



+ OFFICE OF COMPLIANCE + FY 2012 ANNUAL REPORT

STATE OF THE  
**CONGRESSIONAL**  
**WORKPLACE**

A Report on Workplace Rights, Safety, Health, and Accessibility Under  
the Congressional Accountability Act





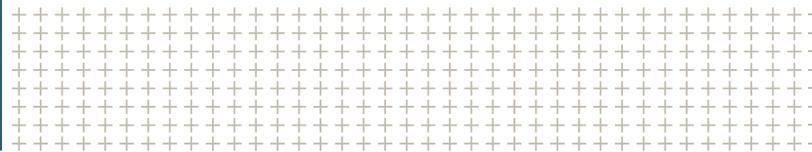
“This bill, which applies to the congressional employees the basic protections against discrimination, unsafe working conditions and unfair labor practices which are guaranteed to other American workers, is a long overdue reform. For many decades, Congress routinely exempted itself from laws which it passed to apply to the rest of America—a double standard which increased the contempt which most citizens have justifiably held for this institution. Capitol Hill was the last bastion of arbitrary bosses, long after the struggles of working men and women gained basic human and economic rights for workers in most of our Nation.”

**+ Representative Bernard “Bernie” Sanders (VT) (now a U.S. Senator), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995**



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# THE CHAIR OF THE BOARD OF DIRECTORS



The Board of Directors of the Office of Compliance (OOC) once again applauds the agency for its many accomplishments during fiscal year 2012. The OOC, along with every agency in the Federal government, has had to rethink how to fulfill its mandates and mission, while conforming to current fiscal constraints. Truly, fiscal year 2012 has

been a challenging one for the OOC. However, the staff has faced these challenges to provide the programs and services mandated by the Congressional Accountability Act (CAA) to further workplace rights, safety and health, and public access.

The OOC's success in servicing the Congressional community is due largely to the dedication of OOC staff. The OOC is a very small agency: 21 full-time equivalent employees and several contractors perform the work that is required by the CAA. The work we do on behalf of the Legislative Branch is equivalent to that performed by several different agencies and offices within the Executive Branch: the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and the Occupational Safety and Health Administration, to name a few. With this large and important mission and minimal resources, the OOC could only accomplish its statutory requirements with the full commitment of its workforce. During fiscal year 2012, the staff of the Office ensured successful completion of a first-ever risk-based safety and health inspection, provided educational materials to covered employers and employees in cost-efficient and effective ways, and ensured unfettered access to the agency's dispute resolution program. Though workplaces to be inspected continued to increase and employees continued to seek OOC's services to resolve workplace issues, the resources provided to the agency dwindled; however, the quality of services provided by the agency remained excellent, largely due to the skill level, steadfastness, and professionalism of OOC staff.

The OOC's success during FY2012 was also dependent on the continued support it receives from the Congressional community. Whether it is monthly meetings with its oversight committees, staff briefings for appropriations issues, or meetings with covered employers and employees to address safety and health hazards, the OOC's efforts to advance workplace rights, safety, health, and public access are furthered with the cooperation shown by interested stakeholders. In particular, during FY2012, the OOC collaborated with the Committee on House Administration to communicate directly with House employees via email. This access will allow the Office to offer educational materials to employees of the House of Representatives in a quick, efficient, and cost-effective manner. We applaud the cooperative efforts of the Committee on House

Administration in ensuring that its employees are educated on and efficiently notified of their rights under the CAA.

Another remarkable feat in FY 2012 was the closing of the safety and health complaint involving the utility tunnels, ahead of schedule and under budget. This accomplishment, along with the successful completion of fire and life safety efforts in Longworth, which fully preserved the historicity and physical beauty of that building, constitute milestones for the Office in Occupational Safety and Health enforcement. These successes were due directly to the open communication and cooperation between the OOC, the Office of the Architect of the Capitol, the agencies' respective oversight committees, appropriations committees, and other invested stakeholders.

Indeed, fiscal year 2012 revealed that collaboration between the agency and the Congressional community yields productive results for the entire campus. The Board of Directors of the Office of Compliance continues to work with Congress to strengthen the rights and responsibilities provided in the CAA. Each Congress, the Board provides its recommendations to Congress on adding to the CAA those laws that do not currently apply to the Legislative Branch but do apply to the private sector and the Executive Branch of the Federal government. At the time of the writing of this annual report, the Board of Directors continues to recommend that Congress apply to Legislative Branch employees: protections against retaliation for whistleblowers; posting of rights under the CAA; mandatory training on the rights under the CAA; more effective protection against retaliation for employees who report safety violations; the authority of the General Counsel to issue investigatory subpoenas. The Board further recommends that Congress approve the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) regulations, adopted by the Board and tailored to the particular procedures and practices of the Legislative Branch, to maximize the reemployment rights of returning veterans.

The Board looks back on FY 2012 with an eye toward the future, knowing that the accomplishments achieved resulted from collaboration between the OOC and the Congressional community. We support these continued efforts and anticipate additional successes as a result of the work we do together.

Sincerely,

A handwritten signature in black ink that reads "Barbara L. Camens". The signature is written in a cursive, flowing style.

Barbara L. Camens  
Chair, Board of Directors

# STATEMENT FROM THE EXECUTIVE DIRECTOR



I am pleased to report on the Office of Compliance's (OOC) accomplishments for fiscal year 2012. The OOC has a broad mandate—advancing workplace rights, safety, health, and public access in the Legislative Branch of the Federal government—and minimal resources.

The most vital resource, however, is the staff of OOC. Through the dedication and commitment of our employees, the OOC has done much to provide Congress effective dispute resolution services, thorough safety, health, and public access inspections, and a successful educational program that furthers the rights and responsibilities mandated by the Congressional Accountability Act. Fiscal year 2012 proved to be another year of demonstrated commitment by the staff of OOC.

As was the case with many agencies, the OOC had to set priorities and revisit operational strategies based on the reduced financial resources provided to it. We revamped processes, restructured programs, and renegotiated contracts in an effort to increase efficiencies and reduce costs. Specifically, the agency made changes to its website that improved the utility of and access to the dispute resolution services provided to the Congressional community. With these improvements, it will be easier for employees and employers to find the tools to help them address workplace issues and resolve matters at the earliest possible point. As a part of streamlining the services provided by the agency, we renegotiated contracts and implemented a “flat rate” for our mediation service providers. This change allowed us to control costs while affording opportunities for mediators to work more efficiently and effectively in facilitating the early resolution of disputes. The agency also negotiated reductions in the hourly rate paid to its hearing officers. This reduction in fees reduced costs without diminishing the high level of professional services provided by skilled and experienced adjudicators.

Our efficiencies continued as we realized a year of “firsts” for the Office of Compliance during FY2012. The OOC issued its required annual notification to employees in a concise one-page mailer. This was different than the multipage newsletter previously mailed to employees. This one-pager provides an easy reference for employees and employers on the rights and responsibilities mandated by the Congressional Accountability Act, while affording the agency considerable cost-savings.

The OOC collaborated with the Committee on House Administration to e-mail House employees with educational materials required by the Congressional Accountability Act. For the first time, the OOC was able to directly communicate via email with House employees—expanding our outreach to the Congressional community, while saving taxpayers’ dollars for printing and distribution.

Another accomplishment for the OOC was the completion of the first-ever risk-based inspection. The OOC’s General Counsel inspected high hazard areas to determine compliance with relevant safety and health standards. This type of inspection is critical to ensuring the safety and health of Congressional employees, as it focuses on reducing the risk of injuries while employees perform potentially dangerous operations. In the long run, conducting risk-based inspections will help improve the safety and health programs of employers covered by the Congressional Accountability Act.

Fiscal year 2012 was a year of many firsts, as we focused on how best to fulfill our mission and meet our mandate with limited resources. Our efforts to implement efficiencies are proving to be successful. Most of the claims made before the OOC in FY 2012 continue to be resolved during the agency’s confidential processes. As we have been expanding our educational outreach to the Legislative Branch, we are seeing a more informed community—from managers who understand their responsibilities under the CAA and recognize how to prevent workplace disputes to employees who know that they can come to the Office of Compliance for confidential and fair resolution of their workplace issues early in the process. Our goal is to continue working with our stakeholders by providing them with the information and services necessary to advance access, safety, health and workplace rights on the Hill.

Continued assistance from our stakeholders, our oversight committees, and the appropriations committees provides us with the support we need to give Congress the services it deserves: when we work together, success can be achieved.

Sincerely,

Barbara J. Sapin, Esq.

# THE CONGRESSIONAL WORKPLACE AND THE CONGRESSIONAL ACCOUNTABILITY ACT

The Congressional Accountability Act of 1995 (CAA) applies private sector and Executive Branch workplace rights, safety, health, and public access laws to Congress and its agencies and provides the legal process of resolving alleged violations of the CAA through the Office of Compliance (OOC). The CAA protects over 30,000 employees of the Legislative Branch nationwide (including state and district offices). Under certain circumstances, job applicants and former employees are protected. The CAA also provides protections and legal rights for members of the public with disabilities who seek access to public accommodations and services in the Legislative Branch.

## CONGRESSIONAL WORKPLACES COVERED BY THE CAA

- + HOUSE OF REPRESENTATIVES
- + SENATE
- + CONGRESSIONAL BUDGET OFFICE
- + GOVERNMENT ACCOUNTABILITY OFFICE\*
- + LIBRARY OF CONGRESS\*
- + OFFICE OF THE ARCHITECT OF THE CAPITOL
- + OFFICE OF THE ATTENDING PHYSICIAN
- + OFFICE OF COMPLIANCE
- + OFFICE OF CONGRESSIONAL ACCESSIBILITY SERVICES
- + UNITED STATES CAPITOL POLICE

*\*Certain provisions of the CAA do not apply to the Government Accountability Office and Library of Congress; however, employees of those agencies may have similar legal rights under different statutory provisions and procedures.*



## + LAWS APPLIED TO THE CONGRESSIONAL WORKPLACE BY THE CAA:

Section 201 of the CAA	<b>HARASSMENT AND DISCRIMINATION PROHIBITED</b>	Prohibits harassment and discrimination in personnel actions based on race, national origin, color, sex, religion, age, or disability. Laws applied: Title VII of the Civil Rights Act, Age Discrimination in Employment Act (ADEA), Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act (ADA)
Section 202 of the CAA	<b>FAMILY AND MEDICAL LEAVE</b>	Provides leave rights and protections for certain family and medical reasons. Law applied: Family and Medical Leave Act (FMLA)
Section 203 of the CAA	<b>FAIR LABOR STANDARDS</b>	Requires the payment of minimum wage and overtime compensation to nonexempt employees, restricts child labor, and prohibits sex discrimination in wages. Law applied: Fair Labor Standards Act (FLSA)
Section 204 of the CAA	<b>POLYGRAPH TESTING PROTECTIONS</b>	With some exceptions, prohibits 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. Law applied: Employee Polygraph Protection Act (EPPA)
Section 205 of the CAA	<b>NOTIFICATION OF OFFICE CLOSING OR MASS LAYOFFS</b>	Under certain circumstances, requires that employees be notified of an office closing or of a mass layoff at least sixty days in advance of the event. Law applied: Worker Adjustment and Retraining Notification Act (WARN)
Section 206 of the CAA	<b>UNIFORMED SERVICES RIGHTS AND PROTECTIONS</b>	Protects employees who are performing service in the uniformed services from discrimination and provides certain benefits and reemployment rights. Law applied: Uniformed Services Employment and Reemployment Rights Act (USERRA)
Section 207 of the CAA	<b>PROHIBITION OF REPRISAL OR INTIMIDATION FOR EXERCISING WORKPLACE RIGHTS</b>	Prohibits employing offices from intimidating, retaliating against, or discriminating against employees who exercise their rights under the CAA.
Section 210 of the CAA	<b>ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS</b>	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 agencies. Law applied: Titles II and III of the Americans with Disabilities Act (ADA)
Section 215 of the CAA	<b>HAZARD-FREE WORKPLACES</b>	Requires that all workplaces be free of recognized hazards that might cause death or serious injury to employees. Law applied: Occupational Safety and Health Act (OSHA)
Section 220 of the CAA	<b>COLLECTIVE BARGAINING AND UNIONIZATION</b>	Protects the rights of certain Legislative Branch employees to form, join, or assist a labor organization, or to refrain from such activity. Law applied: chapter 71 of Title 5, U.S. Code.
Genetic Information Nondiscrimination Act (GINA)	<b>GENETIC INFORMATION NONDISCRIMINATION &amp; PRIVACY</b>	Prohibits the use of an employee's genetic information as a basis for discrimination in personnel actions.
Veterans' Employment Opportunities Act (VEOA)	<b>VETERANS' EMPLOYMENT OPPORTUNITIES</b>	Gives certain veterans enhanced access to job opportunities and establishes a redress system for preference eligible veterans in the event that their veterans' preference rights are violated.

# ANNUAL REPORT

Congress passed the Congressional Accountability Act of 1995 (CAA) with overwhelming bipartisan support to bring 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 employers and the Federal Executive Branch. Prior to the passage of the CAA, Congress had exempted itself from the reach of these laws, affording employees no statutory remedy for any 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 workplace rights claims brought by Congressional employees; 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 promulgate regulations and make recommendations for changes to the CAA, that would apply to Congress the same workplace laws that apply to private and public employers.

In passing the CAA, 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 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.

This Annual Report provides an analysis of the state of workplace rights, safety, health, and accessibility in Congress during FY 2012 (October 1, 2011–September 30, 2012). And where noted, this report provides information that became available after FY 2012, but before it went to print.

In addition, this Annual Report provides FY 2012 statistics on the use of the OOC by Congressional employees, including statistics about the types of claims being made against Congressional employing offices. Section 301(h) of the CAA requires the OOC to publish such statistical data.

Other periodic reports that are provided to Congress, as required under the CAA, are summarized in this Annual Report and are described below:

- 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 (OSHAct), at least once each Congress and report on those findings. This Annual Report provides a preview of the risk-based inspections conducted for the first time ever, during the 112th Congress.
- Section 210(f) of the CAA requires that the OOC conduct biennial inspections of Legislative Branch facilities for compliance with the access to public services and accommodations requirements of the Americans with Disabilities Act (ADA), at least once each Congress, and report on those findings. In this report we preview some of the ADA findings for the 112th Congress (2011–2012).
- 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—titled “Recommendations for Improvements to the Congressional Accountability Act”—issued to Congress in December 2012, which made recommendations to the 113th Congress (2013–2014) for changes to the CAA to advance Congressional workplace rights. The Board of Directors highlights those sections of the 102(b) report that continue to be priorities.

All of our statutory reports are available on the OOC’s website at [www.compliance.gov](http://www.compliance.gov).

## ANNUAL REPORT STRUCTURE

This Annual Report includes: the State of Workplace Rights; the State of Safety & Health; and the State of Access to Public Services & Accommodations. For each section, this report describes:

- + **WHAT THE LAW REQUIRES:** An overview of the legal obligations under key provisions of the CAA.
- + **ACHIEVEMENTS & COMPLIANCE ASSESSMENT:** An assessment of Congressional compliance with the CAA, including achievements, non-compliance, and areas for improvement.

- + **PARITY GAP ANALYSIS (State of Workplace Rights and State of Safety and Health):** 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 (pursuant to Section 102b of the CAA) to amend the CAA to advance workplace rights for Congressional employees so that they have protections similar to those of employees in the private sector and the Federal Executive Branch.





