation program has allowed for OOC staff to receive a thorough introduction to their benefits when joining the OOC. Efforts to acquire sufficient work space continue. In the interim, adjustments have been made to maximize the space we have, providing as much workspace privacy as possible.

The telework and alternative work schedule policies were discussed with staff and implemented with their input.

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