

office of compliance

FY 2010 ANNUAL REPORT

state of the
CONGRESSIONAL WORKPLACE

A REPORT ON WORKPLACE RIGHTS, SAFETY, HEALTH, AND
ACCESSIBILITY UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT



“MR. CHAIRMAN, the Founders of our Constitution never intended that Congress should be exempt from laws enacted for the rest of the Nation. In Federalist Paper No. 57 James Madison made clear that the Founders fully understood the salutary benefits that would flow from having legislators join the public in conforming to the laws Congress would enact: he called it a guard against oppression and ‘one of the strongest bonds by which human policy can connect the rulers and the people together.’ The Founders intuitively understood the case we make here today: Congress will pass better laws if it knows it will be fully subject to them.”

—Representative Richard Swett (NH-2), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995.





in this

REPORT

THE CONGRESSIONAL WORKPLACE AND THE CONGRESSIONAL ACCOUNTABILITY ACT	4
ABOUT THIS ANNUAL REPORT	9
WHY WE ARE HERE, WHAT WE DO	11
STATE OF WORKPLACE RIGHTS	18
STATE OF SAFETY & HEALTH	34
STATE OF ACCESS TO PUBLIC SERVICES & ACCOMMODATIONS	46
APPENDIX	59

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 redress to Legislative Branch employees for violations of the CAA by employing offices. The CAA protects over 30,000 employees of the Legislative Branch nationwide (including committees and state district offices). Please see “Why We Are Here, What We Do” for more information about the CAA and the role of the Office of Compliance (OOC) in the CAA’s administration and enforcement. You may also contact the OOC at 202.724.9250 or visit www.compliance.gov for further information about the rights and protections provided to Congressional employees.

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

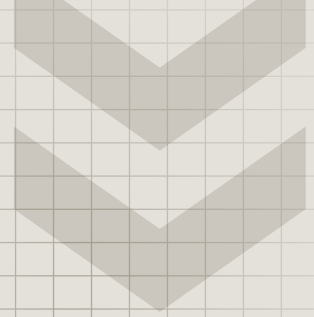
OFFICE OF THE ATTENDING PHYSICIAN

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

Section 201 of the CAA	NO HARASSMENT OR DISCRIMINATION	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, Americans with Disabilities Act (Title I)(ADA)
Section 202 of the CAA	FAMILY AND MEDICAL LEAVE	Provides leave rights and protections for certain family and medical reasons. Law applied: Family and Medical Leave Act (FMLA)
Section 203 of the CAA	FAIR LABOR STANDARDS	Requires the payment of minimum wage and overtime compensation to nonexempt employees, restricts child labor, and prohibits sex discrimination in wages paid to men and women. Law applied: Fair Labor Standards Act (FLSA)
Section 204 of the CAA	POLYGRAPH TESTING PROTECTIONS	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 refusing to take a test. Law applied: Employee Polygraph Protection Act (EPPA)
Section 205 of the CAA	NOTIFICATION OF OFFICE CLOSING OR MASS LAYOFFS	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	UNIFORMED SERVICES RIGHTS AND PROTECTIONS	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	PROHIBITION OF REPRISAL OR INTIMIDATION FOR EXERCISING WORKPLACE RIGHTS	Prohibits employing offices from intimidating, retaliating, or discriminating against employees who exercise their rights as applied by the CAA.
Section 210 of the CAA	ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS	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: Americans with Disabilities Act (Titles II and III) (ADA)
Section 215 of the CAA	HAZARD-FREE WORKSPACES	Requires that all workplaces be free of recognized hazards that might cause death or serious injury. Law applied: Occupational Safety and Health Act (OSHAct)
Section 220 of the CAA	COLLECTIVE BARGAINING AND UNIONIZATION	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 the Federal Services Labor-Management Relations Act
Genetic Information Nondiscrimination Act (GINA)	GENETIC INFORMATION NONDISCRIMINATION & PRIVACY	Prohibits the use of an employee's genetic information as a basis for discrimination in personnel actions.
Veterans' Employment Opportunities Act (VEOA)	VETERANS' EMPLOYMENT OPPORTUNITIES	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.



STATEMENT FROM THE CHAIR OF THE BOARD OF DIRECTORS

Last year's annual report—"State of the Congressional Workplace"—received unprecedented attention in the Congressional community and with the American public.

Congressional members and staffers commended the Office of Compliance's (OOC) new format, which provided greater transparency and clarity about the rights and protections for Congressional employees under the Congressional Accountability Act (CAA).

For fiscal year 2010, we use the same format to provide statistical, educational, and objective information that illustrates Congress's accomplishments under the CAA, occupational safety and health compliance, the types of employment dispute claims that Congressional employees raised with the OOC, and recommendations for improvements to the CAA. Throughout the report, we also explain the responsibilities of the OOC, its role in the Congressional workplace, and the use of the OOC's services by Congressional employees and employing offices to resolve workplace disputes.

During fiscal year 2010, at the recommendation of the OOC Board of Directors, Congress approved regulations that implemented the Veterans' Employment Opportunities Act (VEOA), which provides veterans who served this country with improved access to job opportunities in Legislative Branch agencies. The VEOA also establishes a redress system for preference eligibles in the event that their veterans' preference rights are violated. With these regulations in place, the VEOA will open potential opportunities for veterans seeking jobs in the Legislative Branch.

Despite our progress, substantial work still needs to be done to advance rights in the Congressional workplace. At the conclusion of the 111th Congress (2009–2010), the Board of Directors issued its "Recommendations for Improvements to the Congressional Accountability Act" for the 112th Congress (2011–2012) to consider and implement. Most of these recommendations urge Congress to provide basic and long-standing workplace rights that apply in the private sector, such as posting notification of employee rights. Other recommendations include record-keeping of employment records and anti-retaliation protections for Congressional staffers who report waste, fraud, and abuse. The Board of Directors will continue to meet with, and discuss our recommendations with, Members of Congress during the 112th Congress.

During fiscal year 2010, the Board of Directors issued several decisions, including one relating to the scope of the participation clause for Congressional employees who engage in protected activity under the CAA. The Board has noticed a steady increase in the number of appeals raised for our review. Some of the appeals present legal issues of first impression that may have broad implications for the Congressional workplace.

Finally, the Board wants to congratulate the OOC staff on a job well done this past year. The Congressional workplace is much safer and more informed as a result of their efforts towards greater transparency and collaboration with employing offices and the OOC's oversight committees.

Sincerely,

A handwritten signature in black ink that reads "Barbara L. Camens". The signature is written in a cursive style and is positioned above the printed name.

Barbara L. Camens, Esq.



STATEMENT FROM THE EXECUTIVE DIRECTOR

As one of our many efforts to increase knowledge and awareness about workplace rights, access for the disabled, and safety and health in the Legislative Branch, the Office of Compliance (OOC) mounted a concerted effort in fiscal year 2010 to become more transparent and open about the work we do, the use of OOC services by Congressional employees, and whether Congress was complying with the Congressional Accountability Act (CAA).

To engage stakeholders, our staff met with freshmen and incumbent Members of Congress to discuss our services and the resources we can provide for developing a better understanding of the rights and responsibilities under the employment, safety, health, and accessibility laws applied by the CAA. Our staff worked closely with the Congressional Research Service to ensure that Congressional employee training includes information about workplace rights. We also conducted training during the New Member Orientation Program for Members of the House of Representatives to inform newly-elected representatives about their obligations and responsibilities as employers.

These efforts are still not enough. The OOC recommends that employee rights be posted in all employing offices and that mandatory training about preventing inappropriate conduct in the Congressional workplace is warranted for all managers and staffers in the Legislative Branch. A more informed and educated workforce will lead to a more responsible and productive workplace.

The OOC has felt the impact of a substantial increase in discrimination, harassment, and retaliation cases over the past 5 fiscal years. The OOC dispute resolution program in fiscal year 2010 saw an increase in formal requests for confidential counseling and mediations, compared to five fiscal years ago. Also in comparison, there was an increase in discrimination, harassment, and retaliation claims. These cases are becoming more complex and sophisticated, often with multiple allegations of discrimination, discovery disputes, and issues relating to the OOC's rules and procedures.

Our 111th biennial inspection of Congressional properties covering over 17 million square feet in the Washington Metropolitan Area found approximately 5,400 hazards, a reduction of almost 60% from the 109th Congress, when we found 13,141 hazards. While Congress has made great strides in abating many of the hazards around the Capitol complex, a dozen dangerous hazards remain within the Congressional workplace. These hazards are ones that could cause permanent, total disability and even death to employees and visitors to the Capitol in the event of an accidental fire or a fire caused by a terrorist attack. The OOC continues to work with Congress and responsible offices to make sure abatement of these hazards remains a high priority.

We continue to be dedicated to our mission to advance workplace rights, safety, health, and access for the disabled in the Legislative Branch.

Sincerely,

A handwritten signature in black ink that reads "Tamara E. Chrisler". The signature is written in a cursive, flowing style.

Tamara E. Chrisler, Esq.



about this

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 and public employers. Prior to the passage of the CAA, Congress had exempted itself from the reach of these laws, affording employees no statutory remedy for their violation.

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

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

What is the current state of Congressional accountability and compliance under the CAA? This Annual Report provides an analysis of the state of safety & health, accessibility, and workplace rights in Congress during fiscal year 2010 (October 1, 2009–September 30, 2010). In some instances, the OOC provides information that became available after fiscal year 2010, but before this Annual Report went to print.

This Annual Report is compiled from one main source of information: periodic reports that are disclosed to Congress, as required under the CAA. All of our statutory reports are available on the OOC's website at www.compliance.gov. The three reports required by the CAA 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) or (OSHA), at least once each Congress and report on those findings. This Annual Report summarizes the OSHAct inspections report for the 111th Congress (2009–2010), which was completed and issued by the OOC in FY 2011.
- Section 210(f) of the CAA requires the OOC to conduct biennial inspections of Legislative Branch facilities for compliance with the access to public services and accommodations requirements under the Americans with Disabilities Act (ADA), at least once each Congress and report on those findings. We summarize the ADA inspections report for the 111th Congress (2009–2010) that will be issued in fiscal year 2012 and describe a comprehensive plan for ADA inspections during future Congresses.
- 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—newly titled “Recommendations for Improvements to the Congressional Accountability Act”—issued to Congress in December 2010, which made recommendations to the 112th Congress (2011–2012) for changes to the CAA to advance Congressional workplace rights. The Board of Directors highlights sections of the 102(b) report that continue to be priorities.

The fourth statutory requirement is described as follows:

- Section 301(h) of the CAA requires the OOC to publish statistics on the use of the OOC by Congressional employees, including information about the types of claims being made against Congressional employing offices. The OOC’s publication of FY 2010 statistics is contained in this Annual Report.

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:** A general, background explanation of legal obligations under key provisions of the CAA.
- ▶ **Achievements & Compliance Assessment:** An assessment of Congressional compliance with the CAA, including achievements, areas for improvement, and non-compliance with the law.
- ▶ **Parity Gap Analysis (for State of Workplace Rights and State of Safety & Health only):** An analysis of the difference between the workplace rights afforded to Congressional employees under the CAA and the workplace rights afforded to employees in the private sector and the Federal Executive Branch. This analysis also contains recommendations from the Board of Directors of the OOC to amend the CAA to advance workplace rights for Congressional employees so that they have similar protections as employees in the private sector and the Federal Executive Branch.

why we are here,

WHAT WE DO

CONGRESSIONAL ACCOUNTABILITY AND THE OFFICE OF COMPLIANCE

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

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

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

Under Section 102(b) of the CAA, the OOC'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. Sections 210(f)(2) and 215(e)(2) of the CAA require that the General Counsel of the OOC submit biennial reports to Congress about compliance inspections conducted under the Americans with Disabilities Act and the Occupational Safety and Health Act, respectively.

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

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

LAWS THAT PROTECT CONGRESSIONAL EMPLOYEES UNDER THE CAA

The CAA, which is administered and enforced by the OOC, applies the following employment, labor, accessibility, and workplace safety laws:

- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act of 1990
- Employee Polygraph Protection Act of 1988
- Fair Labor Standards Act of 1938

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

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

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

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

Many employment, labor, and safety and health law experts—whether they defend employers or bring claims on behalf of employees—agree that educating employers about their obligations and employees about their rights is one of the best strategies for preventing violations of employment, labor, accessibility, and safety and health laws. Why? Because employers who do not understand their legal obligations are more likely to run afoul of them. Furthermore, ignoring workplace problems or allowing

them to fester without addressing them creates unnecessary workplace conflict that can later lead to liability and undesirable publicity for all parties involved.

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

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

- developing and distributing written materials and publications;
- maintaining a website with materials about the law and its enforcement;
- conducting briefings, workshops, and conferences about the law and the services the OOC offers to our stakeholders and their employees;
- answering questions from Congressional members, 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 towards 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.

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

DID YOU KNOW?

Congress and the Legislative Branch occupy approximately 18 million square feet of property in the Washington, DC Metropolitan Area alone. Congress also occupies building space in each of the 50 states and U.S. territories.