# WHAT WE DO

We need an independent Office of Compliance where employees...know that they can seek relief for discrimination, harassment, or unfair labor practices in confidentiality and without the threat of retaliation.

Our bill establishes an Office of Compliance for the entire legislative branch. The role of the Office is to function as a legislative-branch equivalent of the executive enforcement agencies, ensuring congressional compliance with all the major Federal employment laws. + **Senator Joseph Lieberman (CT), June 29, 1994, from the legislative history of the Congressional Accountability Act of 1995.**

## SERVICES WE PROVIDE TO CONGRESS, CONGRESSIONAL EMPLOYEES, AND THE PUBLIC

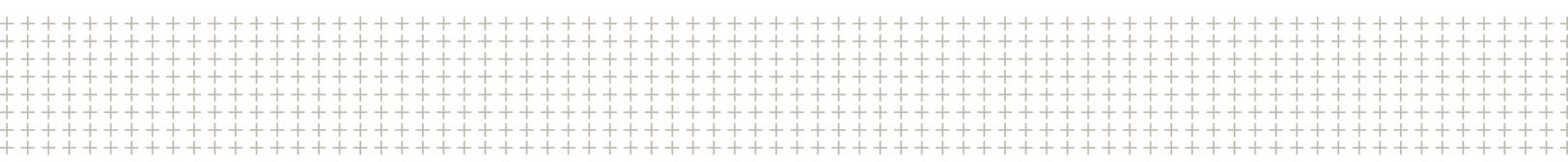
In 1995, Congress passed the Congressional Accountability Act (CAA). The purpose of the CAA was to require Congress and its agencies to follow many of the same employment, labor, accessibility, safety, and health laws that Congress enacted to apply to private business and the Federal Executive Branch, and to provide an avenue of legal recourse for those employees who allege violations of workplace rights. Under the CAA, an employee may seek a number of legal remedies for violations of the law including monetary damages, such as back pay awards, and the reimbursement of attorney's fees if the employee successfully wins his or her case.

Until the CAA's passage, Congress had exempted itself from most of these laws, but a collective voice of bipartisan Congressional Members expressed dissatisfaction with such exemptions. Members wanted Congress to be held

accountable to the same employment, accessibility, and safety laws that Congress enacted to apply to other employers.

Many 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 in protecting and advancing the rights of Congressional employees. Under the CAA, Congress established the Office of Compliance (OOC) as an independent agency 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.

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.



## RESOLVING DISCRIMINATION, HARASSMENT, AND OTHER WORKPLACE RIGHTS DISPUTES IN THE LEGISLATIVE BRANCH

The CAA provides for mandatory alternative dispute resolution (ADR), which includes confidential counseling and mediation for the settling of disputes under most workplace rights laws as described on page 5 of this Annual Report.

In most instances, the CAA imposes a strict 180 day time limit for an employee, applicant, or former employee to initiate a workplace rights violation claim by submitting a formal request for counseling with the OOC. After completing confidential counseling, the employee may decide to further pursue his or her claim through confidential mediation with his or her employer.

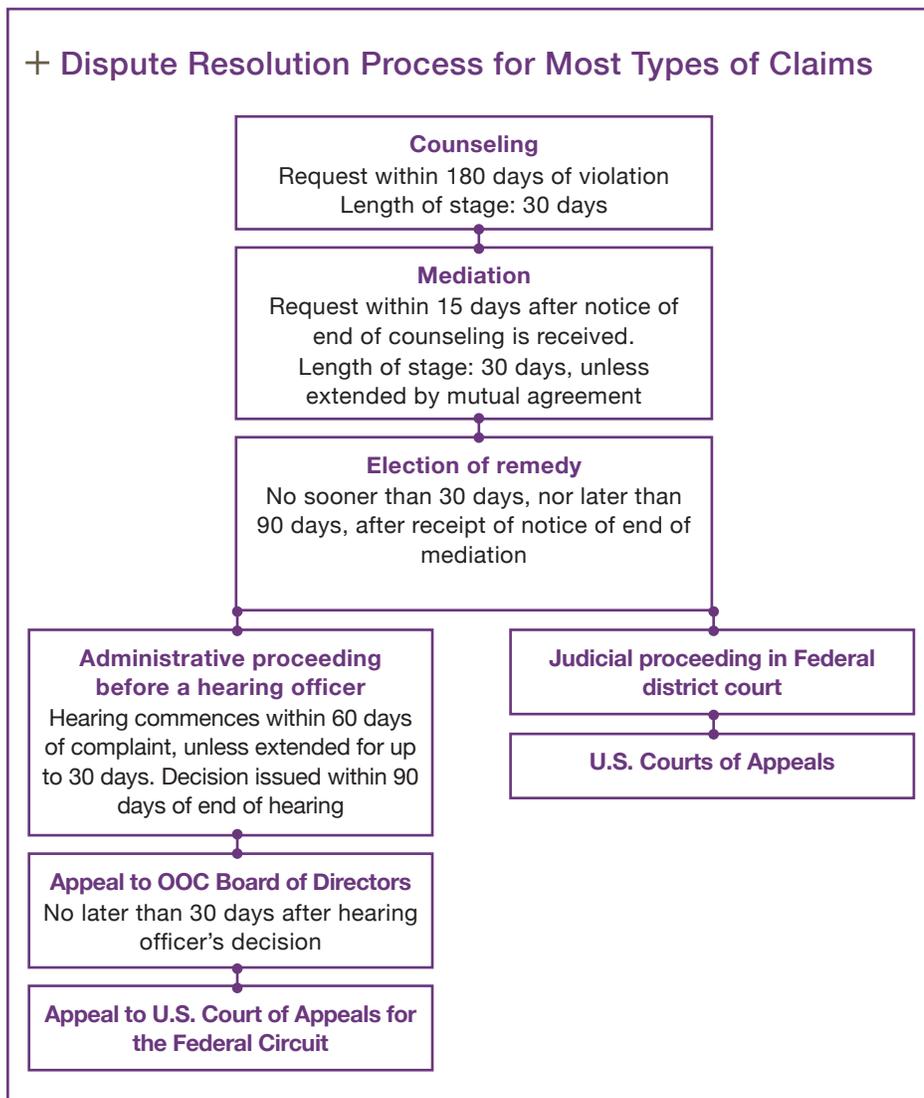
If the parties involved are not able to resolve their dispute through mediation, an employee may either pursue an administrative hearing with the OOC, or file a civil suit in Federal district court.

After an administrative hearing, if either the employee or the employer is dissatisfied with the final decision of the hearing officer, a request may be made to have the hearing officer's decision reviewed by the Board of Directors of the OOC. If the employee or the employer is dissatisfied with the Board of Directors' ruling, the decision may be appealed to the U.S. Court of Appeals for the Federal Circuit for further review. If, instead, the case proceeds to a civil suit, appeals of Federal district court decisions will proceed under the rules that normally apply to appeals in Federal court, usually an appeal to the appropriate U.S. Court of Appeals.

Depending on the law and facts in a case, a hearing officer, the OOC Board of Directors, or Federal court may order monetary awards and other appropriate remedies for the prevailing party in the case, such as reinstatement, promotion, or back pay. Attorney's fees, expert witness fees, and certain other costs may also be awarded. No civil penalties or punitive damages may be awarded for any claim under the CAA.

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

At any time during the ADR Process, an employee may designate (at the option and expense of the employee) a representative, such as an attorney, to represent him or her in the matter.

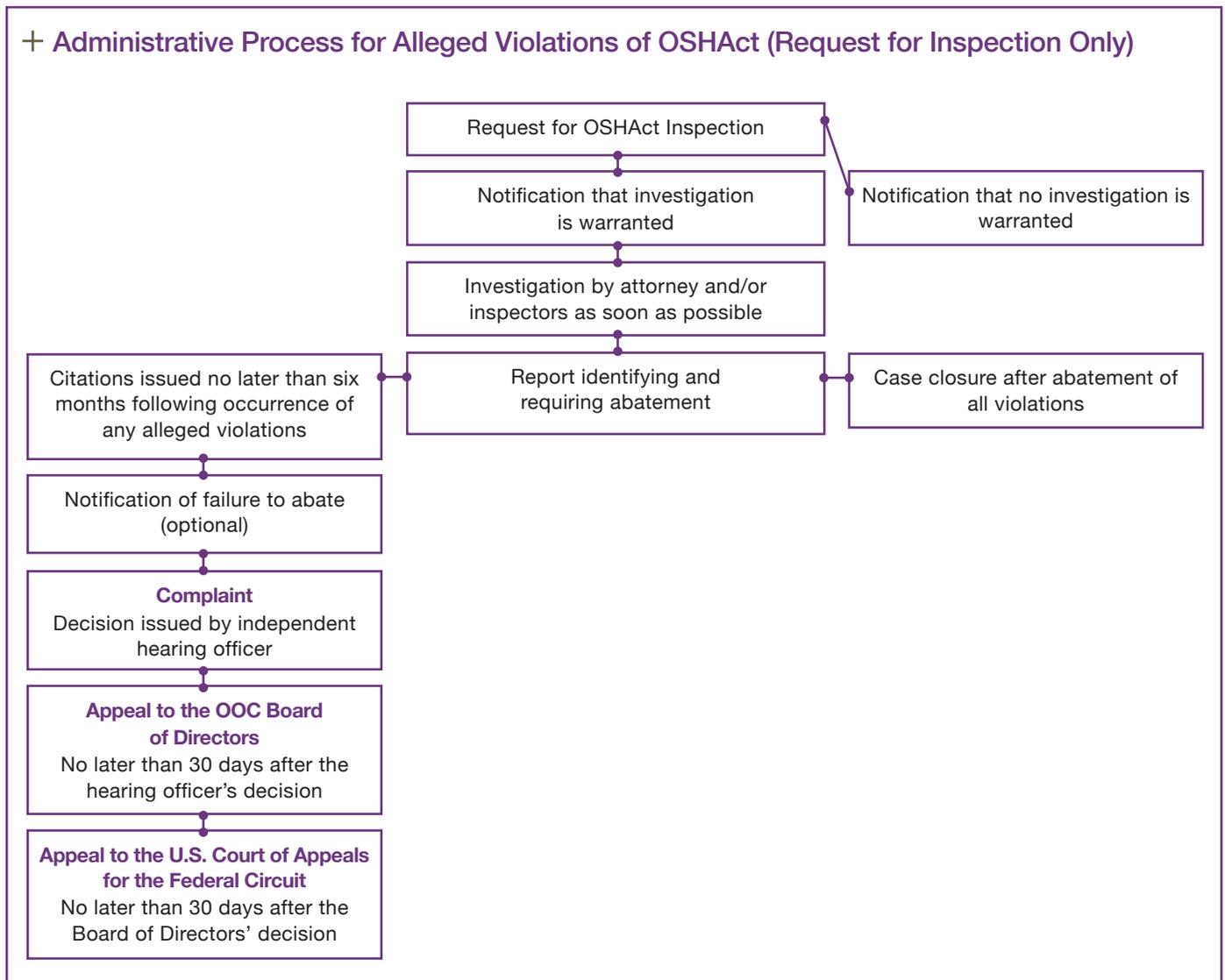


## ENSURING A SAFE & HEALTHY CONGRESSIONAL WORKPLACE

Under the CAA, the Legislative Branch must comply with the OSHAct and its standards requiring that the workplace be free from recognized hazards that are likely to cause death or serious injury. The General Counsel of the OOC inspects Congressional properties biennially for such violations and reports them to the Speaker of the House and President Pro Tempore of the Senate. The OOC also provides information and technical assistance to employing offices that are responsible for abating workplace hazards.

The CAA provides that a Congressional employee or employing office may file a Request for Inspection to

determine if a dangerous working condition exists. 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 remedying the hazard. If a hazardous condition is not corrected despite the issuance of a citation, the General Counsel can file an administrative complaint with the OOC, and seek an order mandating the correction of the violation.

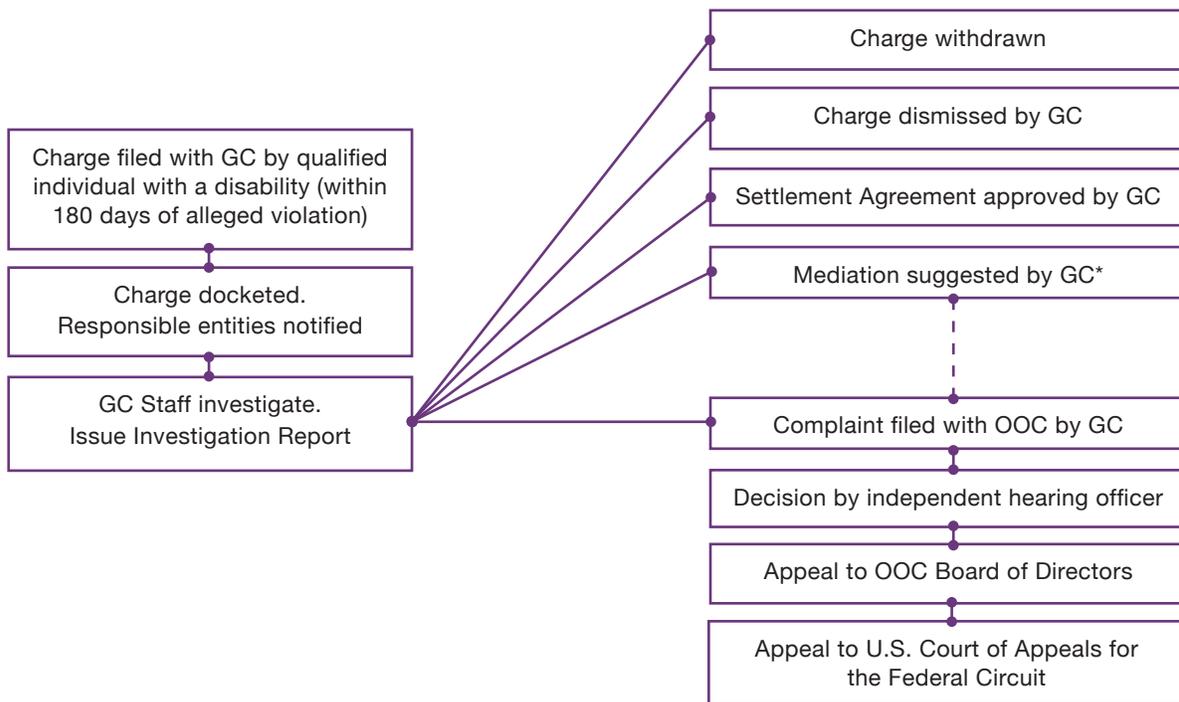


## ENSURING ACCESS TO CONGRESSIONAL SERVICES AND ACCOMMODATIONS FOR MEMBERS OF THE PUBLIC WITH DISABILITIES

Section 210(f)(2) of the CAA requires that the General Counsel of the OOC inspect employing office facilities in the Legislative Branch for compliance with the rights and protections against discrimination in the provision of public services and accommodations for people with disabilities, established by Titles II and III of the ADA.

The CAA also provides that members of the public may file charges of discrimination alleging public access violations under the ADA. 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.

