Statement of

Susan Tsui Grundmann, Executive Director

Office of Congressional Workplace Rights

Before the Subcommittee on the Legislative Branch,

Committee on Appropriations, United States House of Representatives

Fiscal Year 2020 Budget Request

February 7, 2019

Mr. Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Legislative Branch Subcommittee, thank you for allowing me the opportunity to submit for the record this statement regarding the budget request for Fiscal Year (FY) 2020 for the Office of Congressional Workplace Rights (OCWR). I want to express our appreciation to this Subcommittee for its continued support of the OCWR and its mission of advancing workplace rights, safety, health, and accessibility for employees in the legislative branch and members of the public who visit the nation's capital.

The Congressional Accountability Act of 1995 (CAA) embodies a promise by Congress to the American public that it will hold itself accountable to the same federal workplace and accessibility laws that it applies to private sector employers and executive branch agencies. Congress established the OCWR—until recently known as the Office of Compliance—to administer the CAA.

The OCWR's Statutory Mandate

We are a very small office with a very broad mandate. With 28 FTE positions inclusive of a part-time Board of Directors, the OCWR serves the same functions as multiple agencies in the executive branch, including the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Department of Labor, and the Federal Labor Relations Authority. We are responsible for enforcing federal workplace and accessibility laws that cover more than 30,000 employees in the legislative branch, including the House of Representatives, the Senate, the United States Capitol Police, the Library of Congress, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Congressional Accessibility Services, and our own office, among others. We administer the administrative dispute resolution (ADR) system established by the CAA to resolve workplace disputes; we carry out a program of education respecting the laws made applicable to employing offices of the legislative branch by virtue of the CAA and to inform individuals of their rights under those laws; and we advise Congress on needed changes and amendments to the CAA.

Furthermore, our General Counsel (OGC) is responsible for inspecting—at least once each Congress—over 18 million square feet of facilities and grounds in the legislative branch for Occupational Safety and Health (OSH) violations, as well as the public areas of all facilities in the legislative branch for compliance with titles II and III of the Americans with Disabilities Act (ADA). The OGC is further responsible for investigating allegations of OSH, ADA, and unfair labor practice (ULP) violations filed under sections 210, 215 and 220 of the Act, and for filing and prosecuting complaints of OSH, ADA and ULP violations. As one of the smallest offices in the

legislative branch with no redundant staff, the OCWR also regularly contracts for the services of other individuals such as mediators, hearing officers, and safety and health inspectors, in support of its statutory mandate.

The CAA Reform Act

On December 21, 2018, the Congressional Accountability Act of 1995 Reform Act, S. 3749, was signed into law. Not since the passage of the CAA in 1995 has there been a more significant moment in the evolution of legislative branch workplace rights. The new law focuses on protecting victims, strengthening transparency, holding violators accountable for their personal conduct, and improving the adjudication process. The Reform Act includes many important changes that dramatically expand the OCWR's duties and responsibilities, as well as the number of employees covered by the CAA.

These new duties and responsibilities include:

- substantially modifying the administrative dispute resolution process under the CAA, including creating additional procedures for preliminary hearing officer review of claims;

- developing and implementing procedures for current and former Members of Congress to reimburse awards or settlement payments resulting from harassment or retaliation claims;

- developing and implementing procedures for employing offices to reimburse payments resulting from specified claims of discrimination;

- appointing one or more advisers to provide confidential information to legislative branch employees about their rights under the CAA;

- renaming our office as the Office of Congressional Workplace Rights to more clearly inform the legislative branch community of our mission;

- extending CAA protections to unpaid staff, including interns, detailees, and fellows, as well as employees of the Library of Congress, the John C. Stennis Center for Public Service Training and Development, the China Review Commission, the Congressional-Executive China Commission, and the Helsinki Commission;

- significantly expanding OCWR reporting obligations;

- developing and administering a biennial climate survey of all legislative branch employees to collect information on the workplace environment and attitudes regarding sexual harassment;

- creating a program to permanently retain records of investigations, mediations, hearings, and other proceedings;

- establishing an electronic system to receive and keep track of claims; and

- developing and implementing means by which legislative branch employees who work outside of the Washington, D.C., area—such as in Members' district offices—have equal access to OCWR services and resources.

Some of the changes in the CAA Reform Act are effective immediately, such as the name change of our Office, but most will be effective 180 days from enactment, i.e., on June 19, 2019. The biennial climate survey of the legislative branch—which will be designed in FY 2019—will be administered for the first time in FY 2020.

The OCWR's FY 2020 Budget Justification

For FY 2020 operations, we are requesting $6,332,670, which is the same as our FY 2019 enacted level. Approximately 60% of the requested amount provides pay and benefits. The remainder focuses on supporting the OCWR's statutory mandates and improving the delivery of services to the covered community under the CAA. It also reflects the OCWR's immediate need to implement and administer the changes set forth in the Reform Act, discussed above. This amount will also allow us to carry out our statutory mission to educate and train Members of Congress, their staff, and other legislative branch offices and employees on their rights and responsibilities under the CAA through the development of education and training courses and materials specifically designed for the legislative branch, and which are easily understood, practical rather than legalistic, and proven effective. The education and training programs mandated by the Reform Act reflect Congress's ongoing commitment to foster and promote a healthy workplace culture on Capitol Hill.