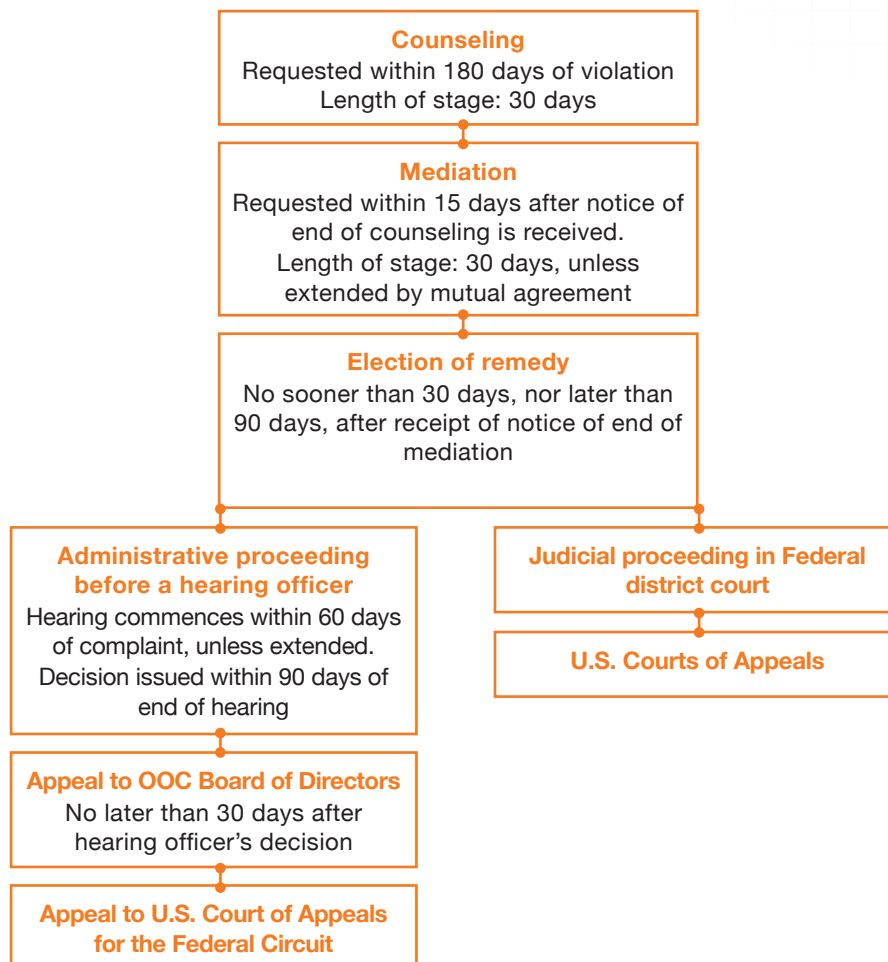
► Dispute Resolution Process for Most Types of Claims¹

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. In most instances, the CAA imposes a strict 180 day time limit for filing a violation of workplace rights claim with the OOC. 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 court. Some advantages of using the OOC’s administrative hearing process, as compared to filing a civil suit, are that it offers faster resolution, greater confidentiality, fewer evidentiary restrictions, and lower expenses than a court forum, while still offering the same remedies that a court can provide.

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.

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 office staff, or the OOC will service the needs of the employee through its Washington, D.C. office.

¹ Requests for inspections under the OSHA Act, charges filed under Titles II and III of the ADA (public access), and disputes under Chapter 71 of the Federal Service Labor-Management Relations Act are resolved through separate processes, also described in this report.

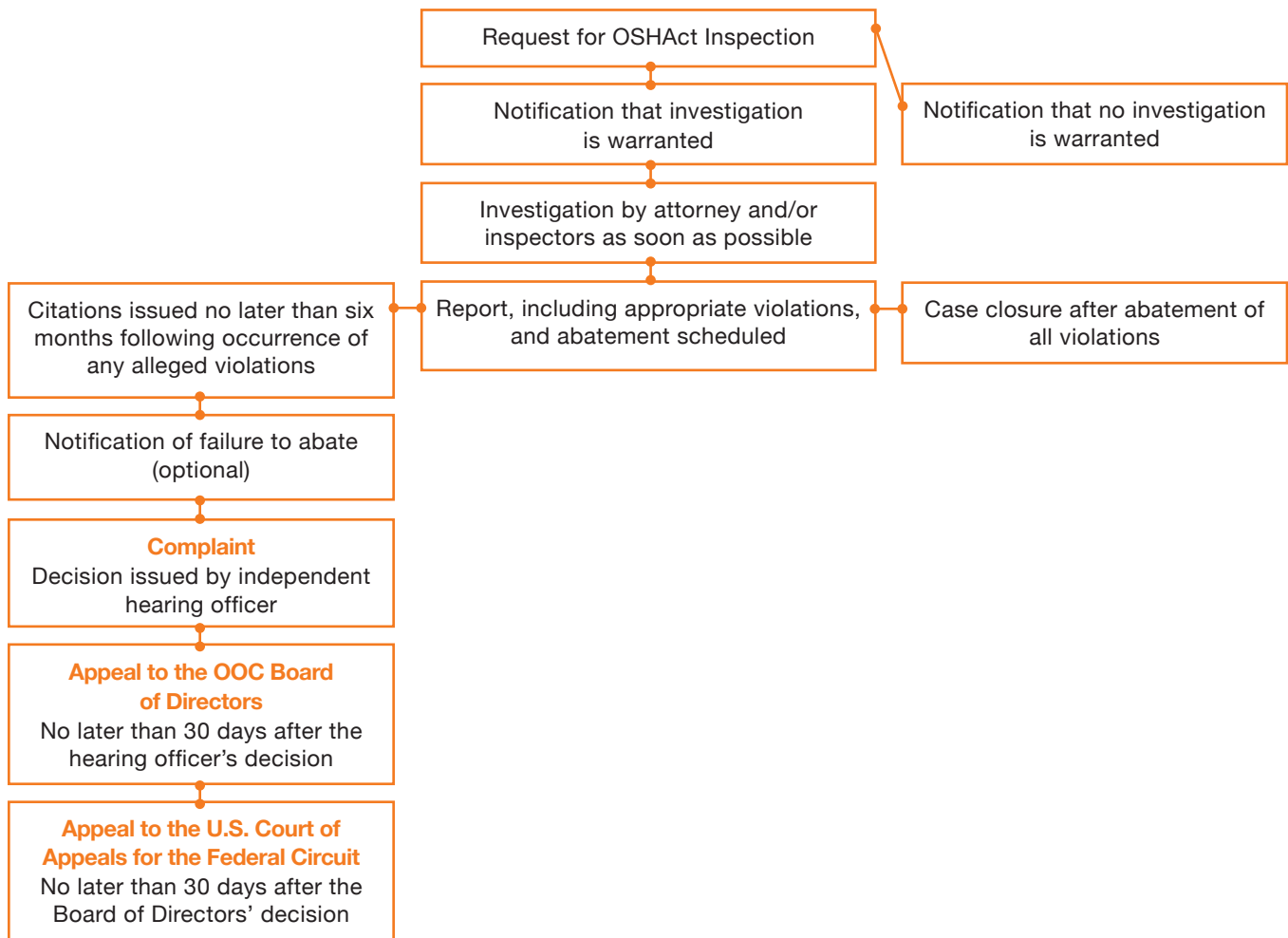


► Administrative Process for Alleged Violations of OSHAct (Request for Inspection Only)

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

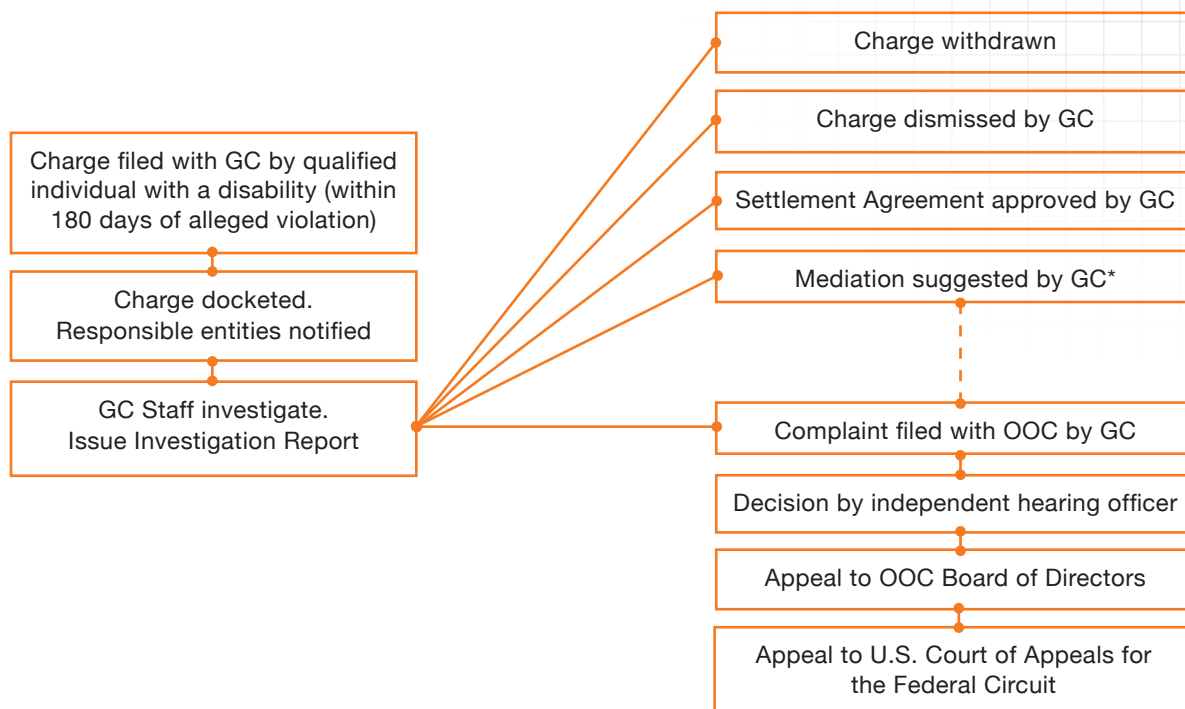
When an investigation reveals a hazardous working condition, the General Counsel may issue a notice or citation to the employing office that has exposed employees to the hazard and/or to the office responsible for correcting the violation. The office or offices are then responsible for taking appropriate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



► Dispute Resolution for Alleged Violations of ADA Accessibility Laws

Under the CAA, the General Counsel of the OOC (GC) is required to inspect covered employing office facilities in the Legislative Branch for compliance with the rights and protections against discrimination in the provision of public services and accommodations for people with disabilities, established by Titles II and III of the ADA.

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

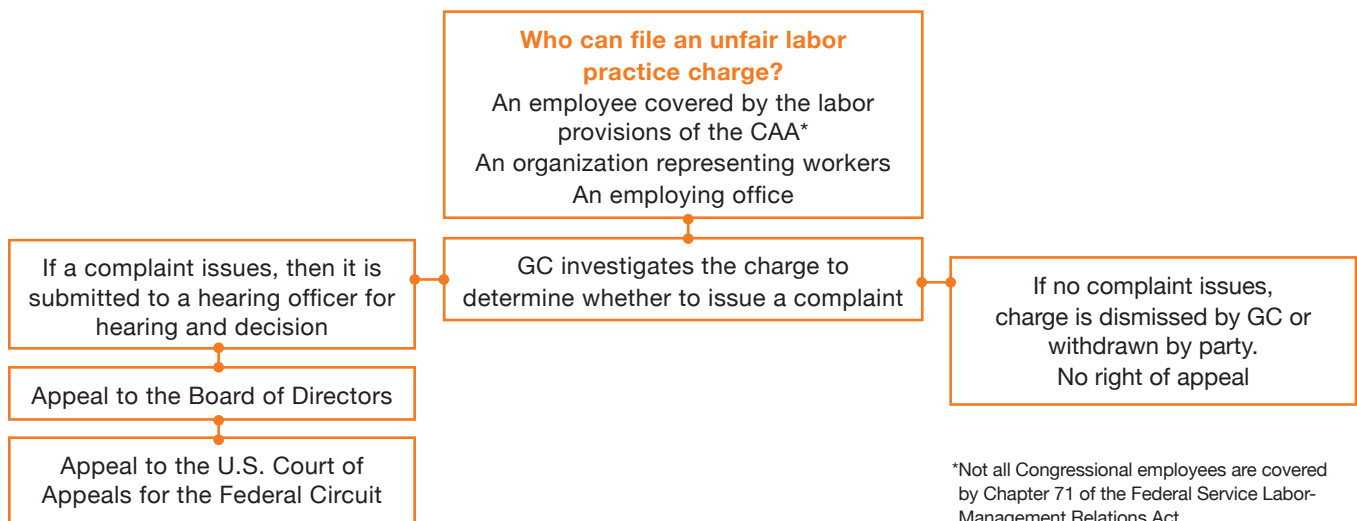


*Mediation is not mandatory

► Administrative Process for Alleged Violations of Federal Labor Laws

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

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



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

The OOC provides educational materials to employees and employing offices about their workplace rights and obligations. The OOC has produced a poster with the rights and protections afforded to employees under the CAA. The OOC encourages employing offices to display the poster where notices for employees are customarily placed. The poster not only reminds employees about their rights, but also notifies potential violators of the law that there are significant legal consequences for violating the law.

Employing offices can also distribute brochures prepared by the OOC to all employees and include such materials in personnel handbooks.

In addition, the OOC provides training to employing offices and employees about the rights and protections under the CAA and can also provide training about specific topics under the CAA, such as preventing discrimination and harassment in the workplace.

To obtain these educational materials, request training or if you have questions, please contact the OOC. Educational materials may also be downloaded from www.compliance.gov.

YOUR RIGHTS IN THE CONGRESSIONAL WORKPLACE

The Congressional Accountability Act (CAA) provides employment, labor, safety, health, and accessibility rights and protections to covered employees of the Legislative Branch, including employees of Congress and its agencies. In some circumstances, applicants, former employees, and members of the public are also covered. In most instances, the CAA imposes a strict 180 day time limit for asserting a violation of workplace rights claim with the Office of Compliance (OOC). If you have questions about your rights and protections under the CAA, please contact the OOC and ask to speak to a counselor. All counseling is strictly confidential.