### + Dispute Resolution Process for Alleged Violations of Ada Accessibility Laws



\*Mediation is not mandatory

## CONDUCTING REPRESENTATION ELECTIONS AND RESOLVING UNFAIR LABOR PRACTICE DISPUTES

The CAA grants certain Legislative Branch employees the right to join a labor organization for the purpose of collective bargaining under Chapter 71 of Title 5. The CAA protects these employees' rights to form, join, or assist a labor organization without fear of penalty or reprisal. The rights of employees who choose not to join or participate in a labor organization are also protected. Certain procedures must be followed to be represented by a labor organization. The OOC works with the parties to process representation petitions and elections.

The Board of Directors of the OOC has the authority to issue final decisions on union representation and election issues, questions of arbitrability, and exceptions to arbitrators' awards. The General Counsel is responsible for investigating allegations of unfair labor practices and prosecuting complaints of unfair labor practices before an independent hearing officer and the Board.

### + Administrative Process for Alleged Violations of Federal Labor Laws



## EDUCATING TO PREVENT VIOLATIONS OF THE CAA AND PROVIDING INFORMATION ABOUT THE STATE OF THE CONGRESSIONAL WORKPLACE

Many legal and human resource experts 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 expensive litigation, 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 information 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, agencies of the Legislative Branch, and Congressional employees;
- providing training to Congressional Members, agencies of the Legislative Branch, and Congressional employees in a large group setting or, upon request, in a smaller setting tailored toward a particular office; and
- engaging in face-to-face meetings with Congressional Members, agencies, and Congressional employees to offer our employment and occupational safety and health law expertise.

Every year, the OOC provides statistical data about the workplace rights claims made by Congressional employees. Under Section 301(h) of the CAA, Congress requires the OOC to track and report statistical information about the use of the OOC by employees and employing offices of the Legislative Branch. The OOC publishes these statistics annually in this “State of the Congressional Workplace”; statistics for FY 2012 can be found in this annual report.

The OOC conducts on-going review of employment laws and makes recommendations to Congress on how to improve the CAA. Under Section 102(b) of the CAA, the OOC’s Board of Directors 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 and recommend the law be applied to Congress, or not.

All of OOC’s reports are available at [www.compliance.gov](http://www.compliance.gov).





# STATE OF WORKPLACE RIGHTS

Congress and its agencies employ 30,000 employees nationwide, many of whom live in Maryland, Virginia, and the District of Columbia. Congressional employees who have claims of discrimination, harassment, and other violations of workplace rights laws must assert their claims through the Office of Compliance’s (OOC) dispute resolution process. The OOC provides dispute resolution services nationwide regardless of an employee’s geographic location.

“State of Workplace Rights” provides statistical data to Congress on the use of the OOC by Congressional employees. Section 301(h) of the Congressional Accountability Act (CAA) requires that such statistics be published annually.



## SECTION HIGHLIGHTS

- + Most claims filed with the OOC allege discrimination and/or harassment based on race, sex, age, and disability
- + Vast majority of cases are resolved confidentially under the CAA’s dispute resolution process
- + Congress is not covered by certain workplace rights laws required for American businesses and the Executive Branch, such as mandatory notice-posting of workplace rights, mandatory anti-discrimination training, and whistleblower protections for employees who report waste, fraud, and abuse



### **I. WHAT THE LAW REQUIRES:**

A core requirement under the CAA is for the OOC to provide statistical data to Congress about the number of employees asserting their rights under the OOC's alternative dispute resolution (ADR) program, and the reasons for their claims. Congress wants to know how Congressional employees are using the OOC to seek legal recourse for alleged discrimination and harassment claims, as well as other types of claims under the CAA such as family and medical leave and/or retaliation. To this end, the CAA requires that the OOC compile and publish statistics on the use of the OOC by covered employees, including "the number and type of contacts made with the Office, on the reason for such contacts, on the number of covered employees who initiated proceedings with the Office... 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). A full discussion of the FY 2012 statistics is provided on the pages that follow.

### **II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT:**

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 CAA means little if employees do not use the available resources to assert their rights 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, the OOC provides information about the use of the OOC by Congressional employees to enforce their workplace rights under the CAA.

The statistics in this section relate to claims brought by Congressional employees under the OOC's dispute resolution process (see page 12 for more information and a diagram of how the process works). Covered employees under the CAA include current and former employees, as well as applicants.

The CAA mandates a dispute resolution process of confidential counseling and mediation for the prompt resolution of disputes. If the dispute is not resolved during counseling and mediation, the employee may either pursue his or her claim in a confidential administrative hearing before an independent hearing officer with the OOC, or file suit in Federal district court, which is a public forum.

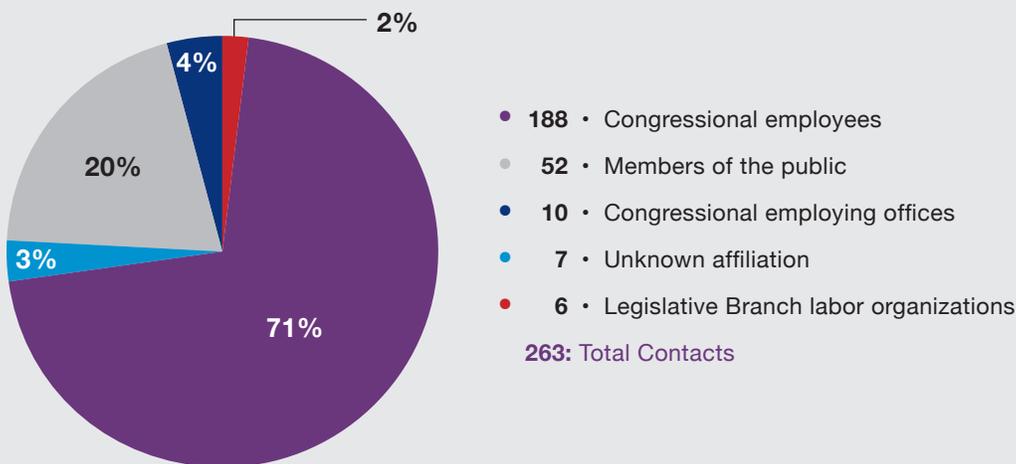
Final decisions of hearing officers may be appealed to the Board of Directors of the OOC. Upon review, the Board issues a written decision of its analysis and evaluation of the facts and issues. A party dissatisfied with the decision of the Board may file a petition for review of the Board's decision with the U.S. Court of Appeals for the Federal Circuit. If an employee filed suit in Federal district court instead of filing an administrative complaint with the OOC, appeals of those decisions follow federal appellate procedures and rules.

## GENERAL INFORMATION REQUESTS IN FY 2012

Congressional employees, employing offices, and the public may contact the OOC in person or by telephone to request information on the procedures of the OOC and to learn about the rights, protections, and responsibilities granted by the CAA. Although general inquiries do not initiate the formal dispute process, they are nonetheless kept confidential by the OOC.

Providing information to a covered employee is often the first opportunity the OOC has to directly address a particular issue. An OOC counselor assists individuals in understanding how the CAA may apply to the facts of their dispute, and suggests ways their claims may be addressed and resolved either through the dispute resolution process or by addressing their concerns directly with their employer without ever having to file a claim with the OOC.

### + Summary of General Information Requests by Group

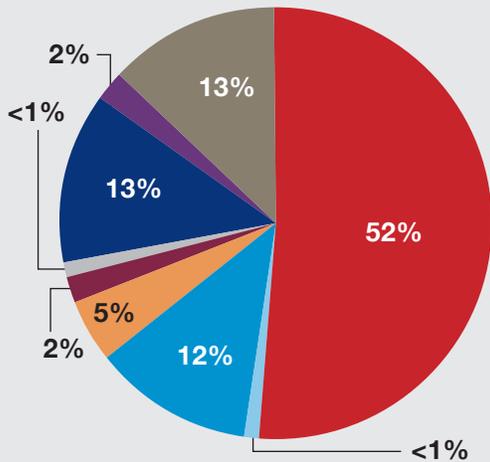


During FY 2012, OOC counselors received 263 general inquiries for information, mostly from covered employees, but also from members of the public, employing offices, and labor organizations.



GENERAL INFORMATION REQUESTS IN FY 2012 (CONTINUED)

+ General Information Requests by Section of Workplace Rights Laws under the CAA



- 159 • Section 201—Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Rehabilitation Act, Americans with Disabilities Act
- 36 • Section 202—Family and Medical Leave Act
- 14 • Section 203—Fair Labor Standards Act
- 1 • Section 204—Employee Polygraph Protection Act
- 4 • Section 205—Worker Adjustment and Retraining Notification Act
- 7 • Section 206—Uniformed Services Employment and Reemployment Rights Act
- 38 • Section 207—Prohibition of Intimidation or Reprisal (Retaliation)
- 6 • CAA Generally
- 38 • Not Directly Related to the CAA

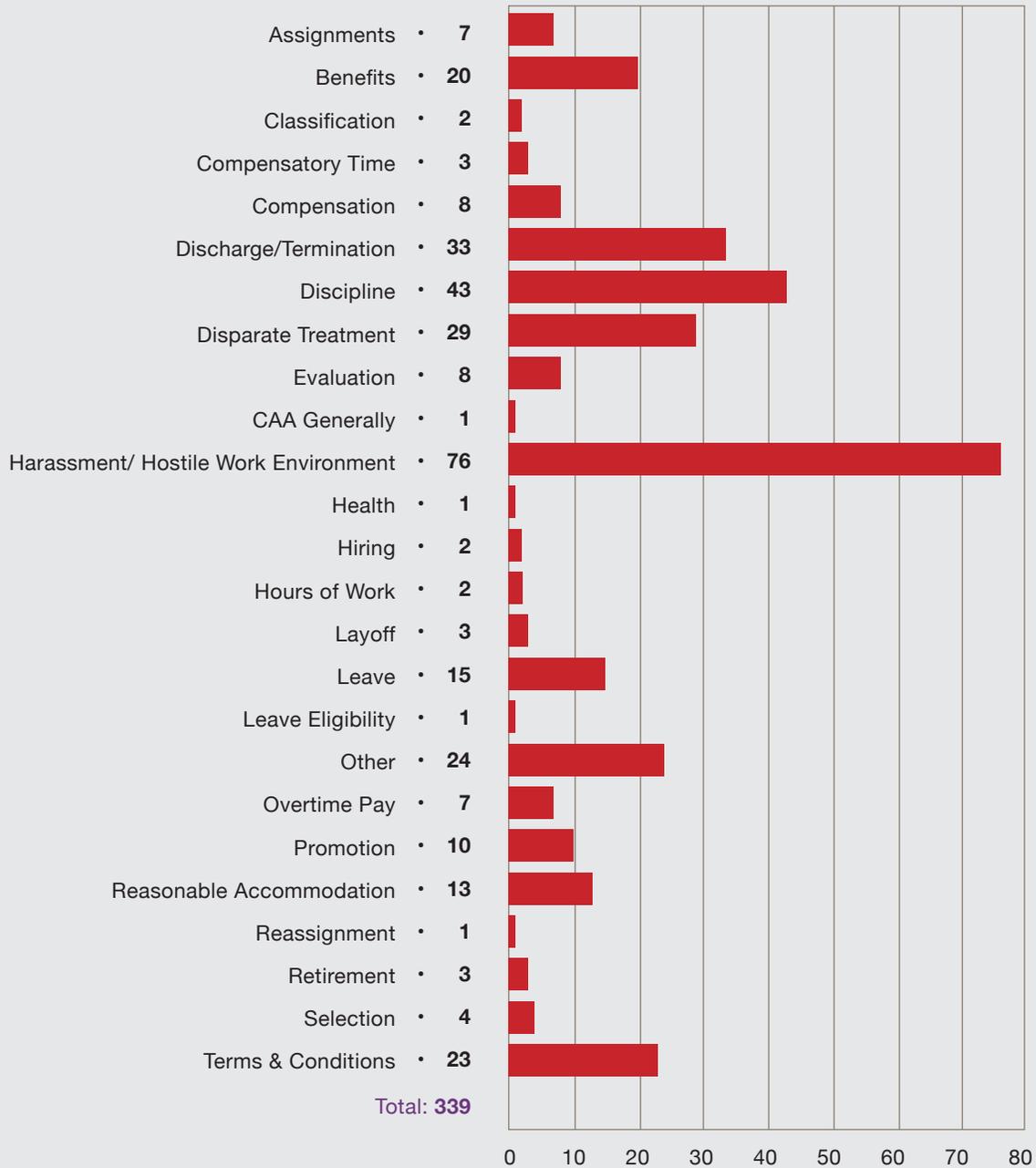
**303:** Total Contacts by Section of Law

(An individual contacting the OOC may inquire about more than one section of the law)

Most contacts concerned issues of workplace discrimination and harassment, followed by questions concerning Family and Medical Leave Act entitlements.

## + General Information Requests by Issue

(An individual contacting the OOC may inquire into more than one workplace issue)



The most common general inquiries related to questions about working conditions, such as harassment and/or hostile work environment followed by questions about discipline.

**REQUESTS FOR CONFIDENTIAL COUNSELING: INITIATING A FORMAL PROCEEDING**

Confidential counseling is the first step in the formal dispute resolution process. During counseling, an OOC counselor helps the employee to better understand his/her claim based on the facts of the situation and the requirements under the law. The employing office is not notified by the OOC that the employee has filed a request for counseling because counseling between the employee and the OOC is strictly confidential.

To formally assert and preserve his/her claim, a Congressional employee (or applicant or former employee) must file a formal request for counseling within 180 days of the alleged violation. By filing a request for counseling, an employee can preserve the claim while deciding whether to pursue the case.

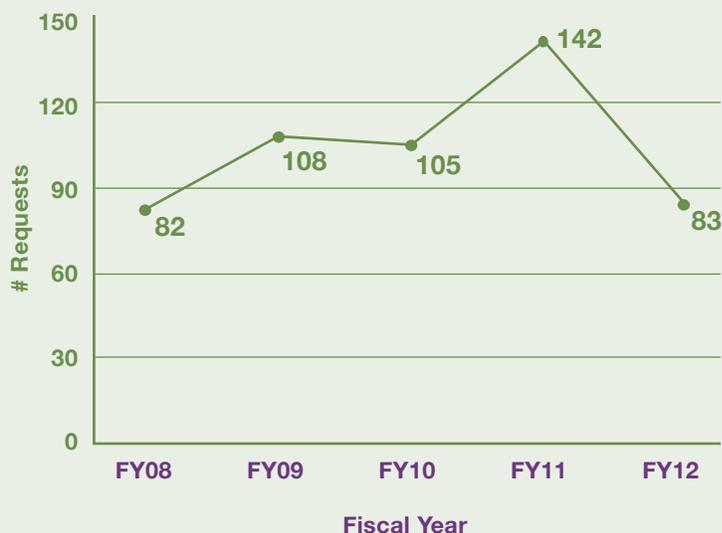
Counseling Proceedings	
New requests for counseling filed in FY 2012	83
Cases resolved during counseling in FY 2012 (includes proceedings carried-over from prior reporting periods)	8
Cases pending in counseling as of September 30, 2012	16



Employees filed 83 new counseling requests in FY 2012. Of those claims processed in FY 2012, 8 were resolved during counseling.