The OCWR received a substantial increase to its funding for FY 2018 and FY 2019, and we have already begun to make progress on many of the initiatives discussed above, including developing and designing a secure e-filing system, and revising virtually all publications and education and training materials that the OCWR produces to incorporate the changes set forth in the Reform Act. Although the initiatives mandated by the Reform Act require substantial funding in FY 2019, many of those initiatives will also require ongoing funding in FY 2020 and beyond. For instance, the e-filing system, once launched, will require continuing cybersecurity upgrades and modifications. New ADR procedures, such as preliminary review by hearing officers of certain claims, will affect the costs associated with adjudication of those claims. Online training and educational modules must be continually updated.

The OCWR anticipates the most costly and laborious task is the design, development and implementation of a biennial climate survey of the legislative branch to collect information on the workplace environment and attitudes regarding sexual harassment, which is called for in the Reform Act. Conducting the survey beginning in FY 2020 and every two years thereafter, updating the survey, and interpreting the data resulting from the survey, will result in additional recurring costs.

Of the FY 2020 requested amount, the OCWR is requesting that a total of $1,000,000 remain available until September 30, 2021 for the services of essential contractors, including hearing officers, mediators, and safety and health inspectors and to design and conduct a climate survey of the legislative branch employees.

Alternative Dispute Resolution Program

The OCWR requests a total of $300,000 for non-personnel services for FY 2020 for administration of its ADR program, which represents our best estimate for the cost of administration of that program in the coming fiscal year based on past and current expenses. The CAA establishes an

ADR process that provides employing offices and covered employees a neutral, efficient, and cost-effective means of resolving workplace disputes. We strive to ensure that stakeholders have full access to these ADR procedures. The OCWR enjoys a 100% affirmance rate in employment cases by the U.S. Court of Appeals for the Federal Circuit. The OCWR continues to do more with less, maintaining a flat rate of pay for contract mediators, a standardized hourly fee for hearing officers, and rate limitations for other outside service providers.

In any given year, it is difficult to predict the number of cases that will be filed with the OCWR's ADR program, the complexity or duration of administrative proceedings, or the overall costs associated with case processing and adjudication. Recent developments add to the difficulty of making such predictions for FY 2020. In FY 2018, for example, Library of Congress employees were allowed to file claims with the OCWR for the first time. This has already added to the number of cases filed with the OCWR, and we expect that number will continue to increase. Moreover, as discussed above, on June 19, 2019, the ADR process will change significantly. The new process, as required by the Reform Act, is outlined in our FY 2020 budget justification. As discussed above, these changes require, among other things, that an additional hearing officer be appointed to conduct a preliminary review in each case filed on or after June 19, 2019 that involves claims arising under part A of title II of the CAA. Furthermore, the changes set forth in the Reform Act will require that the OCWR again amend its Procedural Rules, modify its Case Management System, develop and maintain a full electronic filing system, and improve IT infrastructure and cybersecurity. Other changes in the Reform Act—such as extending CAA protections to unpaid staff, including interns, detailees, and fellows—are highly likely to add to the number of cases on the ADR docket. Our budget justification takes these considerations into account in arriving at our projection of the costs for administering this program in FY 2020.

Education and Training Programs

The OCWR is requesting a total of $370,000 for non-personnel services for FY 2020 for its Education and Training Programs. The OCWR has a statutory mission to educate and train Members of Congress and legislative branch employees on their rights and responsibilities of the CAA. In FY 2018, the demand for the OCWR educational and training materials on preventing harassment and other forms of discrimination in the workplace dramatically increased. To date, thousands of congressional staffers have been trained either in-person or through our online platform.

During FY 2018, OCWR also presented in-person training bi-monthly at the request of the Congressional Research Service (CRS). During each CRS training session, the OCWR interacts with approximately 40-50 congressional staffers new to their jobs in district and state offices located around the country.

The OCWR also reorganized its website and added additional tools in FY 2018, including interactive surveys on safety and health issues, and publications to educate the covered community. The OCWR's monthly publications and quarterly electronic newsletters are aimed at keeping the congressional community up to date on developments in the areas of safety and health and workplace rights. The OCWR continues to quickly respond to this demand for information and training opportunities.