YOUR RIGHTS INCLUDE:

- ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS:** Section 219 of the CAA applies protections from Title II of the Americans with Disabilities Act of 1990 to members of the public who are qualified individuals with disabilities, and prohibits discrimination with regard to access to public services, programs, activities, or places of public accommodation of Legislative Branch facilities and programs.
- COLLECTIVE BARGAINING AND UNIONIZATION:** Section 220 of the CAA applies Chapter 71 of the Federal Service Labor-Management Relations Act and permits certain legislative Branch employees to form, join, and join a labor organization. Once a labor organization becomes the exclusive bargaining representative of employees, an employer is obligated to negotiate the terms and conditions of employment with that organization.
- FAIR LABOR STANDARDS:** Section 201 of the CAA applies the Fair Labor Standards Act of 1938 to covered employees. These rights and protections require payment of the minimum wage and overtime compensation to nonexempt employees, restrict child labor, and prohibit sex discrimination in wages paid to men and women.
- FAMILY AND MEDICAL LEAVE:** Section 202 of the CAA applies the benefits of the Family and Medical Leave Act of 1993 to covered employees. Eligible employees are entitled to take up to 12 weeks of leave in a 12-month period for certain family and medical reasons. Eligible employees who have a spouse, son or daughter, or parent who is on active duty or called to active duty status in the National Guard or Reserves are also entitled to leave for reasons in the Armed Services or Reserves in support of a contingency operation for certain "qualifying exigencies." Eligible employees are entitled to take up to 26 weeks of unpaid leave in case for a covered servicemember during a single 12-month period. Employees on leave continue to receive health insurance benefits and should be restored to their former position at the conclusion of leave.
- GENETIC INFORMATION NONDISCRIMINATION AND PRIVACY:** The GINA of the Genetic Information Nondiscrimination Act of 2008 protects covered employees under the CAA and prohibits the use of an employee's genetic information as a basis for discrimination in personnel actions such as hiring, discharge, promotion, or other employment opportunities. Information that is protected includes, but is not limited to, genetic information and testing of an individual employee or an employee's family members.
- HAZARDOUS WORKSITES:** Section 215 of the CAA applies the Occupational Safety and Health Act of 1970 which requires that all workplaces be free of safety and health hazards that might cause death or serious injury. Employing offices must comply with these workplace safety requirements.
- AGE DISCRIMINATION OR HARASSMENT BASED ON RACE, SEX, NATIONAL ORIGIN, COLOR, RELIGION, AGE, OR DISABILITY:** Section 201 of the CAA applies certain sections of the following acts to covered employees: Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973. These laws provide that personnel actions affecting covered employees shall be free from discrimination on the basis of race, color, religion, sex, national origin, age, and disability. This provision includes hiring, discharge, promotion, pay, benefits, reassignment, and other personnel actions affecting the terms and conditions of employment. Employees are also protected from harassment based on race, color, religion, sex, national origin, age, and disability.
- NOTIFICATION OF OFFICE CLOSINGS OR MASS LAYOFFS:** Section 205 of the CAA applies the rights and protections of the Worker Adjustment and Retraining Notification Act of 1988 to covered employees and requires that employees be notified of an office closing or of a mass layoff at least sixty days in advance of the event.
- POLYGRAPH TESTING PROTECTIONS:** Section 204 of the CAA applies provisions of the Employee Polygraph Protection Act of 1998 to the Legislative Branch. With certain exceptions, these provisions prohibit requiring or requesting that an employee take a lie detector test, or hiring or requiring others to take 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.
- PROTECTION FROM RETRIAL OR INTIMIDATION FOR EXERCISING RIGHTS:** Section 207 of the CAA provides that an employer may not retaliate, threaten, or discriminate against employees who exercise their rights under the CAA. This provision includes opposing practices made unlawful by the CAA, initiating proceedings, making a charge, providing testimony, assisting or participating in a proceeding brought under the CAA. Those who assist others in these activities are also protected.
- REDRESS FOR VIOLATIONS OF THE CAA:** The CAA provides that employees may be entitled to receive remedies for violations of the CAA which may include monetary awards, attorney's fees, and costs.
- UNIFORMED SERVICES MEMBERSHIP AND PROTECTIONS:** Section 206 of the CAA applies the rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 to covered employees. These provisions protect employees performing service in the uniformed services from discrimination and provide certain benefits and unemployment rights upon the completion of service.
- VETERAN EMPLOYMENT OPPORTUNITIES:** Section 401 of the Veterans' Employment Opportunities Act of 1998 gives certain veterans covered under the CAA improved access to job opportunities and establishes a preferential system for preference rights in the event that their veterans' preference rights are violated.

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THE OFFICE OF COMPLIANCE—ADVANCING WORKPLACE RIGHTS, SAFETY, HEALTH, AND ACCESSIBILITY IN THE LEGISLATIVE BRANCH. (202) 724-7830
THE OOC IS AN EMPLOYMENT OPPORTUNITY AND EQUALITY OFFICE. IT PROVIDES THE OOC EMPLOYEES EMPLOYMENT AND PERSONNEL OFFICES ABOUT THEIR RIGHTS AND RESPONSIBILITIES UNDER THE CAA. ADVISORS ARE AVAILABLE TO ASSIST EMPLOYERS, EMPLOYEES, AND INTERESTED AND BENEFICIAL CONSTITUENTS OF THE CAA.

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THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995 (CAA) APPLIES

WORKPLACE RIGHTS FOR CONGRESSIONAL EMPLOYEES

SAFETY, QUALITY LAWS, BENCH, LESS AND PROVIDE MANY IONS AS AND HE CAA LUTION OFFICE SIZES IATION KPLACE ER, A IGH OR ENTIAL DR IN

OFFICE OF COMPLIANCE—ADVANCING
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“ 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.”

— Senator Bernard “Bernie” Sanders (VT), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995

SECTION HIGHLIGHTS

- ▶ Congress approves regulations applying veterans’ employment rights to Legislative Branch agencies
- ▶ Claims alleging violations of workplace rights have increased compared to 5 years ago
- ▶ The number of filed claims alleging discrimination, harassment, and retaliation has increased compared to 5 years ago
- ▶ Most claims filed with the OOC allege discrimination and/or harassment based on race, age, sex, and disability
- ▶ Congress is exempt from certain private sector workplace rights laws mandated 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





state of

WORKPLACE RIGHTS

I. WHAT THE LAW REQUIRES: STATISTICS ABOUT THE USE OF THE OOC BY CONGRESSIONAL EMPLOYEES AND ADVANCEMENT OF WORKPLACE RIGHTS WITH PRIVATE SECTOR AND EXECUTIVE BRANCH

Statistics on the Use of the OOC By Congressional Employees

A core requirement of the CAA is that the OOC provide annual statistical data to Congress about whether employees are asserting their rights under the OOC's alternative dispute resolution (ADR) program and to what degree. Congress wants to know if Congressional employees are seeking counseling about alleged discrimination and harassment claims. Do Congressional employees assert family and medical leave claims, or allege claims of retaliation and reprisal for asserting such claims? 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 FY10 Statistics is provided on the pages that follow.

Congress is Required to Keep Pace with Private Sector and Executive Branch Employment Rights

In addition to monitoring the use of the ADR program, Congress enacted a number of safeguards in the CAA to ensure that Congressional employees continue to have the same rights as private sector and Executive Branch employees and to prevent Congress from avoiding the impact of the laws it passes for the American people and businesses. First, the CAA requires that when Congress passes laws related to employment, safety and health, or public access, it must consider whether to apply such laws to the Legislative Branch, or explain why they should not apply. Section 102(b)(3) of the CAA requires, in part that:

"[e]ach report accompanying any bill or joint resolution relating to terms and conditions of employment or access to public services or accommodations reported by a committee of the House of Representatives or the Senate shall—

(A) describe the manner in which provisions of the bill or joint resolution apply to the legislative branch; or

(B) in the case of a provision not applicable to the legislative branch, include a statement of the reasons the provision does not apply.

On the objection of any Member, it shall not be in order for the Senate or House of Representatives to consider any such bill or joint resolution if the report of the committee on such bill or joint resolution does not comply with the provisions of this paragraph. This paragraph may be waived in either House by majority vote of that House."

To further ensure that Congressional employees are extended the same rights as private sector employees and employees of the Executive Branch, Section 102(b)(2) of the CAA requires the Board of Directors of the OOC to issue a report biennially that recommends changes to the CAA to advance workplace rights for Congressional employees and provide them with the same protections as private sector employees and employees of the Executive Branch. Section 102(b)(2) states in pertinent part:

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

This section—the State of Workplace Rights—discusses the current status of workplace rights in the Congressional workplace and provides statistical information on the use of the OOC by the covered community.

II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: ADVANCEMENT OF VETERANS' HIRING RIGHTS AND STATISTICAL INFORMATION ABOUT THE USE OF THE OOC BY CONGRESSIONAL EMPLOYEES

Congress Approves Veterans' Employment Opportunities Act Regulations

In December 2010, Congress approved the OOC Board of Directors' regulations that implement the rights and protections

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

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to Federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to disabled veterans. Veterans' preference is not so much a reward for being in uniform as it is a way to help make up for the economic loss suffered by those who answered the nation's call to arms.

As explained in the chart below, as a result of the VEOA, eligible veterans receive many advantages in employment in the Legislative Branch, including preference for initial employment and a higher retention standing in the event of layoffs. However, the VEOA does not guarantee the veteran a job, nor does it give veterans preference in internal agency actions such as promotion, transfer, reassignment, and reinstatement.

Statistical Information About the Use of the OOC by Congressional Employees

During the hearings that led to the passage of the CAA, some Congressional Members voiced concern that while the passage of workplace rights laws to protect Congressional employees is important, the laws mean little if employees do not 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

► Veterans' Employment Opportunities Rights in the Congressional Workplace

Who Qualifies as "Preference Eligible?"	Who is Covered?	Who is Not Covered?
<ul style="list-style-type: none"> ► Veterans who have served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized or during particular defined periods and have been separated from the Armed Forces under honorable conditions; ► Disabled veterans; or ► The mother, spouse, or unmarried widow or widower of certain veterans ► Retired members of the Armed Forces are generally excluded from the definition of "preference eligible" unless they qualify as disabled veterans or retired below the rank of major. 	<p>CERTAIN PREFERENCE-ELIGIBLE EMPLOYEES OF:</p> <ul style="list-style-type: none"> ► House of Representatives (limited) ► Senate (limited) ► Congressional Budget Office ► Office of the Architect of the Capitol ► Office of the Attending Physician ► Office of Compliance ► Office of Congressional Accessibility Services ► United States Capitol Police 	<ul style="list-style-type: none"> ► Employees appointed by a Member of Congress; ► Employees appointed by a committee or subcommittee of Congress or a joint committee of the House of Representatives and the Senate; ► Employees who are appointed to positions that are equivalent to Senior Executive Service positions; or ► Employing offices who have no employees covered by VEOA.

WHERE IS VETERANS' PREFERENCE, AS APPLIED BY THE CAA, A FACTOR?

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

they need. In this section, we provide information about the use of the OOC by Congressional employees to enforce their workplace rights under the CAA.

Initial Contacts to the OOC in FY 2010

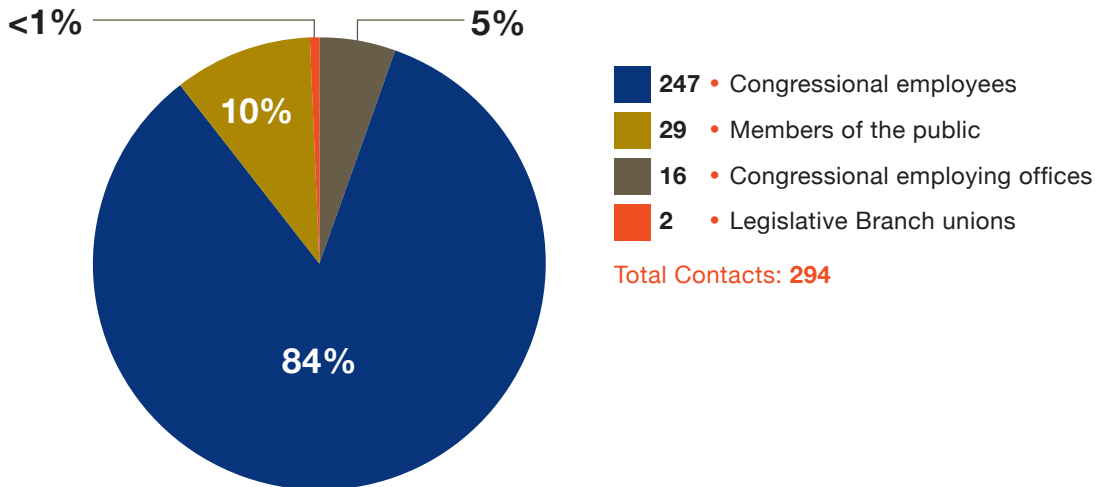
Congressional employees, employing offices, and the public may contact the OOC in person or by telephone to receive informal advice and information on the procedures of the OOC and to learn about the rights, protections, and responsibilities granted by the CAA. The OOC's website—www.compliance.gov—is the most comprehensive source of information on the CAA for employees and employing offices. An automated telephone information line with

recorded information about the CAA and the OOC is also available at (202) 724-9260 for those who do not have ready access to the internet.