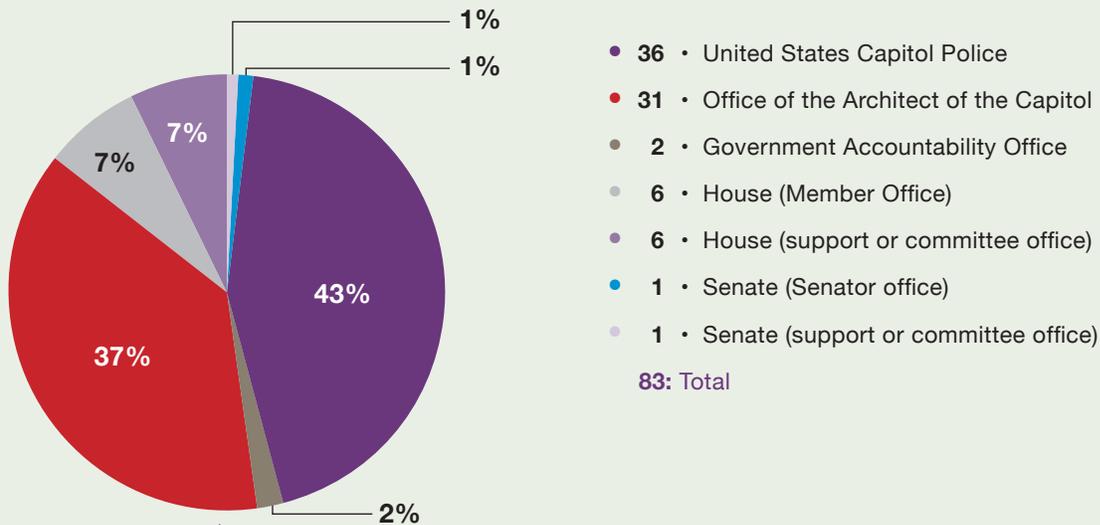
During counseling, cases are often resolved because employees are provided with additional information that enables them to thoroughly assess their claim and explore various avenues for resolution.

**+ 5 YEAR SNAPSHOT: Formal Requests for Counseling Filed by Congressional Employees**



The decrease in the number of Formal Requests for Counseling is reflective of how these statistics fluctuate. As we noted in last year's Report, the significant increase in Formal Requests for Counseling from FY 2010 to FY 2011 was due largely to similarly related, class-like claims filed by multiple claimants. The number of claims filed in FY 2012 is consistent with normal case activity.

## + Requests for Counseling Filed with Allegations Against Employing Office



Most requests for counseling came from employees, former employees of, or applicants to the U.S. Capitol Police (43%), and the Office of the Architect of the Capitol (37%).

## + 5 YEAR SNAPSHOT: Claims Filed with Allegations Against House and Senate

	FY 08	FY 09	FY 10	FY 11	FY 12	Total
House Member Offices	3	8	12	13	6	42
Senator Offices	0	1	3	2	1	7
House Support or Committees	6	14	8	10	6	44
Senate Support or Committees	1	6	1	0	1	9

Over a 5 year period, on average approximately 8 of the 435 House Member Offices (2%) had claims filed against them; in FY 2012, 6 House Member Offices (slightly over 1%) had claims.

Over a 5 year period, on average approximately 1.4 of the 100 Senator offices (1.4%) had claims filed against them; in FY 2012, 1 Senator office (1%) had claims.

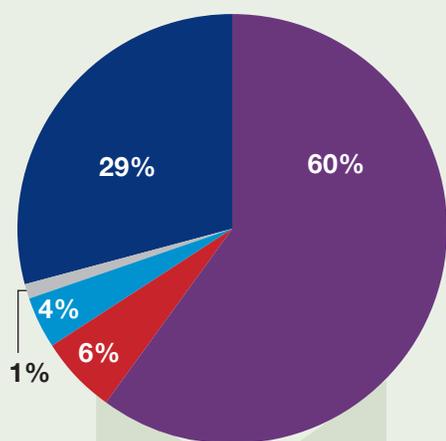
REQUESTS FOR CONFIDENTIAL COUNSELING: INITIATING A FORMAL PROCEEDING (CONTINUED)

+ Summary of Requests for Counseling by Section of the CAA

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

As in prior years, the most common alleged violations of the CAA related to discrimination and harassment based on a protected trait such as sex, race, age, and/or disability under Section 201 of the CAA.

Approximately 60% of the allegations raised during counseling in FY 2012 related to Section 201. Retaliation (29%) was the second most alleged violation of the CAA (Section 207).



- **134** • Section 201—(Claims of discrimination and/or harassment) Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Rehabilitation Act, Americans with Disabilities Act/Rehabilitation Act
  - **13** • Section 202—Family Medical Leave Act
  - **2** • Section 203—Fair Labor Standards Act
  - **9** • Section 206—Uniformed Services Employment and Reemployment Rights Act
  - **65** • Section 207—Prohibition of intimidation, reprisal, retaliation
- 223: Total\***

Section 201 Claims of Discrimination and/or Harassment Listed by Protected Categories (A covered employee may allege more than one claim of discrimination and/or harassment by protected category)	
Race/Color	42
Sex/Gender/Pregnancy	35
Disability (physical/mental)	22
Age	28
National Origin	2
Religion	5
<b>Total</b>	<b>134</b>

The most common claims of discrimination and/or harassment were based on race, followed by sex, age, and disability under Section 201 of the CAA.

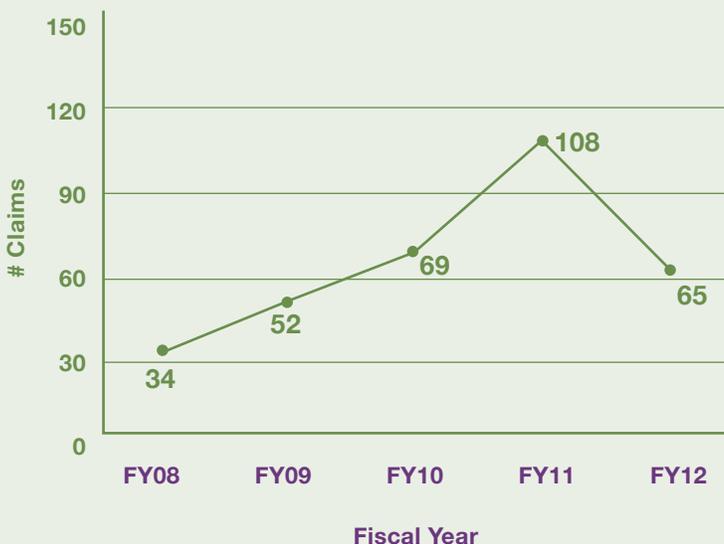
\*No claims were filed in FY 2012 under the Genetic Information Nondiscrimination Act, Veterans' Employment Opportunities Act, Employee Polygraph Protection Act, or Worker Adjustment and Retraining Notification Act.

**+ 5 YEAR SNAPSHOT: Employee Claims Made During Counseling that Allege Discrimination and Harassment (Race, Sex, Age, Disability, National Origin, and Religion) Under Section 201 of the CAA**



Claims of discrimination and/or harassment have more than doubled compared to five years ago, but have decreased substantially compared to last fiscal year. Employees who file requests for counseling often allege multiple types of discrimination and/or harassment under Section 201. For example, an employee may claim that she was discriminated against by not receiving a promotion because of her sex and because of her age.

**+ 5 YEAR SNAPSHOT: Employee Claims Made During Counseling that Allege Retaliation, Intimidation, or Reprisal Under Section 207 of the CAA**

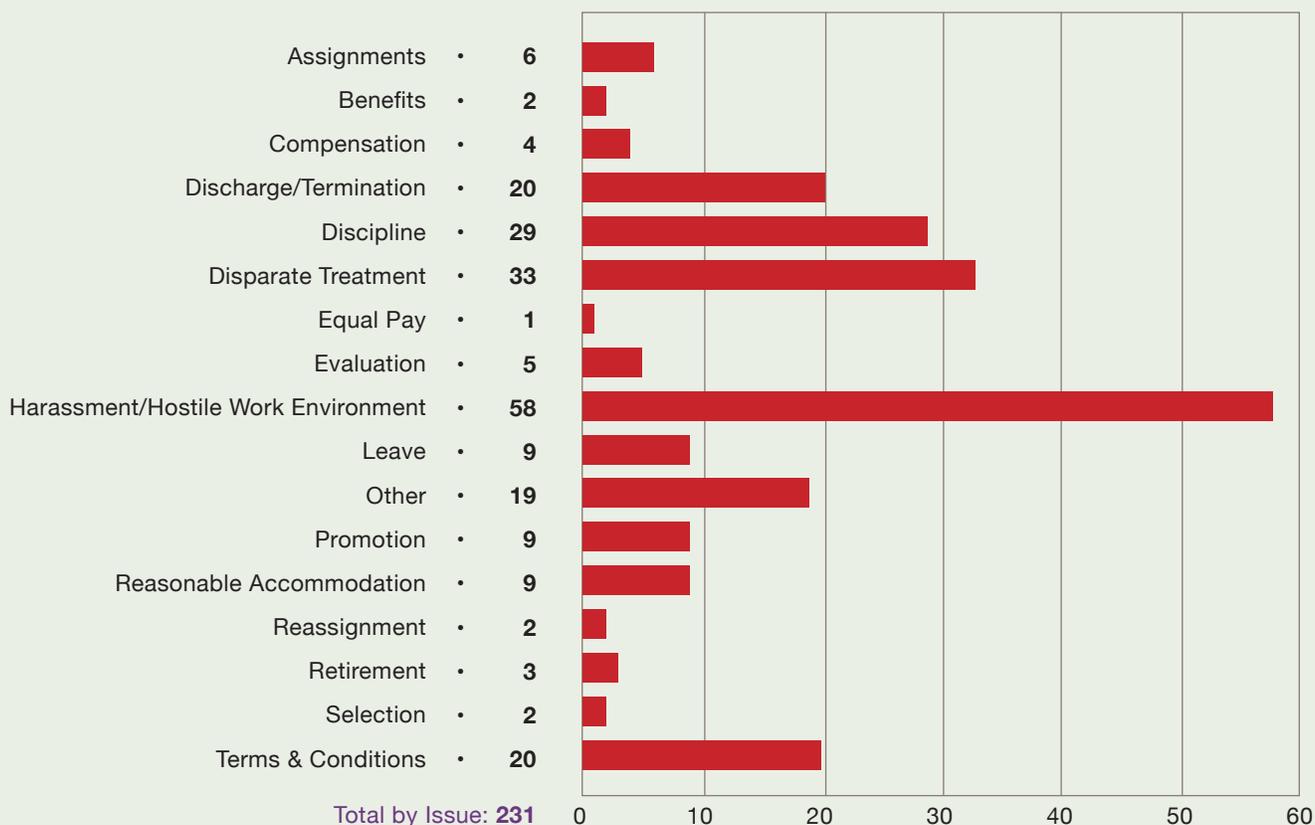


Retaliation claims have increased over the course of 5 years, yet have decreased by 60% compared to last year. This number is consistent with the overall decrease in claims filed in FY 2012. Intimidation and reprisal allegations are often made along with other claims, such as discrimination and harassment.

REQUESTS FOR CONFIDENTIAL COUNSELING: INITIATING A FORMAL PROCEEDING (CONTINUED)

+ Workplace Issues Raised with the OOC by Employees in Counseling

(A single request for counseling may involve more than one issue)



Employees typically request counseling with questions on specific work issues. The most common issue in FY 2012 continued to be harassment/hostile work environment, including sexual harassment and harassment based on other protected traits. Of the 231 contacts by issue, 25% (or 1 in 4) of the issues raised were related to harassment/ hostile work environment.

Other frequent allegations against employers included discrimination in discipline, terms and conditions of employment and terminations, and failures to provide reasonable accommodations for employees with disabilities.

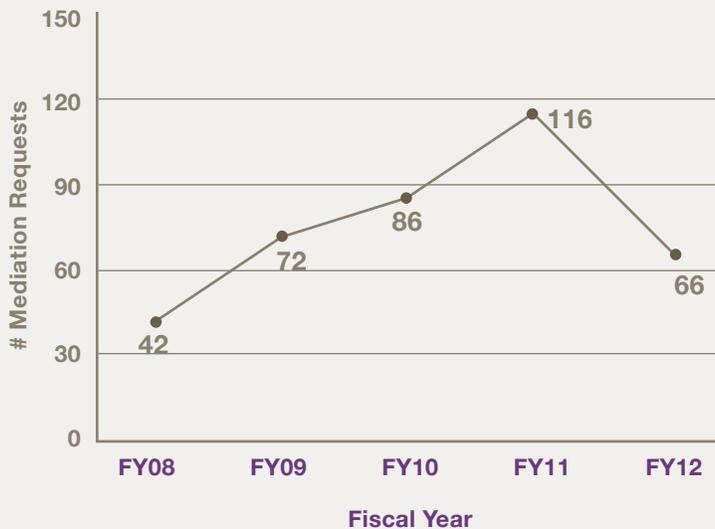
## REQUESTS FOR MEDIATION: EFFORTS TO RESOLVE WORKPLACE DISPUTES RATHER THAN LITIGATE

Confidential mediation is the second step in the dispute resolution process. An employee may proceed to mediation only after completing the first step of confidential counseling. Once the case proceeds to mediation, the employing office is notified about the claim and the parties attempt to settle the matter with the assistance of a neutral mediator appointed by the OOC. Even if mediation initially fails to settle the matter, it is not uncommon for the parties to renew mediation efforts during litigation. Resolving cases during mediation can save the parties from burdensome litigation, which can be very expensive, time consuming, and a drain on resources and productivity.

Mediation Proceedings	
New Requests for Mediation filed in FY 2012	66
Cases resolved at the mediation stage by formal settlements, withdrawal, or no further action in FY 2012 (includes proceedings carried-over from prior reporting periods)	42
Cases pending in mediation as of September 30, 2012	26

Employees filed 66 new requests for mediation in FY 2012. Although many cases are resolved during counseling prior to mediation, a majority of employees who file requests for counseling proceed to mediation.

### + 5 YEAR SNAPSHOT: Requests for Mediation Filed by Congressional Employees



As employee claims of workplace rights violations have decreased, so have the number of requests for mediation.

## ADJUDICATION OF CLAIMS: CONFIDENTIAL HEARING OR FEDERAL COURT

### Adjudicating Claims: Request for Confidential Administrative Hearing at the OOC or Filing a Public Lawsuit in Federal Court

An administrative hearing is the third step in the dispute resolution process. If the parties fail to resolve their dispute in mediation, the employee may then file an administrative complaint with the OOC and the employee's case will be decided by a hearing officer in a confidential setting, or the employee can file a lawsuit in Federal district court, where his/her case would be a matter of public record.

Administrative Complaint Proceedings	
New Complaints filed in FY 2012	14
Complaints formally settled in FY 2012	2
Hearing officer decisions issued in FY 2012 (some cases carried over from FY 2011)	4
Pending in hearing as of September 30, 2012	8

There were a total of 14 administrative complaints filed in FY 2012. Complaints included allegations of violations of the Family and Medical Leave Act, Americans with Disabilities Act, Title VII of the Civil Rights Act, and protection against retaliation under the CAA.

The OOC does not formally track lawsuits filed in Federal district court.



## APPEALS AND OTHER PROCEEDINGS

### Appeals to the OOC Board of Directors

The Board of Directors, the OOC's appellate body, issues decisions resolving matters on review from hearing officer decisions, and on exceptions to arbitrator's awards filed pursuant to the Labor-Management provisions of the CAA. Decisions by the Board of Directors set legal precedent for the interpretation and application of workplace rights in the Legislative Branch.