In FY 2019, the Reform Act will require the OCWR to modify its publications and online training and education materials, and provide better access to OCWR services and resources for staff in district and state offices. Virtually everything that the OCWR produces, including publications and training and educational materials for each of the 13 laws that are incorporated by the CAA, will have to be revised. The OCWR is also redeveloping its educational materials covering the 13 laws applied by the CAA, as well as developing new educational materials, training modules, and posters to inform the legislative branch community of the new procedures set forth in the Reform Act. These efforts will also allow us to assist those employing offices that are required by the Reform Act to develop and implement programs to train and educate their employees on the rights and protections provided under the CAA, including OCWR administrative and judicial dispute resolution procedures. The success of these endeavours, as well as our ongoing mission to provide stakeholders in the legislative branch with current, dynamic and innovative educational and outreach materials, will require substantial funds in FY 2020.

Safety and Health and Public Access

The OCWR is requesting a total of $302,600 for non-personnel services for FY 2020 for its Occupational Safety and Health and ADA public access inspection programs. Before the OCWR opened its doors in 1996, Capitol Hill buildings had not been subject to even the most basic building codes or regulations. The first inspections led to the discovery of serious fire and other safety hazards in House and Senate buildings and around the Capitol. As a result of OCWR inspections, Congress has abated thousands of serious hazards, reduced numerous barriers to access for individuals with disabilities, and dramatically improved the overall safety and accessibility of the Capitol Hill campus. The OCWR has been instrumental in the development and implementation of cost-effective solutions to safety and access problems by working directly with the Architect of the Capitol and other offices on the Hill. It is during these inspections that our inspectors, who are trained OSH and ADA specialists, can work directly with employing offices, providing technical support at the point where assistance is needed. Our budget request will allow us to continue to provide the level of expertise and assistance that the community deserves.

Additional Services

The balance of the requested amount covers contract services, including those furnished by cross-service providers, such as the Library of Congress and the National Finance Center, and other services, equipment and supplies needed to operate the OCWR.

Thank you very much for providing us with this opportunity to brief you on our FY 2020 budget request. As the Executive Director of the OCWR, I am proud of the work that our highly professional and talented staff members perform every day. We are available to answer any questions or to address any concerns that the Chair of the Subcommittee or its Members may have.

Susan Tsui Grundmann
Executive Director

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
Alternative Dispute Resolution Process effective June 19, 2019

INITIAL PROCESSING

Claim must be filed within 180 days of violation.

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PRELIMINARY REPORT

Preliminary Hearing Officer issues report within 30 days, unless an extension of 30 days is granted.

MEDIATION

Voluntary, confidential.

Both parties must request.

May be requested at several points during the process.

Length of stage: 30 days, unless extended for additional 30 days.

↓ ↙ OR ↘

CIVIL ACTION

A claimant who has not requested a hearing at OCWR or whose claim does not proceed past the preliminary review stage may file a civil complaint in U.S. District Court.

ADMINISTRATIVE PROCEEDING BEFORE MERITS HEARING OFFICER

Must request a hearing at OCWR no later than 10 days after Preliminary Hearing Officer's Report.

Hearing will generally be held within 90 days. Decision by Merits Hearing Officer issued within 90 days of end of hearing.

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REVIEW BY OCWR BOARD OF DIRECTORS

Appeal must be filed no later than 30 days after Merits Hearing Officer's decision.

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U.S. COURT OF APPEALS

Appeal must be filed no later than 90 days after Board of Directors' decision.

There is another chart for employees who are claiming that a Member of Congress personally engaged in misconduct.

For more information, please visit: OCWR.GOV

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
Alternative Dispute Resolution Process effective June 19, 2019

FOR EMPLOYEES WHO MAKE A PERSONAL CLAIM AGAINST A MEMBER OF CONGRESS

INITIAL PROCESSING

Claim must be filed within 180 days of violation.

Special notification requirements to Members of Congress.

PRELIMINARY REPORT

Preliminary Hearing Officer issues report within 30 days, unless an extension of 30 days is granted.

Notice to appropriate Ethics Committees.

MEDIATION

Voluntary, confidential.

Both parties must request.

May be requested at several points during the process.

Length of stage: 30 days, unless extended for additional 30 days.

OR

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For more information, please visit:
OCWR.GOV

Susan Tsui Grundmann

Executive Director

Susan Tsui Grundmann joined the Office of Congressional Workplace Rights (OCWR) as Executive Director in January 2017.

Ms. Grundmann serves as chief operating officer for the OCWR, which was established to ensure the integrity of the Congressional Accountability Act of 1995 (CAA) through programs of dispute resolution, education, and enforcement. These programs assist members of Congress, employing offices, employees, and the visiting public in understanding the thirteen workplace and accessibility laws incorporated in the CAA. Ms. Grundmann also works with the OCWR Board of Directors to advise Congress on needed changes and amendments to the CAA.

Previously, Ms. Grundmann served as the Chairman of the U.S. Merit Systems Protection Board, enforcing Federal merit systems in the executive branch. She was confirmed to that position by the U.S. Senate in 2009. Ms. Grundmann has more than twenty years of professional experience in litigation and in advising and educating clients in labor and employment matters. She began her legal career as a law clerk to the judges of the Nineteenth Judicial Circuit of Virginia. She earned her bachelor's degree at American University and her law degree at Georgetown University Law Center.