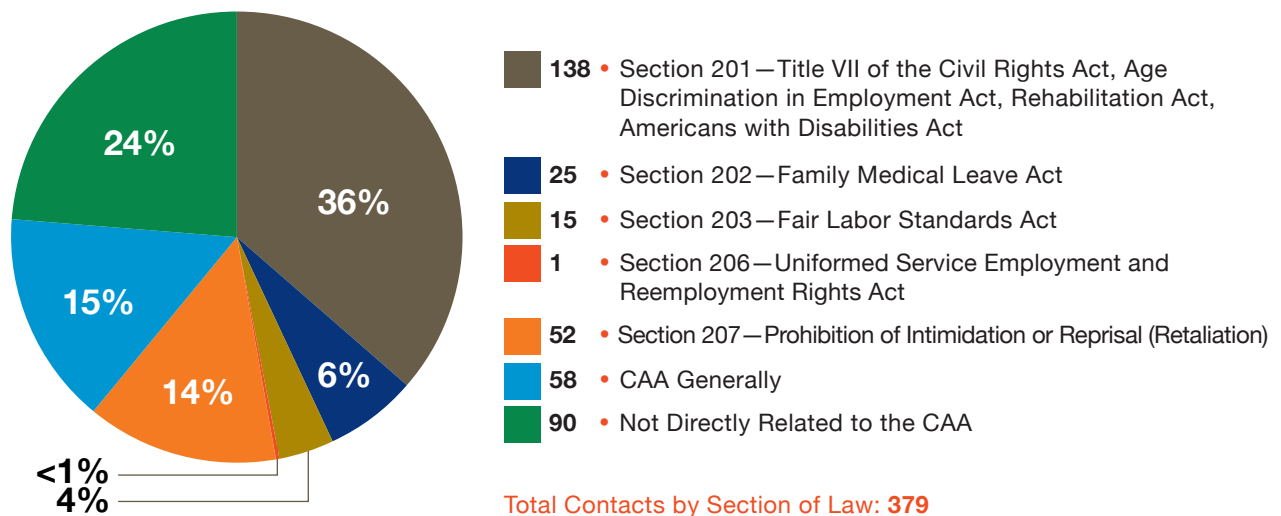
During FY 2010, OOC counselors received 294 contacts from covered employees, employing offices, unions, and the public requesting information. Contacts were made both in person and by phone. The General Counsel also received requests for information and assistance under OSHA Act, ADA, public access, and federal labor laws (see page 29).

Employees contacted the OOC for a variety of reasons in FY 2010, on questions ranging from the application of particular pro-

► Summary of Contacts with the OOC by Group



► Summary of Contacts with the OOC by Section of Workplace Rights Laws (An individual contacting the OOC may inquire about more than one section of the law)



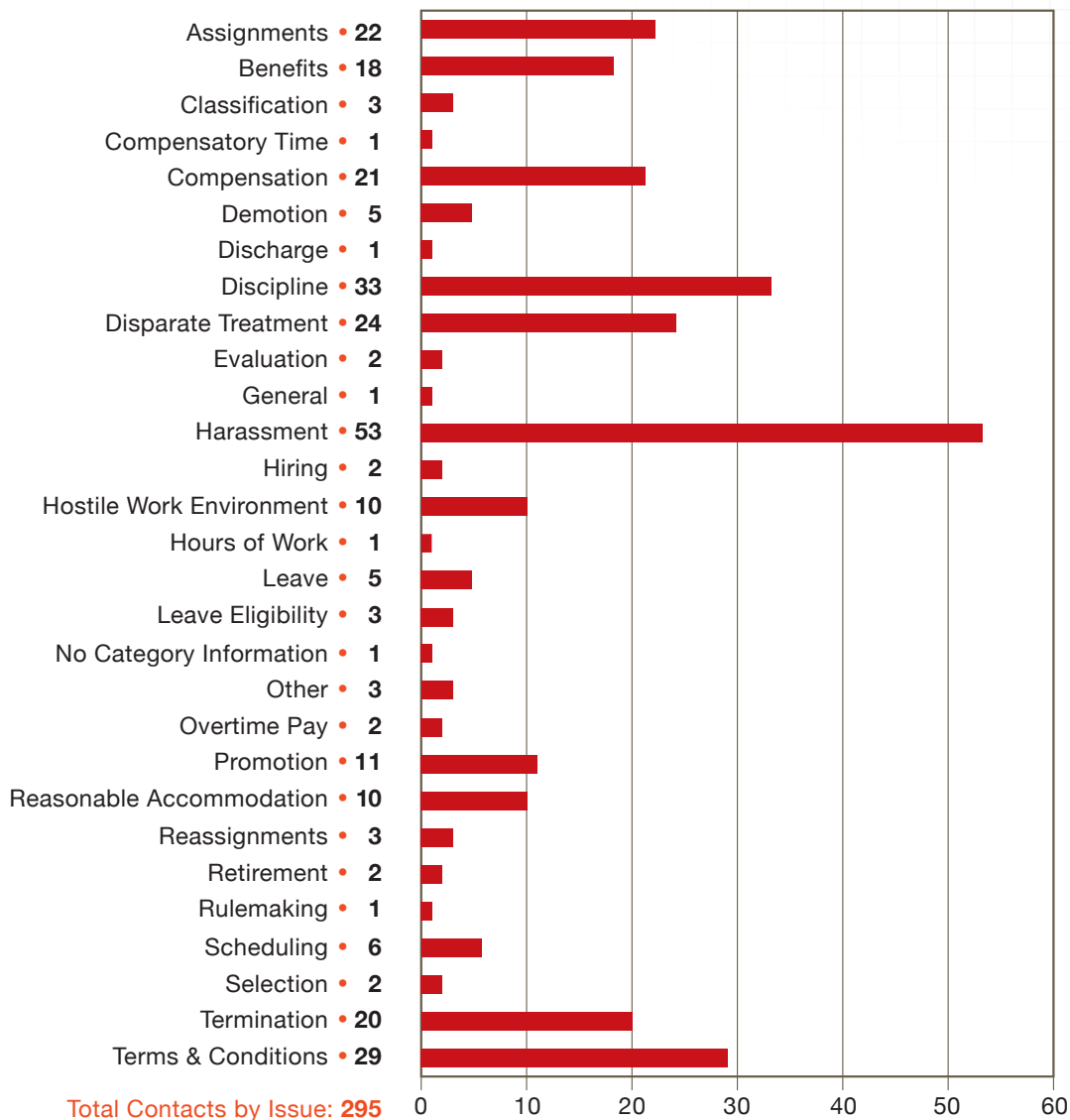
visions of the law, to whether particular conduct could constitute a violation of the CAA. Each single contact may involve several distinct provisions of the law, which is why the total number in this section is higher than the total number of contacts in the “Summary of Contacts to the OOC by Group” section.

In FY 2010, the individuals who contacted the OOC discussed sections of the law as illustrated on the bottom of page 22. In looking at the 379 contacts by section of workplace rights laws, approximately 36% had questions relating to discrimination based on a protected trait such as sex, race, national origin, age, religion, and/or disability, among others; 14% had questions re-

lated to intimidation, reprisal, or retaliation for exercising rights under the CAA; and 6% had questions related to leave rights.

Employees typically contact the OOC with questions on specific work issues. Recurring issues involve discipline, terms and conditions of employment, terminations, and assignments. The most common issue was harassment/hostile work environment, including sexual harassment and harassment based on other protected traits. Of the 295 contacts by issue, 21% of the issues raised were related to harassment/hostile work environment. Contacts in FY 2010 raised issues as illustrated below:

► **Summary of Contacts with the OOC by Issue**
 (An individual contacting the OOC may inquire about more than one issue)



Alternative Dispute Resolution Proceedings in FY 2010

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

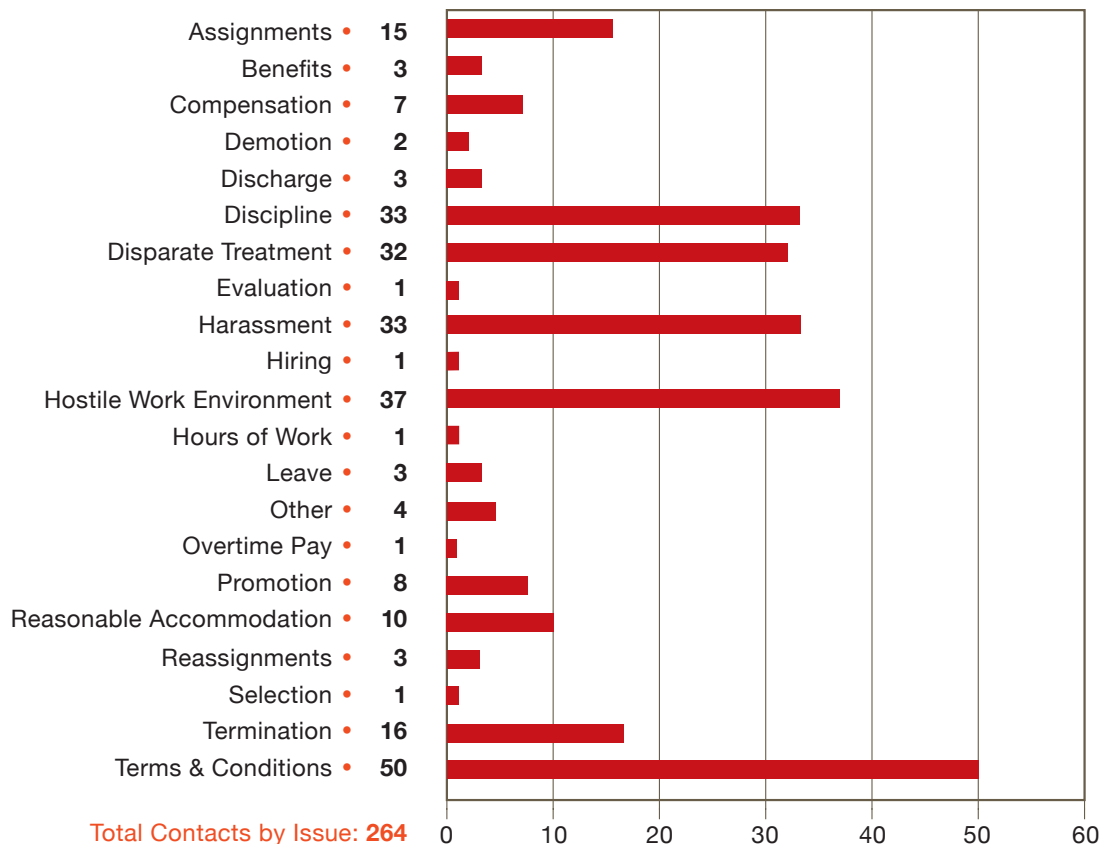
There were 105 new counseling requests in FY 2010 and 86 new requests for mediation. Most requests for counseling came from employees, former employees, or applicants of the Office of the Architect of the Capitol (40%), followed by the U.S. Capitol Police (36%), the House of Representatives (19%), and the Senate (4%).

During counseling, the most frequent workplace issues raised were harassment and/or hostile work environment, terms and conditions of employment, and termination. The most common alleged violations of the CAA related to discrimination based on a protected trait such as sex, race, age, and/or disability under Section 201 of the CAA. Approximately 69% of the allegations raised during counseling related to Section 201.

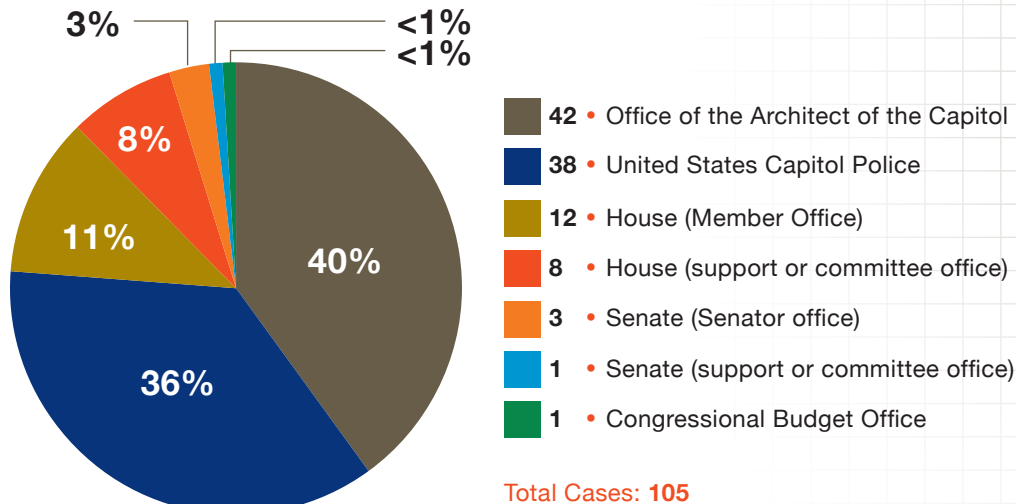
► Counseling Proceedings

New Requests for Counseling Filed in FY10	105
Cases Resolved during Counseling in FY10 (includes results of processes carried over from prior reporting periods)	22
Cases Pending in Counseling on Sept. 30, 2010	9

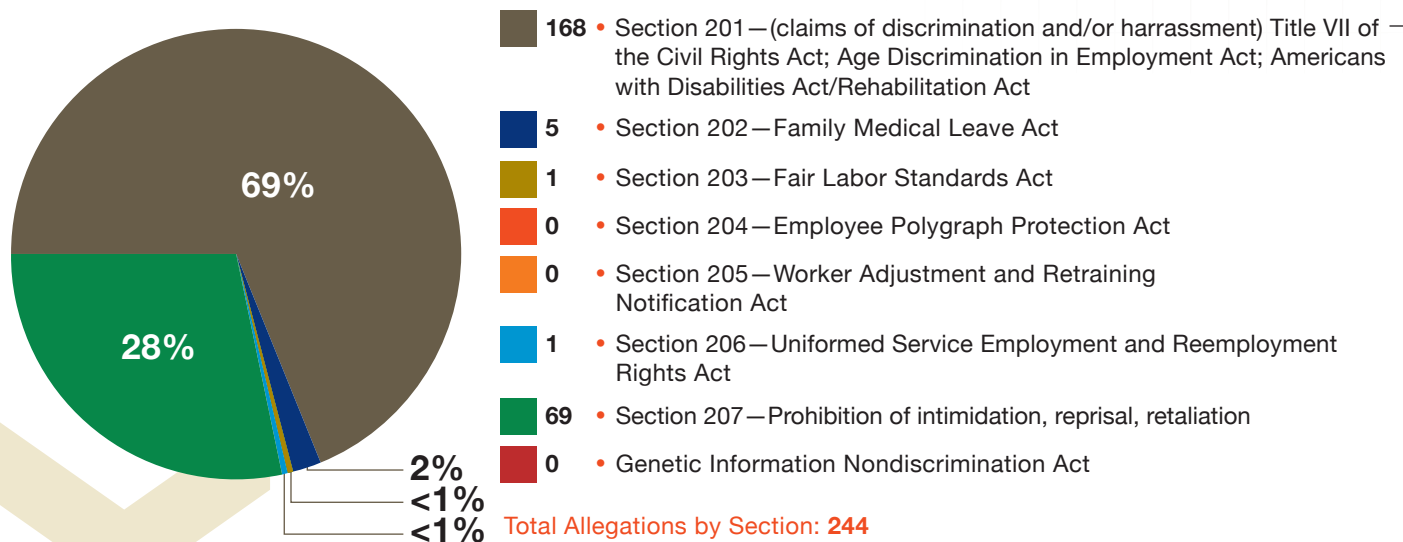
► Workplace Issues Raised with the OOC by Employees in Counseling (A single request for counseling may involve more than one issue)



► **Requests for Counseling Filed Against Employing Office**



► **Requests for Counseling Listed by Sections of the CAA**
 (A single request for counseling may allege a violation of more than one section of the CAA)



► **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	57
Age	41
Sex/Gender/Pregnancy	34
Disability (physical/mental)	28
National Origin	6
Religion	2

5 YEAR SNAPSHOT OF WORKPLACE RIGHTS CLAIMS

Over a 5 year period, the OOC experienced significant increases in its caseload, which included handling confidential requests for counseling by Congressional employees alleging violations of workplace rights and requests for mediation of workplace conflicts between Congressional employees and employing offices. In addition, cases filed by Congressional employees have become more complex as employees make multiple claims against employing offices.