In fiscal year 2012, the Board of Directors issued 5 decisions\*. There were no exceptions to arbitrators' awards filed.

Petitions for Board Review of Hearing Officers' Decisions	
New petitions filed in FY 2012	5
Petitions withdrawn in FY 2012	1
Board decisions issued in FY 2012 (including petitions carried over from previous years)	5
Pending Board review as of September 30, 2012*	4

Final decisions by the Board of Directors can be appealed to the U.S. Court of Appelas for the Federal Circuit. The General Counsel of the OOC represents the OOC in matters appealed to the Federal Circuit. Once an appeal is filed in court, the appellate record is public.

Judicial Review of Final Decisions Issued by the Board	
New petitions for judicial review filed in FY 2012	0
Petitions withdrawn in FY 2012	0
Decisions issued by the Court in FY 2012	1
Pending judicial review as of September 30, 2012	0

### Office of Compliance Action Under Section 220, FY 2012 (Labor Management Relations)

In addition to pursuing individual claims of violation of the CAA, certain employees of the Legislative Branch may form

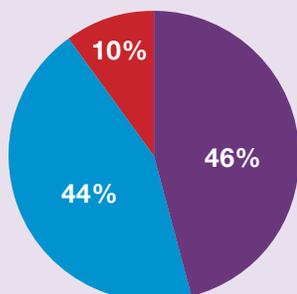
or join unions for the purpose of collective bargaining. The Office of Compliance processes representation petitions filed by labor organizations seeking to represent covered employees. In FY2012, the National Association of Broadcast Employees and Technicians (NABET) filed a petition seeking to represent a unit of employees of the office of House Photography, Office of the Chief Administrative Officer.

The OOC convened meetings with the parties to work through issues and finalize an election agreement. The OOC then conducted a secret ballot election, and a majority of the valid ballots cast were in favor of representation by the labor organization. The Office of Compliance certified the union as the exclusive representative of the employees for purposes of collective bargaining.

### OSHAct, 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 for technical assistance to help ensure that people with disabilities can access Legislative Branch offices, information concerning methods of de-energizing mechanical equipment before beginning routine maintenance, and guidance on best practices used in private industry to maintain indoor air quality.

In FY 2012, the General Counsel received requests for information and assistance under OSHAct, ADA, public access, and Federal labor laws as noted in the chart below.



### + Total Requests to the General Counsel for Information and Assistance by Section of the CAA FY 2012

- 47 • Section 201 – Public access and accommodation under the Americans with Disabilities Act
- 212 • Section 215 – Occupational Safety & Health Act
- 203 • Section 220 – Unfair Labor Practices under Chapter 71 of Title 5, U.S. Code

**462: Total Requests**

\*The Board's disposition of a case may involve more than one decision. For example, the Board may decide to remand a matter before it issues a final decision.

SETTLEMENTS AND AWARDS

**Monetary Resolution of Employee Claims**

Section 415 of the CAA establishes “an account of the Office in the Treasury of the United States for the payment of awards and settlements . . . under [the CAA],” and further authorizes to be appropriated “such sums as may be necessary to pay such awards and settlements.” Section 415 requires that awards and settlements under the CAA be paid from that account. This Treasury account is separate from the operating expenses account of the OOC established under section 305 of the CAA. The Executive Director must approve all settlements at all stages in the proceedings, it is the parties who decide the settlement amounts and terms. An award or judgment may be ordered by a hearing officer, the Board of Directors, or a court of competent jurisdiction.

Monetary settlements can often resolve multiple claims. While many of these settlements and awards resolved harassment, discrimination, and retaliation claims, there are other settlements and awards in the accompanying chart that resolved claims arising out of contract and/or pay disputes.

The Legislative Branch appropriations bills, since 1996, have appropriated funds for awards and settlements under the CAA.

Fiscal Year	Total Number of Settlements/Awards	Total Aggregate Amount of Settlements/Awards
1997	6	\$39,429
1998	16	\$103,180
1999	6	\$72,350
2000	15	\$45,638
2001	7	\$121,400
2002	10	\$3,974,077
2003	11	\$720,071
2004	15	\$388,209
2005	14	\$909,872
2006	18	\$849,529
2007	25	\$4,053,274
2008	10	\$875,317
2009	13	\$831,360
2010	9	\$246,271
2011	23	\$461,366
2012	12	\$426,539



## CASE RESOLUTION ANALYSIS FOR CASES REPORTED IN LAST YEAR'S ANNUAL REPORT (FY 2011)

All workplace violations claims by Congressional employees must go through confidential counseling and mediation in the dispute resolution process mandated by the CAA (see page 12 of this Annual Report for more information) before a case can proceed to adjudication, either through a confidential administrative hearing before an independent OOC hearing officer or by civil suit filed in Federal district court, a public forum. Historically, the majority of cases are resolved confidentially during counseling and mediation.

Last year, the OOC reported that 142 formal requests for counseling were filed by congressional employees in FY 2011. By filing a formal request for counseling, a Congressional employee initiates a "case" alleging a violation (or violations) of the CAA by an employing office in the Legislative Branch. Most claims relate to discrimination, harassment, retaliation, and leave rights.

Cases can be resolved at any juncture during the process, including during litigation and appeals. There are various reasons that cases are resolved including, but not limited to:

(1) a settlement between the employee and employer, which could include a monetary award, an apology, an employment action (e.g., promotion, rehire, transfer, raise, modified performance appraisal, etc.); (2) a decision by the employee to no longer pursue the claim (e.g., due to the facts of his/her case, an informal resolution with the employer, a failure to timely assert a claim, expenses associated with retaining an attorney or litigating a matter, etc.); and (3) an adjudication of the case by a court or hearing officer who determines claims (or the entire case) in favor of a party.

The charts below show the point in the process at which cases filed with the office of compliance in FY 2011 were resolved. In fiscal year 2011, 54% of the 142 cases that were filed were resolved confidentially. Of those 142 cases, 25 were filed against employing offices of the House and Senate, and 96% of those 25 cases were resolved confidentially.

Resolution Analysis of 142 Cases from FY 2011 (including AOC, USCP, CBO, House, Senate)	# of cases resolved	% of cases resolved
Resolved at Confidential Counseling stage	26	18%
Resolved at Confidential Mediation stage	39	27%
Resolved at Confidential Hearing stage (Administrative Complaint) (3 pending in hearing)	8	8%
Appealed to Board of Directors	0	0%
Appealed Board of Directors Decision to Federal Circuit Court of Appeals	0	0%
Filed Complaint in Federal District Court <sup>1</sup>	66	46%
Total Resolution During or After Confidential Administrative Proceedings Before the OOC <sup>2</sup>	73	54%

Focus: Resolution Analysis of 25 Cases <sup>3</sup> from FY 2011 Against Employing Offices in the House And Senate (including committees)	# of cases resolved	% of 25 cases resolved
Resolved at Confidential Counseling stage	5	20%
Resolved at Confidential Mediation stage	15	60%
Resolved at Confidential Hearing stage (Administrative Complaint)	4	16%
Appealed to Board of Directors	0	0%
Appealed Board of Directors Decision to Federal Circuit Court	0	0%
Filed complaint in Federal District Court	1	4%
Total Resolution During or After Confidential Administrative Proceeding with the OOC <sup>4</sup>	24	96%

<sup>1</sup> 51 of the 66 cases were joined in one complaint.

<sup>2</sup> Includes resolution during or after counseling, mediation, an administrative hearing, or appeal to the Board of Directors.

<sup>3</sup> These cases are included in the 142 total cases filed with the OOC in FY 2011.

<sup>4</sup> Includes resolution during or after counseling, mediation, an administrative hearing, or appeal to the Board of Directors.

### III. PARITY GAP ANALYSIS: AMEND THE CAA TO REQUIRE POSTINGS OF WORKPLACE RIGHTS IN ALL EMPLOYING OFFICES, RECORD-KEEPING OF EMPLOYMENT RECORDS, ANTI-DISCRIMINATION TRAINING FOR ALL EMPLOYEES, AND WHISTLEBLOWER PROTECTIONS FOR CONGRESSIONAL STAFFERS

When Congress passed the CAA to apply workplace rights laws to the Legislative Branch, it did not include significant provisions of some of those laws and exempted itself entirely from others, such as the Whistleblower Protection Act of 1989 and the No FEAR Act of 2002. In this regard, two core purposes of the CAA are not fully realized—to ensure Congress follows the same laws as do American businesses and the Executive Branch, and to provide an effective means for Congressional employees to assert their rights. The Board of Directors has made the recommendations discussed below in previous biennial reports submitted to Congress pursuant to Section 102(b) of the CAA. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov). The latest 102(b) report is titled “Recommendations for Improvements to the Congressional Accountability Act.”

#### Recommendation #1: Require Notice-Posting of Congressional Workplace Rights in All Employing Offices

##### CONGRESS AND ITS AGENCIES ARE EXEMPT FROM NOTICE-POSTING PROVISIONS



- 42 U.S.C § 2000e-10(a)(Title VII)
- 29 U.S.C. § 2003 (EPPA)
- 29 U.S.C. § 627 (ADEA)
- 38 U.S.C. § 4334(a) (USERRA)
- 42 U.S.C. § 12115 (ADA)
- 29 U.S.C. § 657(c) (OSHA Act)
- 29 U.S.C. § 211 (FLSA/EPA)
- 5 U.S.C. § 2301 note (notice-posting provision of No FEAR Act)
- 29 U.S.C. § 2619(a) (FMLA)

To ensure that workplace rights are upheld, most Federal anti-discrimination, anti-harassment, safety and health, and other workplace rights laws require that employers prominently post notices of those rights and information pertinent to asserting claims for alleged violations of those rights. Notice-posting informs employees about basic workplace rights, remedies,

and how to seek redress for alleged violations of the law, and it reminds employers of their workplace obligations and consequences for failure to follow those laws.

Although the CAA requires the OOC to distribute informational material “in a manner suitable for posting”, it does not mandate the actual posting of the notice. Applying notice-posting requirements to Congress would provide an additional source of information for employees about their rights.

The Board recommends that Congress and its agencies follow workplace rights notice-posting requirements that currently apply to the private sector and the Federal Executive Branch.

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

#### Recommendation #2: Require Retention by All Employing Offices of Records that are Necessary and Appropriate for the Administration of Laws

##### CONGRESS AND ITS AGENCIES ARE EXEMPT FROM RECORDKEEPING PROVISIONS



- 42 U.S.C § 2000e-8(c)(Title VII)
- 29 U.S.C. § 626(a) (ADEA)
- 42 U.S.C. § 12117 (ADA)
- 29 U.S.C. § 211(c) (FLSA/EPA)
- 29 U.S.C. § 2616(b) (FMLA)

Under most Federal workplace rights laws, Congress has imposed on private and public employers requirements to retain records that are necessary for enforcement of various workplace rights laws. These requirements do not apply to Congress.

Both employers and employees benefit from the retention of documented personnel actions. Records can greatly assist in the speedy resolution of claims. If the law has not been violated, employers more readily can demonstrate compliance when adequate records have been made and preserved. Effective recordkeeping may also be necessary for effective vindication of employee rights. The types of records that must be retained, the method by which they must be retained, and the time periods for which they must be retained differ substantially based upon the statute involved.

The Board recommends that Congress adopt all recordkeeping requirements under Federal workplace rights laws.

The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).

### **Recommendation #3: Mandatory Anti-Discrimination and Anti-Retaliation Training for All Congressional Employees and Managers**

#### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM TRAINING PROVISIONS**



#### **5 U.S.C. § 2301 note (No FEAR Act of 2002) (Training Provision)**

Section 202(c) of the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act) requires that each Federal agency in the Executive Branch provide employees training regarding their rights and remedies under anti-discrimination and anti-retaliation laws. By regulation, all current Executive Branch employees and managers must be trained by a date certain, and training thereafter must be conducted no less than every two years. New employees receive training as part of a new hire orientation program. If there is no new hire orientation program, new employees must receive the applicable training within 90 days of their appointment.

It has long been recognized that anti-discrimination and anti-retaliation training for employees provides many benefits in the workplace. By informing employees about their rights, they learn to differentiate between what the law prohibits, such as unlawful harassment, and what the law does not prohibit, such as everyday non-discriminatory personnel decisions. Employees also learn how to seek redress for violations of their rights and the remedies available to them under the law.

Training also informs managers of their obligations as supervisors. Often, supervisors run afoul of the law because they were not properly informed of their responsibilities or about best practices for handling discrimination and retaliation issues.

Mandatory training has the effect of reducing discrimination and retaliation claims, improving the workplace environment, and lowering administrative and legal costs.

The Board believes that mandatory training would benefit the Legislative Branch in the same manner.

The Board has previously made this recommendation in the 102(b) report submitted to the 112th Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).

### **Recommendation #4: Whistleblower Protections for Disclosing Violations of Laws, Rules or Regulations, Gross Mismanagement, Gross Waste of Funds, Abuses of Authority, or Substantial and Specific Dangers to Public Health**

#### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM WHISTLEBLOWER PROTECTIONS**



#### **WHISTLEBLOWER PROTECTION ACT OF 1989**

Congress passed the Whistleblower Protection Act of 1989 (WPA) to protect Federal workers in the Executive Branch from retaliation for reporting violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Since that time, Congress has also passed other whistleblower protection laws, such as the Sarbanes-Oxley Act, to protect employees in the private sector from reporting similar violations. While the Legislative Branch may experience abuses and gross mismanagement similar to those in the private sector and Executive Branch, Congressional employees do not have whistleblower protections if they decide to report such matters.

As Congress has recognized, employees are often in the best position to know about and report violations of law, waste, mismanagement, and abuse in government and they need protections against retaliation when they disclose these violations. Violations of law, waste, mismanagement, abuse of power, or substantial and specific danger to the public's health and safety are often not discovered by other sources. Furthermore, whistleblowers save taxpayer dollars by exposing waste, fraud and abuse. Whistleblower protection laws increase taxpayers' faith in government by protecting those individuals who act as "watchdogs" and who protect the public's health and safety.

The Board of Directors recommends that Congress apply to the Legislative Branch appropriate provisions of the WPA and provide Congressional employees with protections from retaliation when they disclose violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety in the Legislative Branch.

The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).

# STATE OF SAFETY & HEALTH

This section of the Annual Report is a preview of the information that will be included in the Office of Compliance's *112<sup>th</sup> Congress Biennial Report on Occupational Safety and Health Inspections*, which will be released later in 2013. At that time it will be available at [www.compliance.gov](http://www.compliance.gov).

The OOC is responsible for enforcing the Occupational Safety and Health Act (OSHAct) in the Legislative Branch. In the Washington DC Metropolitan Area alone, Legislative Branch properties cover over 18 million square feet. Over 30,000 employees occupy Legislative Branch facilities across the country and millions of people visit the Capitol Complex each year.