This increase in caseload (managed by the OOC) occurred notwithstanding that a recent survey of Congressional employees, completed in fiscal year 2009 by Congressional Management Foundation, found that Congressional employees knew little about their workplace rights or the OOC¹. Currently, the CAA does not require employing offices to notify their employees about their rights and how to exercise them. The OOC Board of Directors has recommended to Congress that the CAA be amended to include mandatory notice-posting of rights in all employing offices and mandatory anti-discrimination/anti-harassment training of all Congressional employees (see page 30–32 “Parity Gap Analysis”).

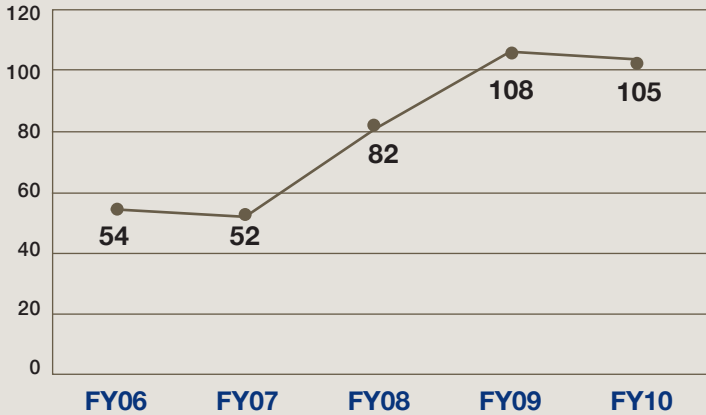
The OOC is working towards increasing its communications with employing offices and employees; however, with its limited resources and with no access to employee work email addresses², mandatory notice-posting and training may be the most direct, cost-saving, and effective means to notify employees about their workplace rights.

¹ See pages 38–41 of FY2009 “State of the Congressional Workplace.”

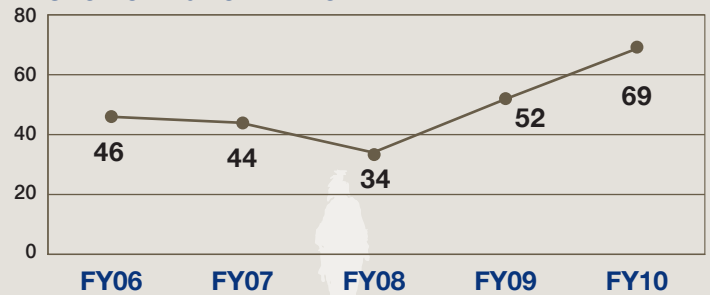
² The CMF survey found that Congressional employees preferred to be contacted by the OOC through their work email addresses. The OOC does not have access to employee emails but is working with the House to develop an electronic means to contact House employees at work.



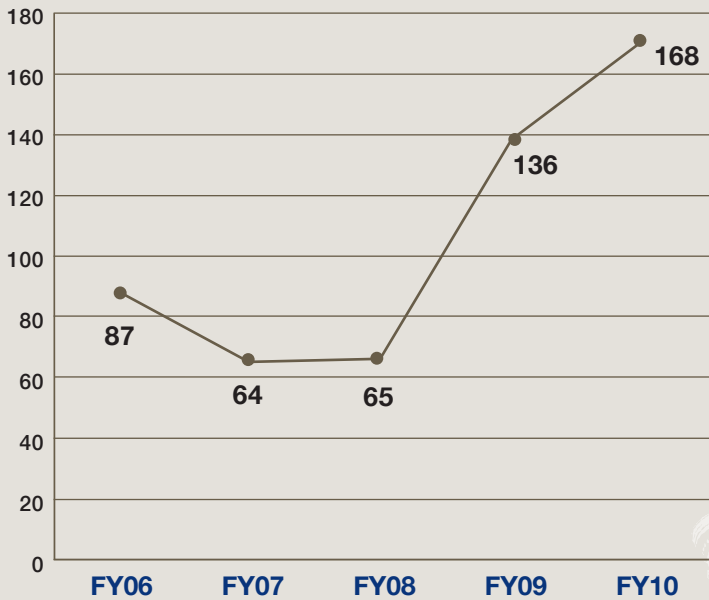
**FORMAL REQUESTS FOR COUNSELING
FILED BY CONGRESSIONAL EMPLOYEES**



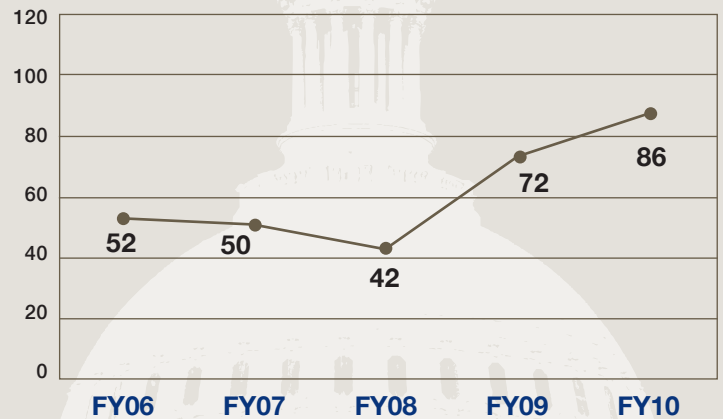
**EMPLOYEE CLAIMS MADE DURING COUNSELING
RELATING TO RETALIATION, INTIMIDATION, OR
REPRISAL FOR ASSERTING CLAIMS UNDER
SECTION 207 OF THE CAA***



**EMPLOYEE CLAIMS MADE DURING COUNSELING
RELATING TO DISCRIMINATION AND HARASSMENT
(RACE, SEX, AGE, DISABILITY, NATIONAL ORIGIN,
AND RELIGION) UNDER SECTION 201 OF THE CAA***



**REQUESTS FOR MEDIATION FILED BY
CONGRESSIONAL EMPLOYEES**



*A single request for counseling may allege a violation of more than one section of the CAA and may include multiple types of discrimination and/or harassment.

► Mediation Proceedings

New Requests for Mediation Filed in FY10	86
Cases Resolved by Formal Settlements in FY10 (Includes proceedings carried-over from prior reporting periods)	17
Cases Pending in Mediation as of Sept. 30, 2010	32

If mediation fails to resolve an employee's case, the employee may then file an administrative complaint with the OOC and the employee's case will be decided on the merits by a hearing officer, or the employee can file a lawsuit in Federal district court.

There were a total of 9 administrative complaints filed in FY 2010. Complaints included allegations of violations of the Family and Medical Leave Act, The Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, and protection against retaliation under the CAA. The OOC does not have statistics on claims filed in Federal district court, as claimants are not required to provide notification to the OOC on court filings.

► Administrative Complaint Proceedings

New Complaints Filed in FY10	9
Complaints Formally Settled in FY10	2
Hearing Officer Decisions Issued in FY10	7
Pending in Hearing as of Sept. 30, 2010	7

The Board of Directors, the OOC's appellate body, issues decisions resolving matters on review from hearing officer decisions, and on exceptions to arbitrators awards filed pursuant to the Labor-Management provisions of the CAA. In FY 2010, the Board did not issue any decisions on exceptions to arbitrator's awards.

► Petitions for Board Review of Hearing Officers' Decisions

New Petitions Filed in FY10	4
Petitions Withdrawn in FY10	2
Board Decisions Issued in FY10	3
Pending Board Review	5

The General Counsel of the OOC represents the OOC in matters appealed to the United States Court of Appeals for the Federal Circuit.

► Judicial Review of Final Decisions Issued by the Board

New Petitions for Judicial Review Filed in FY10	0
Petitions Withdrawn in FY10	0
Decisions Issued by the Court in FY10	1
Pending Judicial Review	1

Office of Compliance Action Under Section 220, FY 2010 (Labor Management Relations)

In FY10, a representation petition was filed by a unit of employees of the Capitol Visitor Center, Office of the Architect of the Capitol, seeking to be represented by a labor organization for purposes of collective bargaining. As a result of the petition, the OOC conducted a secret ballot election on September 16 and 17, 2010. A majority of the valid ballots cast were in favor of representation by the labor organization, the American Federation of State, County and Municipal Employees (AFSCME), Council 26. On September 27, 2010, the OOC certified AFSCME, Council 26, as the exclusive representative of all employees in the unit.

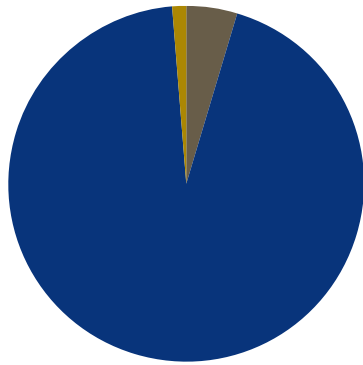
OSHA, ADA, and Unfair Labor Practice Proceedings

The General Counsel of the OOC is responsible for matters arising under three sections of the CAA: Section 210 (Public Services and Accommodations Under the Americans with Disabilities Act of 1990), Section 215 (Occupational Safety and Health Act of 1970), and Section 220 (Unfair Labor Practices Under Chapter 71 of Title 5, United States Code). Employees and employing offices frequently request information, advice, and technical assistance from the General Counsel. For example, the General Counsel has been asked to do pre-inspections of offices, address use of Segways by persons with mobility impairments, provide assistance in developing safety procedures for operating electric carts in hallways, and offer guidance in fixing mold problems in the Russell Building.

DID YOU KNOW?

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

► **Total Requests to the General Counsel for Information and Assistance by Section of the CAA FY 2010**



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

Total Requests: 797

► **Monetary Resolution of Employee Claims**

Section 415 of the CAA established “an account of the Office in the Treasury of the United States for the payment of awards and settlements . . . under [the CAA,]” and further authorized to be appropriated “such sums as may be necessary to pay such awards and settlements.” Section 415 stipulated that awards and settlements under the CAA should only be paid from that account, which is to be separate from the operating expenses account of the OOC established under section 305 of the CAA. The Executive Director approves all such awards and settlements, but it is the parties who decide the settlement amounts and terms, and a hearing officer or court may order an award or judgment.

Monetary settlements could resolve multiple claims and involve multiple claimants. While many of these settlements and awards resolved harassment, discrimination, and retaliation claims, there are other settlements and awards in the chart below 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.

In FY 2010, a total of \$246,271.00 was awarded and disbursed pursuant to 9 settlements made under Section 415 of the CAA. At the time this report was finalized, 13 settlements were awarded totaling \$244,370.00 in FY2011.

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

Fiscal Year	Total Number of Settlements/Awards	Total Aggregate Amount of Settlements/Awards
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

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 private sector workplace rights laws to the Legislative Branch, it did not include significant provisions of some of those laws and exempted itself entirely from others. In this regard, two core purposes of the CAA—to ensure Congress follows the same laws as do American businesses, and to provide an effective means for Congressional employees to vindicate their rights—are not fully realized.

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) (OSHAct)

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.

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.

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. 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. These requirements do not apply to Congress.

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.

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

CONGRESS AND ITS AGENCIES ARE EXEMPT FROM



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 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 also 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.

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 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 Legisla-

tive 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. See WPA 5 U.S.C. § 1201nt. 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 and abuse and whistleblower protection laws increase taxpayers' faith in government by protecting whistleblowers who act as "watchdogs" and 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.





“IT IS TIME THAT WE, as Members of Congress, start acting as servants of those who elected us. We must stop placing ourselves above laws that we feel are necessary of others. Until we do—and to some degree rightly so—this institution’s reputation with the American people will continue to erode.”

—Representative Thomas “Tom” Ridge (PA-21), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995

SECTION HIGHLIGHTS

- ▶ 5,400 hazards found in the Congressional workplace during 111th Congress, a 42% reduction from the 110th Congress
- ▶ 25% of hazards continue to be high risk to occupants and visitors
- ▶ Congressional employees are responsible for defending themselves when reporting safety and health hazards in the workplace





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SAFETY & HEALTH

I. WHAT THE LAW REQUIRES: CONGRESS IS SUBJECT TO MOST OF OSHAct

How the OSHAct is Enforced

The Occupational Safety and Health Act (OSHAct) was enacted to prevent workplace injuries and to safeguard employee health. Other than purely humanitarian reasons for such laws, there are economic reasons for preventing workplace injuries. Injury prevention can save money for employers in several ways, such as reducing downtime to recuperate from injury, avoiding lost production if an employee is injured, obviating the need to train replacement workers, and keeping health care premiums constant.

Section 215(e)(1) of the Congressional Accountability Act (CAA) requires the General Counsel of the Office of Compliance (OOC) to inspect Legislative Branch facilities for compliance with occupational safety and health standards at least once each Congress. Thereafter, the General Counsel is required to report the results to the Speaker of the House of Representatives, President pro tempore of the Senate, and offices responsible for correcting violations, including the the Congressional Budget Office, the Government Accountability Office, the Library of Congress, the Office of the Architect of the Capitol, the Office of the Attending Physician, the OOC, the Office of Congressional Accessibility Services, and the United States Capitol Police. That report, which provides more extensive findings regarding the status of safety and health on Capitol Hill, will be issued by the General Counsel later this year.

Inspecting safety and health conditions is part of the OOC's role in educating Members of Congress and employing offices about the state of safety and health in the Legislative Branch. Safety and health hazards can only be abated once they are identified. The OOC also provides educational materials and technical assistance to Members of Congress and employing offices. For example, Senators and Representatives sometimes request pre-inspections to identify hazards in their offices so they can be fixed as soon as possible, rather than waiting until the next biennial inspection.

This Annual Report summarizes findings of hazards from the OOC inspections for the 111th Congress. In last year's annual report, the inspections were not yet completed because the OOC

inspections are conducted on a calendar year rather than a fiscal year basis. Thus, the OOC projected, based on abatement patterns and reduction rates in prior years, that the OOC's inspectors would find 6,300 hazards. The OOC is pleased that the actual hazards totaled approximately 5,400, demonstrating the degree to which workplace safety is becoming part of the culture of the Legislative Branch. Biennial OSHA inspection reports are available on our website at www.compliance.gov. The report for the 111th Congress will be available later this year.

The CAA allows Congressional employees, employing offices, and bargaining unit representatives of covered employees to request that the General Counsel of the OOC inspect and investigate places of employment for violations of safety and health laws. These are called "requestor-initiated inspections."

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

Danger Levels: Ranking Each Hazard By Risk Assessment Code (RAC)

The OOC ranks hazards according to risk utilizing categories implemented by Department of Defense Instruction 6055.1. Given the finite financial resources available for abating hazards, these rankings help Congressional members and employing offices understand which safety and health hazards should be abated first because they pose a higher potential risk. These categories are called "Risk Assessment Codes" or RACs.

OOC inspectors assign a RAC to each hazard encountered during the biennial inspection. The RAC describes the relative risk of injury, illness, or premature death that could result from exposure to the hazard. RACs vary from RAC 1 for high risk hazards to RAC 4 for the lowest level of risk. A RAC is determined by using a combination of two factors: (1) the probability that an employee could be hurt; and (2) the severity of the illness or injury that could occur.

► Safety Risk Assessment Code (RAC) Matrix

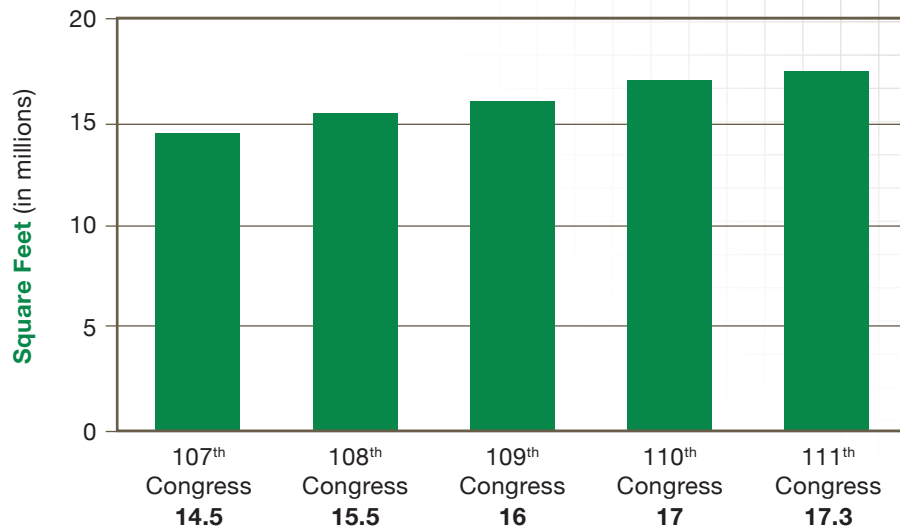
Probability Categories	Hazard Severity Categories →				
	I	II	III	IV	
Likely to occur immediately (A)	RAC 1	RAC 1	RAC 2	RAC 3	<ul style="list-style-type: none"> • Severity Category I: Death or permanent total disability • Severity Category II: Permanent partial or temporary total disability; off work more than 3 months • Severity Category III: Lost workday or compensable injury • Severity Category IV: First aid or minor supportive medical treatment
Probably will occur in time (B)	RAC 1	RAC 2	RAC 3	RAC 4	
Possible to occur in time (C)	RAC 2	RAC 3	RAC 4		
Unlikely to occur (D)	RAC 3	RAC 4			

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

In November 2010, the OOC completed the inspections of the 111th Congress. The OOC will release the findings in the Bien-

ennial Report on Occupational Safety and Health Inspections later this year. The biennial inspection of the 111th Congress covered roughly 96% of the 18 million square feet of space occupied by Congress and other Legislative Branch facilities in the Washington, DC Metropolitan Area, including facilities in Maryland and Virginia.

► **Increase in Area Inspected by the OOC**

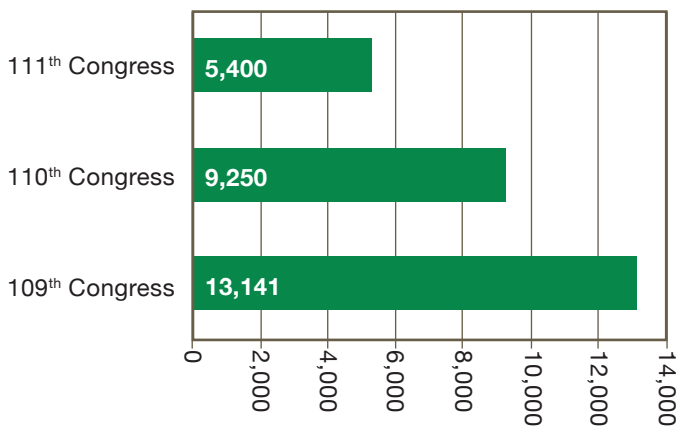


Safety and Health Inspection Trends Analysis

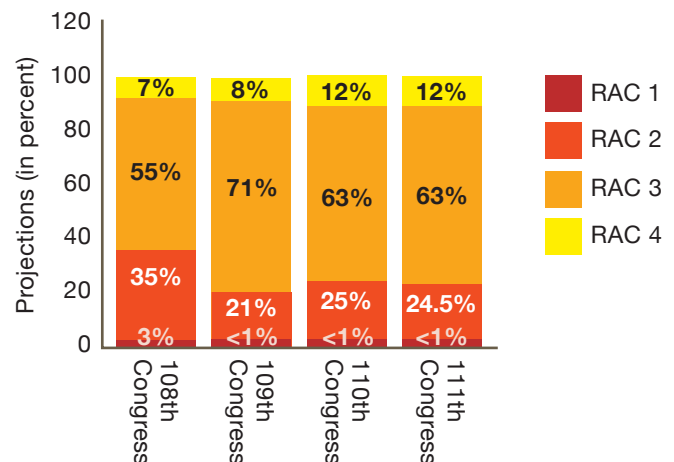
The OOC found 5,400 hazards in the Congressional workplace in the biennial inspection for the 111th Congress, a significant reduction of approximately 42% compared to the biennial inspection of the 110th Congress, during which 9,250 hazards were identified.



► **Number of Hazards per Congress**



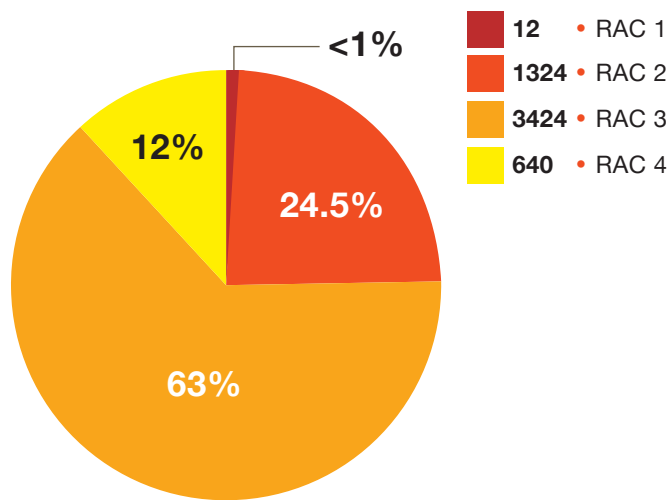
► **Distribution of RACs Over Time**



While there was a substantial reduction in the number of hazards found in the Congressional workplace during the 111th Congress inspections, roughly 25% of the hazards were classified as “high risk”, which have the potential to cause death or serious injury to occupants and/or have a very high likelihood of a less serious injury if not abated. High risk hazards are categorized as RAC 1 and RAC 2.

In the 111th Congress, 12 hazards, which represents less than 1%, were RAC 1, the highest risk hazards in the Congressional workplace. Approximately 25% of the hazards were RAC 2, representing 1,324 hazards, most of which were electrical. Left unabated, these RAC 1 and RAC 2 hazards pose a substantial continuing danger to lawmakers, their employees, and their visitors.

► Total Hazards By Level of Risk

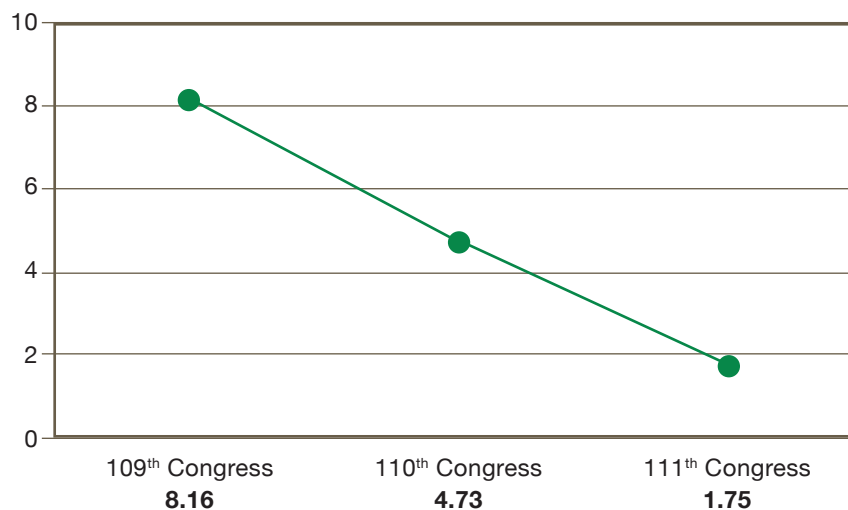


The increased breadth and scope of the OOC's biennial inspections over the past several years proved to have a significant impact on the reduction of hazards in the Congressional workplace. With the hazards identified, Congressional Members and employing offices moved to abate them. The dramatic reduction in the number of safety and health hazards was due in large measure to an increased emphasis on workplace safety by Congressional Members and employing offices. A significant amount of credit for the reduction in workplace hazards must be given to Senate and House Employment Counsel, the Architect of the Capitol, and the Chief Administrative Officer of the House. They instituted new pre-inspection processes in their jurisdictions following the 109th Congress biennial inspection and those pre-inspections had a substantial impact on abating hazards prior to the 111th inspection. The pre-inspection approach included accompanying safety and health professionals on visits to offices in the Senate and House, notifying Congressional staff of hazards commonly found in such spaces, and encouraging staff to look for and correct hazardous conditions prior to the OOC inspections. As a result of such efforts, there were only half the number of hazards in Congressional Member and Committee offices as were in the



preceding Congress. As shown in the graphic below, the average number of hazards identified in Member Offices declined from 8.16 in the 109th Congress to 1.75 in the 111th Congress. Furthermore, 154 Members had hazard-free offices. Nevertheless, 70% of the 535 Members of Congress still have safety and health hazards in their offices.