## SECTION HIGHLIGHTS

- + Successful abatement of serious fire safety hazards in House building provides example for future abatement
- + OOC closes historic utility tunnels case, ahead of schedule and under budget
- + OOC completes first risk-based inspections



## I. WHAT THE LAW REQUIRES: CONGRESSIONAL COMPLIANCE WITH OSHA AND HOW THE OOC ENFORCES SAFETY AND HEALTH REQUIREMENTS

### Occupational Safety and Health Under the Congressional Accountability Act

Congress passed the Occupational Safety and Health Act (OSHA) in 1970 “[t]o ensure safe and healthful working conditions for working men and women[.]” OSHA Section 1. In what has come to be known as the “General Duty Clause,” the statute requires employers to furnish each employee “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious harm to employees.” OSHA Section 5(a)(1). The Act also requires employers and employees to comply with occupational safety and health standards issued pursuant to the statute. OSHA Sections 5(a)(2), 5(b).

Section 215 of the Congressional Accountability Act (CAA) requires employing offices and employees to comply with Section 5 of the OSHA, i.e., the General Duty Clause and occupational safety and health standards promulgated under the OSHA. Section 215(e)(1) of the CAA requires the General Counsel of the Office of Compliance (OOC) to inspect Legislative Branch facilities for compliance with the General Duty Clause and occupational safety and health standards under the OSHA 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 Congressional Budget Office, Government Accountability Office, Library of Congress, Office of the Architect of the Capitol (AOC), Office of the Attending Physician, OOC, Office of Congressional Accessibility Services, and the United States Capitol Police Board. CAA Section 215(e)(2).

Beginning with the 109<sup>th</sup> Congress in 2005–06, and continuing through the 111<sup>th</sup> Congress in 2009–10, the OOC conducted three comprehensive inspections of Legislative Branch facilities throughout the Washington, D.C. metropolitan area. These inspections served as our principal tool for identifying serious safety and health hazards, assessing their risks to employees, and determining whether employing offices had abated the hazards. Our inspections documented significant progress in reducing hazards. We identified over 13,000 hazards in the 109<sup>th</sup> Congress and 5,400 in the 111<sup>th</sup> Congress—even as the total space we inspected increased from roughly 16 million square feet to nearly 18 million

square feet. That is, hazards dropped by almost 60% although the area inspected rose by about 12%.

We attribute this improvement principally to the cooperative efforts of OOC staff and personnel from the employing offices. Our role was to identify the hazards that we found and advise Congressional leadership and the employing offices of our findings. The employing offices, in turn, used those findings as a catalyst to eliminate hazards and make workplaces safer for employees. The AOC’s Superintendents and safety personnel, along with staff in other employing offices, can and should be proud of their achievements in this regard.

### Completed first risk-based biennial OSH inspection

As described in the FY2011 State of the Congressional Workplace, we implemented a different biennial inspection approach for the 112<sup>th</sup> Congress. Our risk-based OSH program focused on inspecting and assuring the abatement of higher-risk hazards that pose the greatest threat of fatalities and injuries to workers and building occupants. During FY2012, we completed the first risk-based occupational safety and health inspection in the Legislative Branch. We targeted high-hazard workplaces and work operations, including high-voltage areas, machine shops, and boiler rooms among others, as well as worksites with repeat RAC 1 and 2 findings. We inspected employee operations on all shifts for the first time. With the cooperation of the AOC’s Capitol Grounds Division, we also conducted the first-ever occupation-specific inspection in the Legislative Branch, which concentrated on landscaping operations. In addition, we evaluated two written safety and health procedures that OSHA standards require in most workplaces: Hazard Communication and Personal Protective Equipment.

When we initially planned the risk-based inspection, we planned to review the Senate Sergeant at Arms’ Lockout/Tagout and Electrical Lockout/Tagout programs, as well as perform a progress review of the Hazard Communication Programs at the Library of Congress’ Packard Campus. Budget cuts required us to eliminate our review of these programs. We also had to reduce the number of days inspecting landscaping operations and, as noted in last year’s annual report, we were unable to inspect Member offices or administrative spaces across the campus.

Although budget cuts required us to limit the scope of our inspections, we were still able to design and implement better procedures for our work. For example, before beginning inspections in each jurisdiction, we conducted an opening conference with relevant employing office leadership, safety and

health staff and, where employees were represented by a union, officials from that organization. At the end of each inspection day, we briefed employing office staff about our findings. We also offered a closing conference to all parties after completing inspections in each jurisdiction. This ongoing communication helped improve the accuracy and consistency of our findings, as well as enhance our stakeholders' understanding of the nature and importance of our work.

To summarize, the OOC's risk-based approach to the safety and health program during the 112<sup>th</sup> Congress included and will in future Congresses continue to include, the following elements:

- Rather than inspecting for the presence of physical hazards in offices and administrative spaces where the number and severity of hazards has been reduced considerably over the years, the OOC will focus on higher-risk operations and workplaces that pose greater risks of injury and illnesses (workshops and higher-risk operations such as the Capitol Grounds landscaping division, etc.), areas of special interest (child care centers and page dorms and schools), and locations where higher-risk hazards were found during previous biennial inspections.
- The OOC will accelerate efforts to assure abatement of longstanding fire and life safety hazards throughout the Capitol Hill Campus, especially those that are the subject of citations issued by the General Counsel in 2000 and 2001.
- To protect employees engaged in higher-risk operations, the OOC will seek to assure that employing offices continue to develop and implement written hazard prevention procedures and programs.

The results of the 112<sup>th</sup> Congress biennial OSH inspection will be available by the end of 2013. At the time this report was prepared, we were finishing our review and analysis of the data gathered during the inspection, as well as evaluating abatement information submitted by employing offices. Once this work is complete, we will prepare our Biennial Report to provide Congressional leadership with the results of the inspection.

## **II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: PROGRESS ON FIRE AND LIFE SAFETY CITATIONS AND AREAS FOR IMPROVEMENT**

### **Background on Emergency Evacuation And Fire Safety Citations**

Some of the most serious and longstanding hazards in the Legislative Branch consist of fire safety and emergency evacuation violations that the OOC first identified in 1996.

In 2000 and 2001, the OOC's General Counsel issued a series of citations requiring abatement of interior egress routes that do not protect building occupants against fire, smoke, and airborne toxins while occupants are evacuating during a fire or other emergency ("unprotected exit routes"); exits that were insufficient in number and inadequate in size to allow all occupants to evacuate the building quickly ("insufficient egress capacity"); excessive travel distances to reach protected exit pathways in an evacuation ("excessive exit access travel distances"); lack of properly rated fire doors ("insufficient level or duration of protection"); and other life safety issues in the Capitol, the Adams and Jefferson Buildings of the Library of Congress, three House Office Buildings and the Russell Senate Office Building. The OOC has reported these hazards in General Counsel biennial OSH reports since the first such report was issued in 1996.

### **Progress On Most Fire Safety Citations**

Substantial progress has been made in addressing many of these hazards by making fire protection/life safety improvements in Congressional buildings across campus.

### **Closed Citation 17 Upon Successful Completion of Fire and Life Safety Abatement Efforts in Longworth Building**

In March 2000, the OOC General Counsel issued Citation 17 to the AOC, charging that the unprotected exit stairwells, lack of properly rated fire doors, inadequate exit capacity and other fire hazards in the Longworth House Office Building posed an undue threat to building occupants in case of fire, in violation of applicable OSHA standards. Nine months later, the AOC retained fire safety engineering firms to conduct design concept studies of proposed abatement methods. In September 2006, the AOC submitted a proposal to abate the hazards that the General Counsel rejected because, even if fully implemented, the plan would have failed to correct all the deficiencies identified in the Citation. The AOC submitted a revised proposal in September 2007. The General Counsel recommended that the AOC expedite the abatement by working on two unprotected stairways simultaneously and accelerating the opening of a newly-constructed exit to maximize exit capacity. These recommendations moved the estimated completion date of the project from December 2013 to July 2011. After the AOC accepted the recommendations, the General Counsel approved the abatement proposal in October 2007.

The approved plan involved enclosing the unprotected exit stairwells and adding exit capacity to the building. Fire doors

were installed on the lower levels of the stairways. On the upper levels, the AOC mounted cross-corridor doorways that were connected to the fire and smoke detection systems. In case of fire, the system was engineered to close the doorways, thus containing the smoke and toxic gases and permitting building occupants to evacuate swiftly and safely. We worked with the AOC to ensure that the cross-corridor doorways not only would provide effective protection from smoke and toxic gases, but also, when not in use, would blend seamlessly with the historic features of the building. The stone surrounding the new doorways was carefully matched to the preexisting stone. In another example of such cooperation, the plan permitted the preservation of a historic open stairway with the addition of a second handrail whose design mirrored that of the original historic brass handrail that was kept in place.

In July 2011, the AOC requested an extension of the abatement period until December, citing unforeseen problems with the preservation of three historic doors within the protected enclosures. The OOC worked with AOC staff and the AOC historian to develop a plan that both maintained adequate protection for the exit stairways and permitted the historic doors to be preserved. The solution involved changing the swing direction of certain doors and adjusting sprinkler heads so that the doors would be sprayed with water in the event of fire. As a result, the General Counsel approved the requested extension and the doors were preserved.

In January 2012, the AOC notified the Office that it had finished executing its abatement plan. Our fire and life safety expert reviewed the documents, inspected the facility and concluded that the hazards had been fully abated. Accordingly, in February 2012, we closed Citation 17.

### **Continued Efforts to Achieve Fire and Life Safety Improvements in the Russell Building**

In March 2000, the General Counsel issued Citation 19 to the AOC because life-threatening fire and emergency evacuation hazards were present in the Russell Senate Office Building. The Russell Building is the only facility on Capitol Hill that provides no protected route for Members, staff, employees, and visitors to evacuate the building safely in case of emergency. The Citation required the Architect to submit an abatement plan to the OOC by January 30, 2001 and complete design and installation by June 2002. The AOC submitted a plan in September 2006 that the General Counsel rejected because it lacked sufficient detail and, without justification, delayed completion of abatement until 2019—nineteen years after the citation had been issued. In February 2008, the Architect

submitted a detailed plan to abate the hazards without compromising the building's architectural integrity. The General Counsel accepted this plan in March 2008, and the AOC sought funding for its implementation. Thereafter, the Senate Rules Committee asked the AOC to suspend work on the plan and to appoint a Blue Ribbon Panel to assess the fire and life safety hazards as well as the historic features of the Russell Building. The Blue Ribbon Panel issued its final report in August 2010. The Senate Legislative Branch Appropriations Subcommittee then instructed the AOC to implement an abatement method identified by the Blue Ribbon Panel that was substantially less costly than the plan the General Counsel had approved in 2008. The Subcommittee concluded that its plan "eliminates all high risk fire scenarios in the Russell Building while minimizing impact to its historic integrity, most effectively utilizing limited resources." Leg. Branch Approps. Subcomm. Report on H.R. 2551 (September 15, 2011).

Because differences remained among stakeholders concerning the abatement of all fire and life safety hazards in the Russell Building, in August 2012, we issued an Amended Citation 19, providing additional details regarding those hazards. The abatement plan that the AOC submitted and the Office approved in early 2008 in response to the original Citation included measures to remedy all fire and life safety hazards in Russell. Because implementation of the abatement plan has been suspended due to fiscal and other concerns, we issued the Amended Citation in order to promote resolution of the continuing differences among all stakeholders. As a result, we are engaged in ongoing technical discussions with AOC staff to identify measures that can be instituted to improve conditions in the Russell Building.

During 2012, the AOC and Library of Congress provided updated abatement plans for Citations 29, 30 and 31, which involve fire and life safety hazards in the Jefferson and Adams Buildings, as well as in the book conveyor system serving all three Library buildings. We have reviewed the updated plans and asked for additional details in certain areas. Once we receive satisfactory answers to our inquiry, we expect to approve the updated plans.

### **Closed out utility tunnels case ahead of schedule and under budget**

April 2012 saw the completion of the five-year, multi-million dollar project to remedy life-threatening hazards in the Capitol Power Plant utility tunnels. The Power Plant provides steam for the heating and cooling of all major Legislative Branch buildings on Capitol Hill.

The project began in June 2007 as the result of an unprecedented settlement negotiated by the Office of Compliance General Counsel and the AOC, which manages most facilities on Capitol Hill. In 1999, OOC inspectors discovered safety and health hazards during our first inspection of the utility tunnels. The General Counsel issued a citation directing the AOC to remedy the violations. Hazardous conditions in the tunnels included asbestos exposure, temperatures exceeding 160 degrees Fahrenheit, falling concrete, insufficient emergency exits and an inadequate emergency communications system, among others.

After lengthy efforts to achieve abatement of the hazards proved unsuccessful, in February 2006 the OOC's General Counsel filed its first administrative safety and health complaint under the Congressional Accountability Act. The complaint charged multiple violations of occupational safety and health standards and sought an order requiring that the hazards be remedied in their entirety.

The OOC and the AOC entered into a Settlement Agreement in June 2007 that provided for full abatement of the hazards by June 2012 and established liaison officials in both the OOC and the AOC to monitor progress under the Settlement. The Settlement required the AOC to conduct regular inspections of the ongoing abatement efforts and report to our Office on a quarterly basis. The OOC liaison worked closely with officials from the AOC to review proposals to remedy specific aspects of the overall project and ensure that the work was being scheduled and conducted as efficiently as possible. As a result of this coordination, the parties were able to foresee potential obstacles to abatement—be they structural, mechanical, electrical, organizational or some other impediment—and institute preventive measures.

The results of this impressive cooperation were remarkable. At the time the Settlement was signed, the AOC estimated that the project would cost \$296 million. Ultimately, the abatement was completed for just over \$173 million—a savings of 40%—as well as a month ahead of schedule. We believe this collaborative process could serve as a template for resolving other complex safety and health hazards in the Legislative Branch.

### **III. PARITY GAP ANALYSIS: CONGRESSIONAL EMPLOYEES SHOULD HAVE THE SAME OSHACT PROTECTIONS AS PRIVATE SECTOR EMPLOYEES**

When enacting the occupational safety and health provisions of the CAA, Congress did not include all provisions of the OSHAct that apply to the private sector. 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 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: Subpoena Authority to Obtain Information Needed for Safety and Health Investigations**

##### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM**



##### **OSHAct § 8(b), 29 U.S.C. § 657(b)**

Employers in the private sector that do not cooperate with the U.S. Department of Labor (DOL) in an OSHAct investigation may be subpoenaed by the DOL to compel the production of information under OSHAct § 8(b), 29 U.S.C. § 657(b). Congress did not provide the OOC with the same authority to issue subpoenas to employing offices in the Legislative Branch.

As Congress recognized in applying this statutory provision to the private sector, subpoena authority for an investigatory agency saves time and money by encouraging voluntary and timely cooperation by an employer with that agency; allows an investigating agency access to essential health and safety information; encourages effective preservation of witness recollection and other evidence; and reduces employee exposure to hazardous conditions by providing an investigatory mechanism to compel in a timely way the production of information necessary to assess a hazard.

The Board of Directors recommends that Legislative Branch employing offices be subject to the investigatory subpoena provisions contained in OSHAct § 8(b) so that OSHAct protections can be enforced as efficiently and effectively as possible.

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

#### **Recommendation #2: Require Recordkeeping of Congressional Employee Injuries**

##### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM**



##### **OSHAct § 8(c), 29 U.S.C. § 657(c)**

Employers in the private sector are required to keep records of workplace injuries and illnesses under OSHAct § 8(c), 29 U.S.C. § 657(c). In enacting the OSHAct for the private 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 recordkeeping requirement should be included in the OSHAct because “the Federal government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries, illnesses, and deaths.” With respect to Legislative Branch workplaces, however, the absence of a comprehensive record-keeping requirement means the OOC lacks what would be a useful tool to administer the CAA.