► Average Number of Hazards Identified in Member Offices

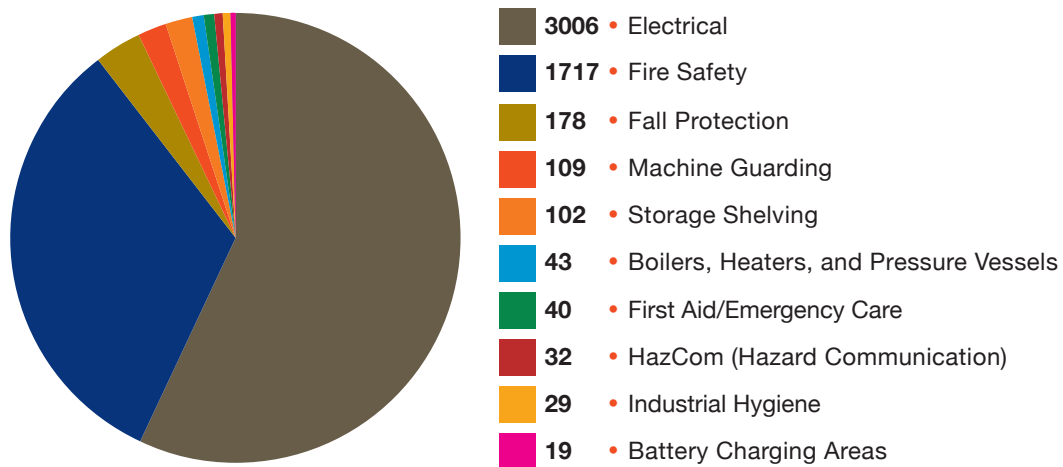


Most Common Hazards in the Congressional Workplace

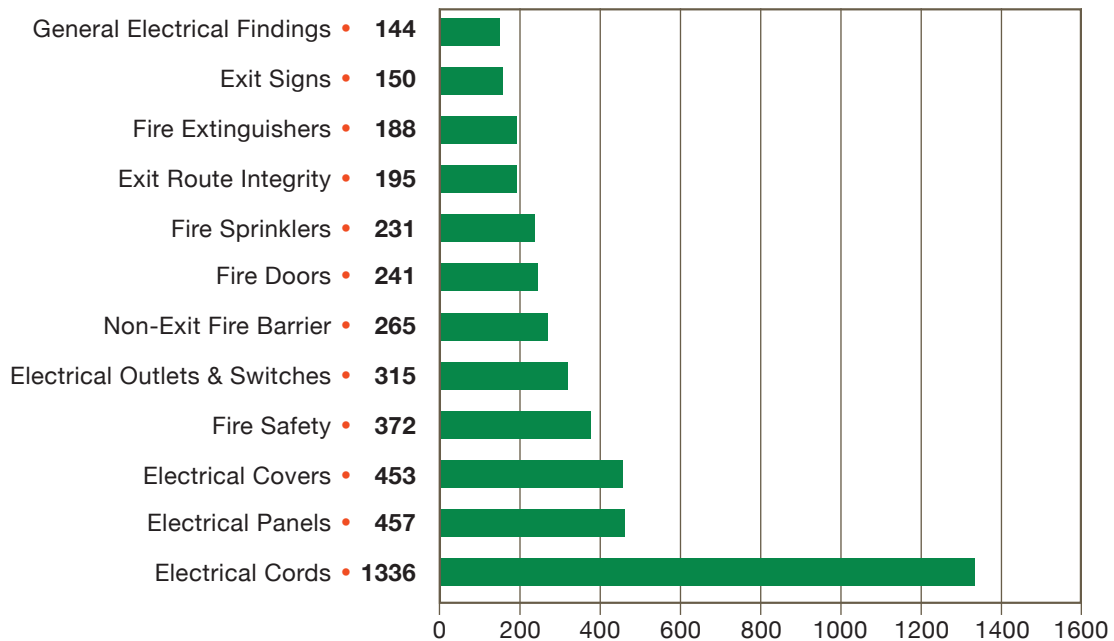
The OOC found that electrical, fire safety, and fall protection threats were the most common hazards identified during the 111th Congress.

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

► Top Ten Most Frequently Discovered Hazards in the 111th Congress



► Breakdown of Top Two Categories (Electrical and Fire Safety)



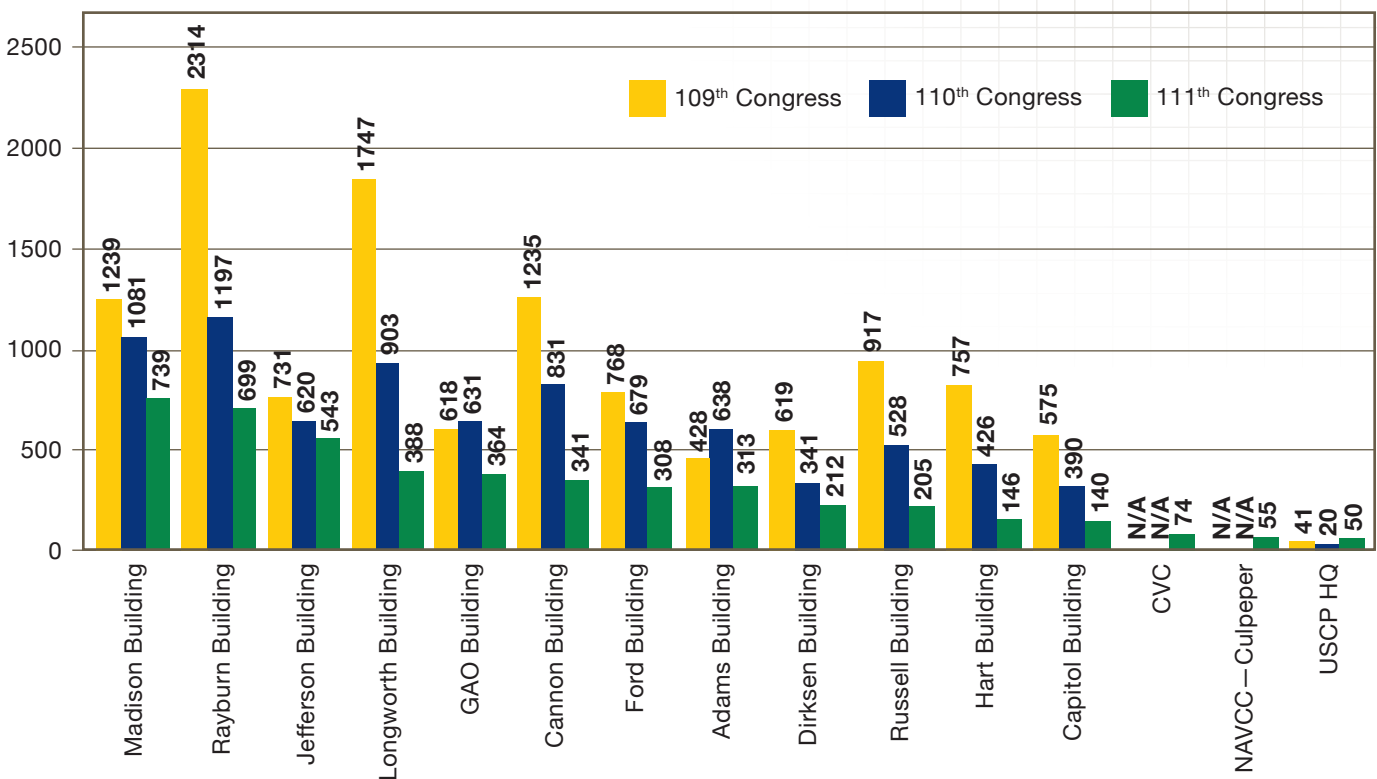
Hazards by Legislative Branch Building

In the 111th Congress, the highest number of safety and health hazards were located in the largest buildings in the Legislative Branch, i.e., James Madison Memorial Building (739), Rayburn House Office Building (699), Thomas Jefferson Building (543), and Longworth House Office Building (388). But the James Madison Memorial Building

had 41% fewer hazards in the 111th Congress than in the 109th Congress, a reduction of 510 hazards. Substantial reductions also occurred in the Rayburn, Cannon, and Longworth House Office Buildings.

The graph below illustrates further progress in the reduction of hazards during the 111th Congress in almost all buildings.

► **Comparison of Hazards by Building**



*Not available (N/A) information because building had not been inspected.

DID YOU KNOW?

The United States Government Accountability Office (GAO) is a non-partisan, independent agency that advises Congress and the Executive Branch about ways to make government more effective, efficient, ethical, equitable, and responsive. GAO was founded in 1921 because federal financial management was in disarray after World War I. Wartime spending had driven up the national debt, and Congress saw that it needed more information and better control over expenditures. GAO's role has been expanded over the years, as the Federal Government often looks to the agency for analysis and advice on issues critical to the public.

Hazards by Entity

Inspections found 3 RAC 1 hazards in the House during the 111th Congress, while the Senate had 2 RAC 1 hazards. All the RAC 1 hazards are fire hazards that remain unabated. The Library of Congress has 4 RAC 1 hazards. All three entities abated substantial numbers of RAC 2 hazards, which were mostly electrical.

Update on the Capitol Power Plant Utility Tunnel Complaint

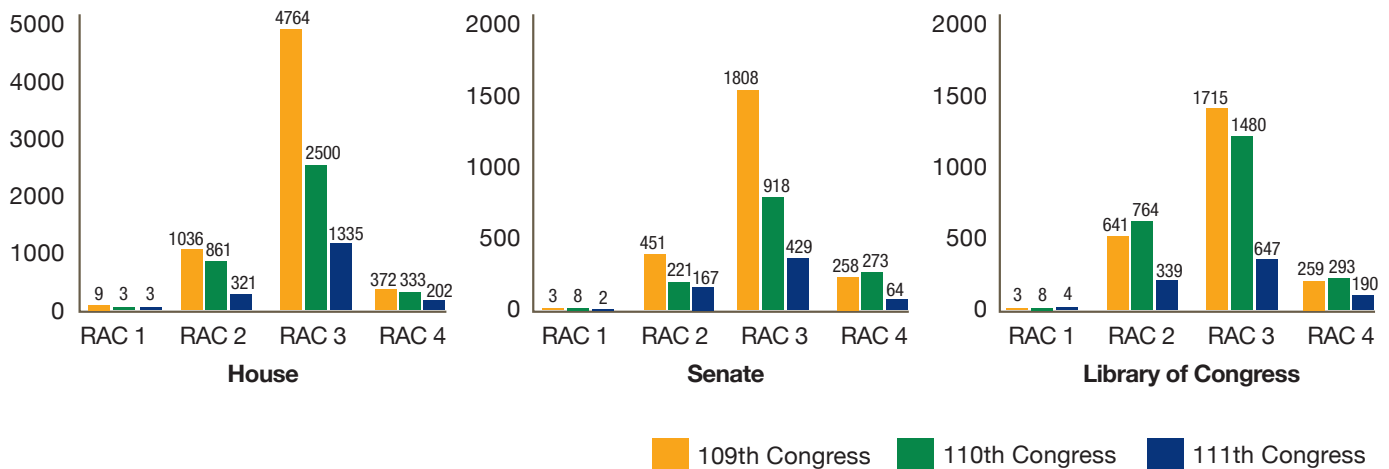
In February 2006, the OOC General Counsel filed the first-ever formal complaint regarding potentially life-threatening conditions in the U.S. Capitol Power Plant utility tunnels. The complaint alleged that the Office of the Architect of the Capitol (AOC) had failed to correct citations, one dating back to 2000, relating to falling concrete, severe heat stress involving temperatures up to 160°F, exposure to asbestos-

containing materials, lack of a reliable communications system to enable monitoring the status of employees working in the tunnels, and insufficient egress points in the tunnels to assure prompt rescue of workers in emergency situations.

A comprehensive settlement was approved in June 2007 by an independent hearing officer and the Executive Director of the OOC. It requires the AOC to abate all high risk (RAC 1 and RAC 2) hazards in the tunnel system by 2012. Further, it mandates regular inspections and quarterly reports by the AOC, and monitoring by the OOC.

During the 111th Congress, our monitoring revealed significant progress in reducing hazards by means of egress installation, concrete and structural improvements, ventilation system installation, and electrical and lighting upgrades. However, some work remains. Many projects are underway

► Hazards by Entity



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

for work to be performed during the 112th Congress, including egress installations and upgrades, continuing concrete removal, signage installation, and inspection program development and implementation. The work required to fulfill the requirements of the settlement has been funded and obligated. The OOC anticipates that the necessary work can be completed before June 2012.

Requestor Initiated Inspections

The 111th Congress saw a continued reduction in the number of inspections requested by covered employees—another indicator of safety and health improvements in the Legislative Branch. Under the CAA, covered employees, employing offices, and bargaining unit representatives of covered employees may request the General Counsel to inspect and investigate places of employment under the jurisdiction of employing offices to ascertain whether there are violations of the OSHA Act. Upon receipt of such requests, the OOC conducts inspections pursuant to these allegations, and when hazards are found to exist, the General Counsel issues a report and directs that appropriate abatement be made by the employing office responsible for correction of the violation. The inspector also may make recommendations based upon “best practices” used in the private sector which, while not required to be followed, would enhance the level of safety and health in Legislative Branch facilities. The employing office may submit comments, agree to abate the hazard, or contest the findings. In the vast majority of cases where a hazard is found, the employing office agrees to abatement. Apart from biennial inspections, these requests are the single most important source of information to the OGC concerning health and safety violations, since they are most often filed by employees who are familiar with, or exposed to, hazardous conditions in the Legislative Branch.

The OOC received sixteen requests for inspection of occupational safety and health issues during the 111th Congress. Often, more than one employing office was named in a given case. As the office responsible for maintaining facilities for the majority of Legislative Branch offices, the Office of the Architect of the Capitol was named in ten cases. The Library of Congress and the United States Capitol Police were named in five and four requests respectively. Half of the cases opened during the 111th Congress have already been closed. Of the remaining cases, most are near to closure, and one case awaits sufficient funding to undertake asbestos and lead abatement.



The potential hazards that the OOC was asked to inspect covered a broad range. Some requests involved hazards not often seen in the private sector, such as emergency communications challenges in security-sensitive areas and an injury caused by a collapsing security barrier. Others asserted more common safety and health concerns, such as insufficient safety equipment and procedures for concrete demolition, poorly maintained powered industrial trucks, and employee complaints regarding exposure to extreme heat and cold. The OOC will continue to address these issues thoroughly and efficiently in order to ensure that Legislative Branch employees’ jobs and workplaces are safe and hazard-free.

III. PARITY GAP ANALYSIS: CONGRESSIONAL EMPLOYEES SHOULD HAVE THE SAME OSHA Act PROTECTIONS AS PRIVATE SECTOR EMPLOYEES AND EMPLOYEES IN THE EXECUTIVE BRANCH

When enacting the occupational safety and health provisions of the CAA, Congress did not include all provisions of the OSHA Act that apply to the private sector and other parts of the public 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 passing this statutory provision to apply to the private sector, subpoena authority for an investigatory agency saves time and money by encouraging voluntary and timely cooperation by an employer with an investigating 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 the protections under the OSHAct 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.

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 record-keeping requirement should be included in that legislation because “the Federal government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries, illnesses, and deaths.” 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 saves time and money by providing information to the OOC and the employing office about injuries and/or illnesses that can then be used to develop and assess the effectiveness of measures taken to protect safety and health. Such records 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, and thus reduce injuries and associated costs.