Maintaining such records would save time and money by providing information to the OOC and the employing office that could then be used to develop and assess the effectiveness of measures taken to protect safety and health. Such records would also assist in the enforcement of, and compliance with, health and safety standards by providing information about patterns and repeated injuries so that hazardous conditions can be identified and abated, thus reducing injuries and associated costs.

The Board of Directors recommends that covered Legislative Branch employing offices be required to keep safety and health records and provide them to the General Counsel of the OOC consistent with the requirements of OSHAct § 8(c), 29 U.S.C. § 657(c), which requires private employers to keep and provide similar records to DOL. Like other employers, Congress and its employing offices should be required to maintain records of occupational injuries and illnesses serious enough to require more than first aid treatment. 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](http://www.osha.gov/dep/fap/recordkeeping_faqs.html).

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

### Recommendation #3: Allow the OOC to Protect Employees from Retaliation for Reporting OSHAct Violations

#### CONGRESS AND ITS AGENCIES ARE EXEMPT FROM



#### OSHAct § 11(c), 29 U.S.C. § 660(c)(2)

Under OSHAct § 11(c), 29 U.S.C. § 660(c), the Secretary of Labor can protect employees in the private sector who report OSHAct violations by investigating and litigating retaliation claims on their behalf. Legislative Branch employees do not receive such protection from the OOC General Counsel.

Such a provision would strengthen the OOC’s ability to protect those who participate in its investigations and proceedings; allow employees to cooperate with investigators by reporting OSHAct violations and discussing workplace conditions with less fear of reprisal because the enforcement agency would investigate and prosecute claims of retaliation; discourage employing offices from retaliating against employees who report OSHAct violations or otherwise cooperate with investigators; and vest enforcement discretion with the agency having knowledge of the protected conduct and the underlying policy considerations.

The Board of Directors recommends amending the CAA to permit the OOC to enforce anti-retaliation rights for covered employees of employing offices under OSHAct § 11(c), 29 U.S.C. § 660(c), who report health and safety hazards or who otherwise participate or cooperate in occupational safety and health investigations.

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*



# STATE OF ACCESS TO CONGRESSIONAL PUBLIC SERVICES & ACCOMMODATIONS

This section of the Annual Report is a preview of the information that will be included in the Office of Compliance's *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations Conducted During the 112th Congress*. The report will be released later in 2013. At that time, it will be available at [www.compliance.gov](http://www.compliance.gov).

The OOC enforces the Americans with Disabilities Act (ADA) to ensure that barriers to access to Congressional public services and accommodations are removed for people with disabilities.



## SECTION HIGHLIGHTS

+ During FY 2012, OGC completed inspections of sidewalks and curb ramps surrounding the Madison, Jefferson and Adams Library of Congress Buildings finding 232 barriers to access under the Americans with Disabilities Act (ADA)—118 barriers pose safety risks to people with disabilities; 43 barriers block access; and 69 barriers are major inconveniences

+ None of the curb ramps on the sidewalks surrounding the Library of Congress Buildings are in compliance with ADA Accessibility standards



- + The OOC continues to look for opportunities to work with employing offices to promote cost-efficient barrier removal by assessing barrier severity, creating transition plans for the removal of ADA barriers, reviewing construction plans for compliance with ADA standards, and providing pre-inspections at early stages of construction

## I. WHAT THE LAW REQUIRES: ACCESS TO CONGRESSIONAL PUBLIC SERVICES AND ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

### The Importance of Public Access by Individuals with Disabilities to Legislative Branch Offices

Persons with disabilities are guaranteed access to public services and accommodations under the Congressional Accountability Act (CAA), which applies Titles II and III of the ADA to the Legislative Branch. Failure to provide access within the meaning of the ADA constitutes discrimination under the law. The Office of the General Counsel (OGC) of the OOC is responsible for conducting inspections of Legislative Branch facilities and programs and enforcing the ADA to ensure that barriers to access for people with disabilities, such as constituents and visitors, are eliminated. See *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations conducted during the 111th Congress* at [www.compliance.gov](http://www.compliance.gov).

Why should Congress consider access by individuals with disabilities to Legislative Branch buildings to be a matter of great significance? In addition to being statutorily required, removing barriers to access to Legislative Branch facilities allows employees and Members with disabilities to perform their duties and permits constituents visiting Congress to exercise their constitutional rights to petition their representatives, to attend and testify at public hearings, and to receive equal access to the tax-supported public services offered by Legislative Branch offices. Millions of people, many of whom have disabilities, visit Congress every year to tour the U.S. Capitol, the Jefferson Library and other iconic buildings on Capitol Hill, some of the most important historical buildings in the United States. Every American should have access to them.

Barrier removal does more than benefit people who have a disability within the meaning of the ADA—it allows a wide variety of people of diverse ages and abilities to safely access facilities and the programs, activities and services provided within those facilities. Much of physical barrier removal involves lessening the amount of physical exertion required to access facilities and operate controls and about providing firm, level, and unobstructed pathways. These design features can benefit almost all users of the facilities.

### Which Legislative Branch Offices Must Provide Public Access to Individuals with Disabilities?

The CAA requires that nearly every Legislative Branch office provide access to its public programs, activities and services,

which means providing access to their hosting facilities. The offices covered by the ADA public access provisions of the CAA include: each Congressional Committee and Joint Committee; each office of the House and Senate, including District and State offices; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; the Office of Congressional Accessibility Services; and the United States Capitol Police.

Legislative Branch offices not covered under the CAA's ADA public access provisions are the Library of Congress, the Government Accountability Office, and the Government Printing Office. However, by an amendment to the ADA that became effective on December 31, 1997, these three offices are required to comply with the ADA public access provisions under 42 U.S.C. § 12209. Thus, all Legislative Branch offices must comply with ADA public access standards.

### Which Areas of Legislative Branch Facilities Covered by the CAA 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 also 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; 28 C.F.R. § 36.104. For a full discussion of the scope of ADA public access and accommodation requirements relevant to covered Legislative Branch agencies, see *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations during the 110th Congress* at pp. 3–10 at [www.compliance.gov](http://www.compliance.gov).

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 feature, alternatives can be considered and implemented to provide at least a minimum level of access.

**OOC'S Approach to Conducting ADA Inspections**  
**Setting Priorities for the 112<sup>th</sup> Congress ADA Inspections:**  
**Removing Structural Barriers that Prevent Access by**  
**Individuals with Disabilities to Cover Legislative Branch**  
**Facilities and Programs.**

To assure that individuals with disabilities have access to public areas of buildings and programs in the legislative branch, barriers interfering with that access must be removed. Physical access to an accommodation or a service will often require removal of structural barriers. Many structural barriers exist on Capitol Hill. These include manually-operated doors that require too great a force to open; doorways too narrow to enable wheelchair access; deficiencies in pathways to buildings, including sidewalks without ADA compliant curb ramps; and other similar obstacles to physical access.

OOC's inspections focus on the identification and removal of barriers in a cost-efficient and effective manner and on a priority basis to enable individuals with disabilities to find safe and barrier-free pathways that will allow them to travel to and enter buildings independently.

Failure to comply with the ADA's requirements during new construction and alterations can only lead to expensive errors that can cost taxpayers hundreds of thousands, if not millions of dollars to correct. It also necessitates OOC re-inspections that unnecessarily consume OOC and AOC resources that could otherwise be used for inspecting other facilities. Unless designers, construction contractors, and contract administrators know what the ADA Standards require, they cannot design, construct and monitor ADA compliance in accordance with the ADA Standards for Accessible Design.

The OOC continues to look for opportunities to work with the AOC and the other legislative branch offices to provide technical advice prior to construction. Currently, the OOC ADA inspection surveys are still performing a very important and fundamental educational function. The cost of these surveys is miniscule when compared to the potential cost savings associated with avoiding future design and construction errors and the potential benefits to providing better accessibility.

**Prioritizing with Limited Resources: Identification and Removal of Structural Barriers**

In an effort to make the most of the limited OOC inspection resources, during the 112<sup>th</sup> Congress, the OGC focused its ADA inspections on the areas that would be of most concern to members of the public. To address these areas of concern, the OGC developed an inspection plan with four components: (1) Evaluating accessible paths and entrances to buildings; (2) Evaluating new construction and alterations affecting accessibility; (3) Evaluating areas identified in requests for inspection; and (4) Evaluating potential barriers

observed by OSH inspectors during biennial OSH inspections. Findings from each of these inspections are provided to covered offices in a detailed report, with photos, describing each barrier. Each barrier is assessed by severity and potential solutions to the barrier are evaluated. Findings from these surveys are included in the General Counsel's biennial ADA reports to Congress together with any responses the OOC has received from the employing offices.

*Evaluating Accessible Paths and Entrances to Buildings.*

When evaluating accessibility, the initial inquiry is whether persons with disabilities can get to and into the facilities where programs, services and activities are being provided. This involves assessing the accessibility of pathways between public transportation drop-off points and entrances, as well as the entrances themselves. The OOC's biennial ADA inspections conducted during FY 2012 principally focused on this aspect of accessibility. The findings from each of these inspections are provided to the AOC in a detailed report, with photos, describing each barrier. Each barrier is assessed by severity and potential solutions to the barrier are evaluated.

*Evaluating new construction and alterations affecting*

*accessibility.* A key feature of improving access is the requirement that, when feasible, new construction and alterations are to be built in compliance with the ADA accessibility standards. The goal of improving accessibility in existing facilities becomes seriously compromised when new construction and alterations merely create new barriers either because of design or construction deficiencies. The OOC has continued to seek and seize opportunities to work with the AOC to improve compliance with the ADA standards when alterations and new construction are being designed and built.

*Evaluating areas identified in requests for inspection.*

A sensible inspection process must focus on areas where people are encountering access problems. To focus attention in these areas, during FY 2012, the OOC processed requests for inspection regarding accessibility problems in a manner similar to that in which it approaches requests for OSH inspections. Individuals encountering accessibility problems on the campus or in an off-campus facility can file a request for an ADA inspection with the OOC. The request can be made anonymously and can be filed electronically through the OOC's website. If the request is filed by a person with a disability, the OOC treats the request as a charge of discrimination under Section 210 of the CAA. The request is served upon the relevant covered office(s) in the same manner that OSH requests are served. The OOC conducts an opening conference to describe the inspection and investigation process. After the inspection and investigation is completed, the OOC issues a detailed report with proposed findings and recommendations. Those requests that are charges of discrimination are also subject to the

mediation, complaint, and hearing proceedings set forth in Section 210(d) of the CAA.

*Evaluating potential barriers observed by OSH inspectors during biennial OSH inspections.* The final component of the OOC ADA inspection process concerns barriers discovered by OOC occupational safety and health (“OSH”) inspectors during biennial and requestor-initiated OSH inspections. All OSH inspectors receive ADA training regarding the accessibility standards and are required to note any obvious ADA problems they observe while conducting an OSH inspection. These barriers typically involve such problems as inoperable ADA features (malfunctioning door openers and similar problems), blockage of or inadequate signage, lack of accessible pathways, protruding objects, lack of strobe lights, or other easily observable barriers. Depending upon the severity and type of barrier identified, the barrier will either be brought to the attention of the employing office representative accompanying the inspector at the time of the inspection (and mentioned in the closing conference report) or result in a more comprehensive ADA inspection to be separately scheduled with the AOC or the covered office responsible for creating or removing the barrier.

**About ADA Severity Codes Assigned to Each Barrier**

When conducting an ADA survey, the OOC classifies each barrier to access using a “severity code” that describes how severely the barrier deviates from the ADA Standards and the effect of this deviation.

ADA Barrier Severity Codes	
<b>Severity Code A</b>	Safety Consideration
<b>Severity Code B</b>	Blocks Access
<b>Severity Code C</b>	Major Inconvenience
<b>Severity Code D</b>	Minor Inconvenience

Consistent with how ADA surveys are usually conducted for private corporations and public units of government, the OOC does not record “D” severities because these minor deviations from the ADA standards have little impact upon accessibility and therefore the cost to correct such deviations usually far exceeds any benefit that would be achieved from its correction.

**Applying ADA Standards**

During FY 2012, the OOC surveyed the exterior pathways leading to the LOC Buildings. Under the ADA, sidewalks providing access to buildings must be sufficiently free of access barriers for the building to be considered accessible. Since they were first enacted in 1991, the regulations implementing the ADA have emphasized the importance of providing accessible sidewalks. Under the ADA, public entities are

required to inspect their sidewalks and then develop transition plans to correct the barriers to access found during these inspections.

During its inspections, the OOC generally found five types of exterior pathway barriers: curb ramps with adverse slope, cross slope, surface or joint-space conditions; abrupt vertical changes in the level of the sidewalk surfaces, wide joint spaces or other adverse sidewalk-surface conditions; cross slopes and slopes that are too steep; protruding objects in the sidewalk corridors; and parking, bus loading areas or outside dining spaces with access barriers. Each of these types of physical exterior pathway barriers has been described in previous OOC reports (See OOC FY 2011 Annual Report and the OOC Biennial ADA Report for the 111<sup>th</sup> Congress).

**II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: RESULTS FROM EXTERIOR PATHWAY INSPECTIONS OF LIBRARY OF CONGRESS BUILDINGS**

During FY 2012, the OOC completed its exterior inspections of the LOC buildings—Madison, Jefferson and Adams—identifying physical barriers to access for people with disabilities. The OOC is currently completing similar inspections for the Senate office buildings. The OOC’s ADA inspections found that most of the curb ramps on the sidewalks surrounding the LOC buildings are not in compliance with either the 1991 and 2010 standards. In many cases, the deviation from the standard is severe enough to be classified as an “A” severity—which means that the condition of these ramps raises safety concerns.

In the aggregate, the OOC found 232 exterior pathway barriers outside of LOC buildings; 54 barriers were assigned Severity Code A, which pose safety risks for people with disabilities; 94 were assigned Severity Code B, which block access for people with disabilities; and 84 were assigned Severity Code C, which are major inconveniences for people with disabilities. The total combined barriers illustrate the severe challenges that people with disabilities face when they need physical access to LOC buildings. The findings from these exterior inspections are summarized in the table that follows.

**Understanding the Impact of the Barriers Found**

Most employees, constituents, and visitors to the LOC buildings cannot access these buildings without using the curb ramps and sidewalks that surround the buildings. The OOC’s inspections found that the existing sidewalks are difficult for people with disabilities to navigate because of one or more of the following deficiencies (which are also referred to as “barriers” or “barriers to access”):

## Cost of Removing Barriers

While the OOC has not received any cost estimates from the AOC, the software used by the OOC for conducting inspections and recommending solutions has provided rough estimates of the costs associated with each barrier solution. These cost estimates include adjustments for construction costs in the Washington, D.C. area and the higher costs associated with government construction work.

The ETA software has estimated the total cost for correcting all of the exterior barriers around the LOC buildings, using the solutions recommended by the OOC, at approximately \$1.7 million.

	Adams	Jefferson	Madison	Total Barriers	
<b>Total Exterior Pathway Barriers</b>	55	92	85	232	51% of the total barriers pose a safety risk for people with disabilities
Code A = Safety Consideration	24	47	47	118	
Code B = Blocks Access	14	18	11	43	
Code C = Major Inconvenience	16	27	26	69	None of the curb ramps outside of LOC buildings comply with the ADA
<b>Curb Ramp Barriers</b>	18	36	42	96	
Code A = Safety Consideration	8	18	33	59	
Code B = Blocks Access	3	5	5	13	53% of sidewalk barriers pose safety risks, such as wheelchair instability
Code C = Major Inconvenience	7	13	4	24	
<b>Vertical Change/Surface Barriers</b>	27	23	20	70	
Code A = Safety Consideration	14	16	7	37	Protruding objects, such as low tree branches, can cause facial and eye injuries and other harm
Code B = Blocks Access	4	0	0	4	
Code C = Major Inconvenience	9	7	13	29	
<b>Exterior Ramp Barriers</b>	9	4	3	16	35% of slope barriers pose safety risks, such as causing a wheelchair to tip over/ backwards
Code A = Safety Consideration	3	2	2	7	
Code B = Blocks Access	6	1	1	8	
Code C = Major Inconvenience	0	1	0	1	Protruding objects, such as low tree branches, can cause facial and eye injuries and other harm
<b>Protruding Objects &amp; Other Obstructions</b>	0	1	9	10	
Code A = Safety Consideration	0	1	3	4	
Code B = Blocks Access	0	0	2	2	35% of slope barriers pose safety risks, such as causing a wheelchair to tip over/ backwards
Code C = Major Inconvenience	0	0	4	4	
<b>Cross Slope &amp; Slope Barriers</b>	0	24	7	31	
Code A = Safety Consideration	0	9	2	11	35% of slope barriers pose safety risks, such as causing a wheelchair to tip over/ backwards
Code B = Blocks Access	0	10	2	12	
Code C = Major Inconvenience	0	5	3	8	
<b>Parking , Bus Loading &amp; Dining Space Barriers</b>	0	4	3	9	35% of slope barriers pose safety risks, such as causing a wheelchair to tip over/ backwards
Code A = Safety Consideration	0	1	0	1	
Code B = Blocks Access	1	2	2	5	
Code C = Major Inconvenience	0	1	2	3	

# APPENDIX



## APPENDIX A: ACRONYMS

Above Finished Floor: AFF

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

Employee Polygraph Protection Act: EPPA

Fair Labor Standards Act: FLSA

Family and Medical Leave Act: FMLA

General Counsel of the Office of Compliance: GC

Genetic Information Nondiscrimination Act: GINA

Government Accountability Office: GAO

Government Printing Office: GPO

Library of Congress: LOC

Occupational Safety and Health: OSH

Occupational Safety and Health Act: OSHAct

Office of Compliance: OOC

Risk Assessment Code: RAC

Uniformed Services Employment and Reemployment Rights Act:  
USERRA

Veterans' Employment Opportunities Act: VEOA

## **APPENDIX B: STRATEGIC PLAN 2010–2012**

### **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, 2011 to September 30, 2012.

#### **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 unfair labor practice disputes.

#### **INITIATIVES:**

- A. Prioritize OSH and ADA inspections and abatement enforcement according to risk and severity;
- B. Promote improved understanding of compliance requirements through targeted, effective education and technical assistance programs; and
- C. Provide clarity to stakeholders respecting OOC protocols and procedures.

#### **MEASURES:**

1. Identify, prioritize, and assure the creation of an efficient and cost-effective plan for the responsible employing offices to abate all RAC I and RAC II hazards found in all covered Washington area buildings and facilities.
2. Resolve 80% of all RAC I and RAC II hazards within one year of their discovery.
3. Facilitate pilot inspection of Member District and State offices' self-inspections by end of FY2011.
4. Complete pilot self-inspection program and use survey results to develop a self-inspection program for all Member District and Senate State offices by the end of FY2012. Secure ADA transition plans for all covered Washington, DC area buildings and facilities.

#### **SUMMARY OF ACCOMPLISHMENTS:**

During FY 2012, the General Counsel completed its first-ever risk-based safety and health inspection program. Conducting

a risk-based inspection is very time consuming. Inspecting high-hazard areas, such as machine shops and electrical transformer rooms, requires determining which of many OSHA standards applies before the inspector can evaluate the extent of compliance with the relevant standard(s). Similarly, evaluating the effectiveness of OSHA-mandated safety and health programs requires the inspector to review the written program documents thoroughly, assess the extent to which the document meets the standard's requirements, and then interview employees to ascertain whether they understand and are complying with the program's provisions on the job. Nonetheless, conducting such inspections is essential to reducing the risk of incurring injuries in what are potentially dangerous employee operations.

The General Counsel issued citations in 2000 and 2001 concerning the life-threatening fire hazards in the Capitol, House and Senate office buildings, and Library of Congress facilities. Six of these citations remain unabated due in large part to fiscal constraints. Accordingly, the OOC remains focused on fire prevention efforts in these facilities. The OOC continues to work closely with the AOC to develop and monitor interim measures to help improve safety in these buildings until permanent abatement can be achieved.

During FY2012 our ADA inspections continued to identify barriers to individuals with disabilities' ability to gain access to Legislative Branch facilities. OCC continued to work with the AOC to develop cost-effective plans to address the most serious barriers to access uncovered by our inspections and by complaints made by members of the public. Our biennial inspections focused on identifying and removing access barriers on pathways to building entrances, and beginning to identify barriers in public restrooms. Using new inspection software, we were able to provide more comprehensive and precise measurements of ADA deficiencies to help employing offices design appropriate and less costly ways of eliminating barriers.

#### **GOAL II:**

Provide a fair, efficient, and high quality process for resolving workplace disputes that are presented to the OOC under the CAA.

#### **INITIATIVES:**

- A. Effectively utilize alternative dispute resolution techniques in OOC proceedings to assist disputants in successfully resolving workplace disputes.
- B. Provide resources to parties coming before the Board of Directors—increasing their knowledge and understanding of the CAA, advancing the application of the CAA, and facilitating the appropriate resolution of matters before the Board.

- C. Support the implementation of the labor-management provisions of the CAA.
- D. Effectuate the Board of Directors' rulemaking authority by tracking and reviewing proposed legislation and regulation, amending the Agency's Procedural Rules, and recommending Congressional approval of substantive regulations adopted by the Board.

**MEASURES:**

1. Utilize the case management system to monitor the use of the OOC by covered employees, spot trends, and develop training programs that target areas where increased education on the rights and protections of the CAA is indicated.
  - Year one, the Agency will review data and determine the topic areas and scope and frequency of training to be provided.
  - Year two, in coordination with its stakeholders, the Agency will develop educational modules that meet the needs of the covered community.
  - Year three, the Agency will provide regular and integrated training for stakeholders on methods of dispute resolution, the provisions of the CAA, and the Agency's procedures.
2. Attain issuance of substantive regulations for the application of VEOA, USERRA, FMLA, FLSA, and GINA under the CAA, and amendments to the OOC's Procedural Rules, as recommended by the Board of Directors of the OOC.

**SUMMARY OF ACCOMPLISHMENTS:**

The OOC's administrative hearing process provides employees a confidential forum in which to pursue their claims, while offering the same remedies that a court can provide. In FY 2012, more employees raising increasingly complex issues opted to utilize the OOC's confidential administrative hearing process to resolve their claims. This surge in demand for comprehensive services significantly increased the agency's costs.

In FY 2012, the OOC provided advice and information to over 260 covered employees, 83 requests for counseling claiming violations of the Congressional Accountability Act (CAA) were filed, 66 requests for mediation were received, and 20 cases were resolved through negotiated settlements (both monetary and non-monetary).

In FY 2012, 14 administrative complaints were filed—an increase of 16% over FY 2011, and more than 50% over FY 2010. OOC's Board of Directors received 5 petitions for review of hearing officer decisions in FY 2012, and 3 cases were pending on appeal from FY 2011. After thorough and extensive deliberation, 7

decisions were issued by the Board. Final decisions of the Board of Directors are published on our web site at ([www.compliance.gov/directives/board-decisions](http://www.compliance.gov/directives/board-decisions)).

At the beginning of FY 2012, the OOC revised the terms of service contracts with independent mediators in order to reduce expenditures. With the cooperation and dedication of its service providers, the OOC implemented a flat rate for mediation services, and reduced the hourly rate paid to its hearing officers—resulting in the same high level of professional services while achieving a reduction in overall costs. In addition, during FY 2012, OOC was fortunate to work with several talented law students, who, as part of OOC's summer legal internship program, performed crucial legal research and provided support to the work of the Board of Directors.

To improve utility and access to the dispute resolution program—the OOC updated, implemented and published on its website new ADR forms. The work to further refine our forms and agreements is continuing. To further ensure that claims are processed efficiently and effectively, the Board of Directors continued to review its procedural rules, and draft substantive regulations to implement the amended Family and Medical Leave Act. Additional efficiencies included streamlining operations—expanding document storage, revising case management tools, and engaging in a 3 year strategic planning process.

**GOAL III:**

Improve knowledge of rights and responsibilities under the CAA, both on Capitol Hill and in State and District offices, and increase awareness of the OOC among Legislative Branch employees and employing offices as a primary resource when questions arise.

**INITIATIVES:**

- A. Increase visibility within the covered community and build relationships with those stakeholders who are unfamiliar with the OOC's services.
- B. Become a vital resource for the covered community.
- C. Acknowledge and promote the basic tenets of fair employment practices and workplace rights inherent in the CAA.
- D. Develop a "Model Office" program to recognize those employing offices that seek training and advice from the OOC.
- E. Increase the effectiveness of the OOC website as an informational resource, and implement methods of mutual recognition between the OOC and various Legislative Branch entities.

## **MEASURES:**

1. Increase by 5% from the previous fiscal year, and in each succeeding fiscal year, the number of training opportunities offered to employees and employing offices.
2. Increase by 5% from the previous fiscal year, and in each succeeding fiscal year, the distribution of “fyi’s” produced, and *Fast Facts*, and other published material disseminated to employing and support offices by way of First Call on the House side and the Senate Education and Training Office, as well as other distribution points.
3. Connect with key Legislative Branch stakeholders on issues important to the Agency, achieving direct access to Members, staff, or employee representatives 80% of the time.

## **SUMMARY OF ACCOMPLISHMENTS**

During FY 2012, the OOC sent its first publication via e-mail to employees of the House of Representatives. In collaboration with the Committee on House Administration (CHA), the OOC was able to use a cost-efficient method of direct e-mail distribution to House employees. This was a huge accomplishment for OOC and the CHA, responding to the preference voiced by employees in OOC’s 2009 survey that they would prefer to receive information by e-mail. Importantly, this method also provided significant cost savings in printing and distribution.

In FY2012, the demands for OOC’s educational resources continued to increase. To keep up with demand, the OOC revamped and reproduced several of the educational brochures. These materials are used in office visits, counseling and mediation sessions, Congressional Research Service (“CRS”) presentations, and other training workshops. Several agencies and Member offices have contacted the OOC for additional materials to keep in their workplaces as well.

OOC continued to provide updated and timely educational materials to employing offices. We distributed materials for new Senate hires, sending out 2122 notifications in FY 2012, and prepared a presentation as part of orientation for newly elected Members of the House of Representatives.

Under the CAA, the OOC is required to send information about workplace rights and dispute resolution to the homes of Congressional employees. After sending out an annual multi-page newsletter for years, we moved to a one page “Notification of Rights” flyer, which was sent to the home of each Congressional employee, including Members of Congress. We found the one page notice to be a much more cost effective educational resource

that can also be used throughout the year for meetings with Members and new staff.

## **GOAL IV:**

Maximize OOC employees’ capabilities and contributions by increasing satisfaction through innovation, the acquisition of up-to-date technological resources, and maintaining an environmentally-friendly workplace.

## **INITIATIVES:**

- A. Develop and implement an Affirmative Action Policy.
- B. Enhance individual productivity and organizational efficiency and effectiveness through the acquisition of up-to-date technological resources.
- C. Gain additional office/work space to meet the growing needs of the Agency.
- D. Develop and implement a Continuity of Operations Plan (COOP).
- E. Commit to increase the OOC’s efforts for the betterment of the environment.
- F. Create and implement a formalized mentoring program.
- G. Streamline administrative processes to support the smooth functioning of the OOC’s operational responsibilities.

## **MEASURES:**

1. The OOC will review its current diversity outreach activities and seek to expand the diversity of its applicant pool by increasing attendance at job fairs, and posting vacancies and Requests for Proposals in media that reach out to minorities, women, and people with disabilities.
2. Employee satisfaction with the mentoring program will be measured by surveying participating staff and tracking their development. Upon completion of the program, the goal is to maintain at least 75% employee satisfaction with the program over the three year span of this Plan.
3. The OOC will measure the success of its greening activities by surveying each staff member on their use of electricity and recycling in FY 2010, followed by a repeat survey in 2011 and 2012 monitoring for increased conservation activities. The initial survey will be created by July 2010 and distributed. Survey results will be collated and assessed by September 30, 2010.

4. The OOC will track the amount of paper ordered from FY2010 through FY2012, seeking a 10% decrease in the amount of paper used between FY2010 and FY2012.

**SUMMARY OF ACCOMPLISHMENTS:**

During FY 2012, the OOC maintained its internal initiatives of enriching the workplace environment and supporting mission directives. The OOC workplace is one that encourages open and respectful dialogue between managers and staff, a willingness to share and accept ideas, self-awareness, and a personal commitment to these values. These values are reflected in the OOC's updated personnel policies. The OOC continued to promote non-discrimination and workplace diversity in accordance with its Affirmative Action Policy at all staffing levels, including among interns and contract service providers. The OOC continues to update and keep current its Pandemic Planning procedures, as well as its COOP procedures.

The OOC participated with the Legislative Branch Financial Management Council in developing and implementing financial efficiencies within OOC. In particular, our time and attendance record keeping system, has produced continued personnel time savings, as the usage of the system

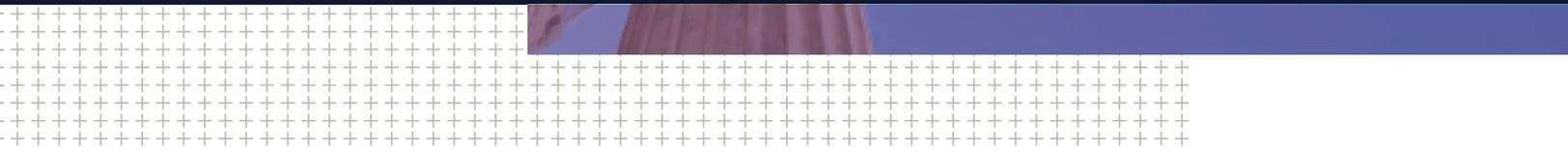
has normalized. OOC's refined process for 'settlement' disbursement has produced again this year a savings of approximately \$9,000 on FY 2012 settlements.

The OOC continues to work towards its goal of reducing travel-related expenses by utilizing video-conferencing equipment in order to conduct meetings with participants throughout the country.

The OOC maintains its work with the LOC in enhancing workstation security and updating OOC desktop computer systems with advanced operating system software and anti-virus updates.

The OOC continued to promote a healthy workplace and reduce its carbon footprint by increasing email as a form of correspondence with stakeholders, promoting recycling, and reducing paper waste by requiring double-sided copying. The OOC successfully utilized an application created specifically for OOC by the Web Systems unit in the House of Representatives to send the OOC annual mailer to all House employees electronically, thereby eliminating the need to print such material, which reduced agency costs and its carbon footprint.





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