The Board of Directors recommends that covered Legislative Branch employing offices be required to keep and provide safety and health records to the General Counsel of the OOC consistent with the requirements of the 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

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

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.

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.

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 will 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.



“IT IS IMPORTANT that we show the American people that we are in no way above the law and that we are not afraid to live under the same laws we impose on the public.”

— Representative Karen Thurman (FL-5), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995.

SECTION HIGHLIGHTS

- ▶ One-fifth of Americans live with disabilities and deserve access to their elected officials, Congressional services and accommodations
- ▶ Lack of OOC resources and further budget cuts will limit ADA inspections and may bring ADA inspections of the Capitol Campus to a halt
- ▶ New regulations from the Department of Justice will affect the Legislative Branch
- ▶ New construction is not eliminating barriers for the disabled as it should



state of access to

PUBLIC SERVICES & ACCOMMODATIONS



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

GUARANTEED ACCESS

Persons with disabilities are guaranteed access to public services and accommodations provided under the Congressional Accountability Act (CAA), which applies Titles II and III of the Americans with Disabilities Act (ADA) to the Legislative Branch. Failure to provide access within the meaning of the ADA is discrimination under the law.

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

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

WHICH LEGISLATIVE BRANCH OFFICES MUST PROVIDE ACCESS?

The following Legislative Branch offices are required to provide access under the CAA¹:

- Each Committee;
- Each Joint Committee;
- Each office of the House;
- Each office of 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

WHICH PLACES IN LEGISLATIVE BRANCH FACILITIES MUST BE ADA ACCESSIBLE?

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

Under Title III, Legislative Branch offices must provide access to places of public accommodation. Guidance for interpreting the phrase “places of public accommodation” can be found in the regulations promulgated by the Department of Justice that are the basis for the regulations and interpretations issued under the CAA. See CAA §§ 210(e)(2) & 411; 2 U.S.C. §§ 1331(e)(2) &

DID YOU KNOW?

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

¹ The Government Accountability Office, the Government Printing Office and the Library of Congress are required to provide access under § 509(6) of the ADA, 42 U.S.C. § 12209(6).

PUBLIC SERVICES & ACCOMMODATIONS

1411. Under 28 C.F.R. § 36.104, “a place of public accommodation” is a facility which provides the following:

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

WHAT DOES ACCESSIBILITY MEAN?

Under the ADA, access means three things:

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

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

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

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

- ▶ **PHYSICAL ACCESS.** Physical access to an accommodation or a service will often require removal of structural barriers. Structural barriers can include manually operated doors, narrow doorways, stairs without ramps, sidewalks without curb cuts, and other obstacles to physical access. The regulations regarding removal of structural barriers are different depending upon whether the barrier exists in an existing building or in new construction. For the distinction, see the following section on “What Are Structural Barriers?”

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

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

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



WHAT ARE STRUCTURAL BARRIERS?

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

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

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

WHERE ARE THE MOST COMMON BARRIERS?

Generally, the most common barriers can be found:

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

THE CHALLENGES WITH HISTORICAL BUILDINGS

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

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

II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: COST-EFFECTIVE SOFTWARE USED BY THE OOC WILL TRACK AND PRIORITIZE BARRIERS AND THE OOC WILL FOLLOW AND ENFORCE NEW DEPARTMENT OF JUSTICE ADA REGULATIONS

COST-EFFECTIVE ADA SOFTWARE ACQUIRED AND NEW ADA INSPECTION PROCESS IMPLEMENTED

Prior to this report being finalized, the OOC conducted and completed in fiscal year 2011 its ADA inspections for the 111th Congress. Some information from that inspection is included here. The full inspection report will be finalized and released in fiscal year 2012. During the 111th Congress, ADA inspections focused on improving access to facilities. In an effort to identify accessible routes for individuals with disabilities and to otherwise encourage improvement of exterior accessibility features, the OOC began a comprehensive survey of sidewalks, curb cuts, and ramps. During fiscal year 2011, the exterior accessibility features of the House office buildings were surveyed. Resources permitting, the OOC will extend this survey to other areas of the campus.

Because the ADA requires strict compliance with the ADA Accessibility Guidelines during new construction, during fiscal year 2010, the OOC also worked toward completing a comprehensive pre-inspection of the Capitol Visitor Center (CVC) that was commenced prior to the CVC’s opening. During this pre-inspection, the OOC worked cooperatively with the AOC to identify and remove barriers to access that

DID YOU KNOW?

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

PUBLIC SERVICES & ACCOMMODATIONS

needed to be addressed in the new construction. The OOC hopes to continue to work cooperatively with the AOC during the design phase of future construction projects to help ensure that barriers to access are sufficiently addressed in the renovation plans. The OOC also hopes to continue to work with the covered offices to improve access (within existing budget constraints) by helping to identify and prioritize access projects. The overall goal is to provide the most access at the least cost. The OOC believes that with sufficient resources, and continued support from the covered offices, this goal is achievable.

During fiscal year 2010, the OOC continued to provide educational programs and technical assistance in matters relating to ADA access. The OOC anticipates that access to services and accommodations will continue to improve as knowledge and awareness of the ADA access requirements increase.

ADA SOFTWARE HELPS IDENTIFY BARRIERS, ASSESS THEIR SEVERITY AND PROVIDE COST-EFFECTIVE SOLUTIONS FOR THEIR REMOVAL.

In fiscal year 2009, the OOC conducted a comprehensive review of its ADA inspection program. Based on this review, the OOC determined that the program would benefit by implementing the approach to ADA compliance used by most public and private organizations covered by the ADA. This approach involves surveying all facilities to: (1) identify the barriers to access; (2) assess the severity of each barrier to quantify the need for removal; and (3) evaluate potential solutions to the barriers based upon cost and need. In fiscal year 2010, the OOC entered into a public-private partnership with Evan Terry Associates, P.C. (ETA) to implement such a barrier-removal survey approach to the Capitol Hill campus.

ETA, a well-known and respected ADA surveying company, partnered with the OOC to share services. One of the OOC's contract workers performed ADA surveys for ETA in exchange for allowing the worker to acquire and hone the skill and knowledge needed to perform surveys with the software with little or no cost to the OOC. The OOC was then able to obtain licensing rights to use the ETA software at little cost. By acquiring, installing, and implementing the ADA survey software developed by ETA, the OOC is now able to provide enhanced reports regarding the barriers to access on the Capitol campus. These reports identify barriers to access based upon how existing elements deviate from the ADA Standards for Accessible Design, assess the severity of each barrier, propose solutions to barriers, estimate the costs of

solutions, track photos depicting each barrier, and track the status of steps taken to implement solutions to the barrier.

During October 2009, the OOC hosted a meeting with the employing offices on Capitol Hill to introduce the ETA software. ETA provided a live demonstration of the software and used it to conduct an inspection of several areas on the campus. ETA representatives were available to answer questions and provide information. The OOC understands that, subsequent to this presentation, the AOC also conducted its own review of ADA barrier removal reporting systems and concluded that the ETA survey process and software was the best system available.

NEW ADA INSPECTION PROCESS

In an effort to make the most of our limited inspection resources, the OOC will be focusing future ADA inspections on the areas of most concern to members of the public. To address these areas of concern, the OOC has 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. Our anticipated inspection and reporting process for each of these components is described below.

Evaluating Accessible Paths and Entrances to Buildings

When evaluating accessibility, the first question that is usually asked is whether people with disabilities can get to and into the facilities where programs, services and activities are being provided. This involves assessing the accessible pathways between public transportation drop-off points and entrances, as well as the entrances themselves. The OOC's regularly scheduled ADA inspections will focus on this aspect of accessibility. The 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 will be included in our biennial reports to Congress together with any responses the OOC has received from the employing offices.

Evaluating New Construction and Alterations Affecting Accessibility

One of the key features of improving access under the ADA 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 construc-

tion and alterations merely create new barriers. The OOC continues to look for ways to work with the AOC to improve compliance with the ADA standards when alterations and new construction are being designed and built. The OOC continues to offer technical guidance and training regarding what the ADA accessibility standards require. The OOC hopes to focus upon how this assistance can be provided in an orderly and systematic fashion. This can include getting people with disabilities involved in transition planning. Given the importance placed upon new construction and alterations in the ADA, during the 112th Congress, if resources permit, the OOC plans to conduct inspections of new construction and alterations affecting accessibility. Findings regarding new construction and alterations affecting accessibility will be included in the OOC's biennial reports to Congress together with any responses we have received from the employing offices.

Evaluating Areas Identified in Requests for Inspection

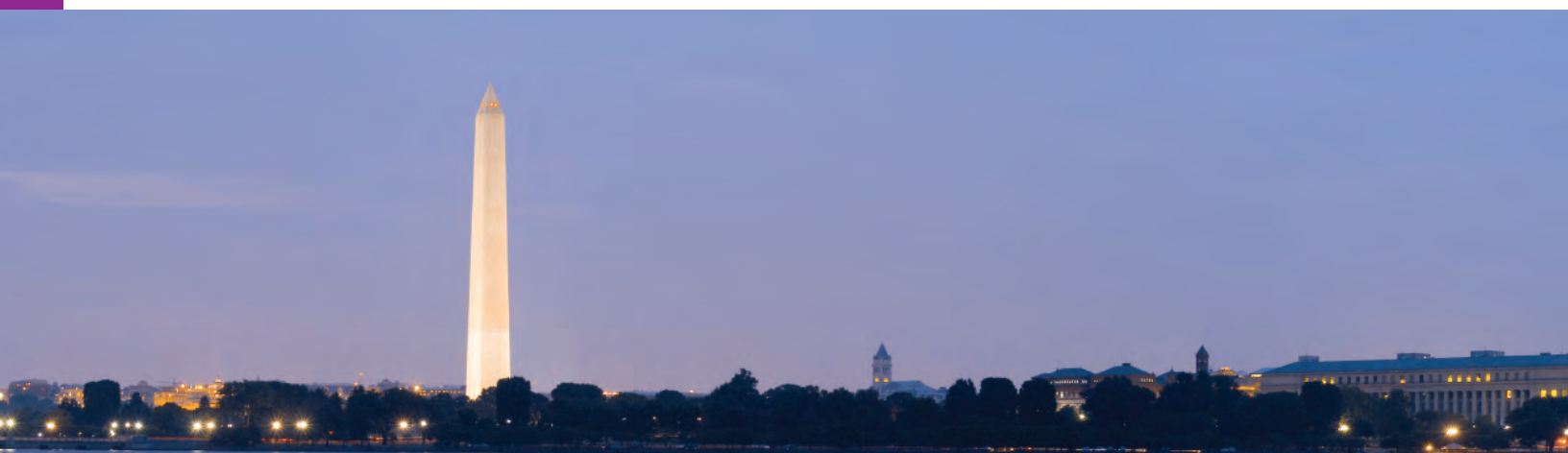
A sensible inspection process must focus on areas where people are encountering access problems. To focus attention in these areas, the OOC will be processing requests for inspection regarding accessibility problems in a manner similar to the way the OOC handles requests for an OSH inspection. Any person who encounters an accessibility problem on the campus or in an off-campus Legislative Branch facility can file a request for an ADA inspection with the OOC. The request can

be made anonymously. 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 employing office(s) in the same manner that OSH requests are served. The OOC then 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. Findings made during these inspections may be included in our biennial reports to Congress together with any response we have received from the employing offices.

Evaluating Potential Barriers Observed by OSH Inspectors During Biennial OSH Inspections

The final component of the ADA inspection process concerns those barriers observed by OSH inspectors during biennial OSH inspections. All OSH inspectors have had some training regarding the ADA accessibility guidelines and are instructed to note any obvious ADA problems that are observed while conducting an OSH inspection. The OOC anticipates that these barriers will involve such problems as inoperable ADA features (malfunctioning door openers and similar problems), blockage of or inadequate signage, lack of accessible pathways, protruding

DID YOU KNOW? Congress and the Legislative Branch occupy approximately 18 million square feet of property in the Washington, DC Metropolitan Area alone. Congress also occupies building space in each of the 50 states and U.S. territories.



PUBLIC SERVICES & ACCOMMODATIONS

objects, or other easily observable barriers. Depending upon the severity and type of barrier, 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 lead to a more comprehensive ADA inspection which will be separately scheduled with the AOC and/or the employing office responsible for the barrier.

RESOURCE CHALLENGES

Although the OOC has developed a comprehensive plan to conduct ADA inspections in a cost-effective way that will actually save taxpayers money, given current budgetary constraints, it is unlikely that much of this plan will be fully implemented in fiscal year 2012. Inspections are performed by the same staff conducting OSH inspections, which due to ongoing safety and health concerns, are given a higher priority within the OOC. This means that ADA inspections are only conducted when resources permit. Because resource constraints have forced the OOC to reduce the number of OSH inspectors, there is very little time left for the ADA compliance program.

Failure to comply with the ADA's requirements during new construction or alterations can lead to very expensive errors that can cost taxpayers thousands, if not millions, of dollars to correct. Unless designers and construction contractors are aware of what the ADA requires, they cannot design and construct in accordance with the ADA Standards for Accessible Design. The first step to an effective ADA barrier removal program is to stop creating new barriers in new construction. Meeting this first step continues to be a challenge in the Legislative Branch. For example, when the OOC conducted an inspection of the newly remodeled restrooms in the Adams LOC Building during late FY 2009 and

early FY 2010, it found that many of the newly installed fixtures did not comply with the ADA Standards for Accessible Design. The OOC was able to discover the errors after only 25 % of the restrooms had been remodeled and the AOC was able to respond by making appropriate changes prior to the actual construction of the remaining restrooms. The OOC has also seen similar errors when conducting surveys of recently constructed ramps, curb ramps, and sidewalks. For the most part, these errors are occurring due to lack of knowledge regarding the specific requirements of the ADA Standards. The OOC continues to work with the AOC and the other employing offices to provide technical advice prior to construction as 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.

NEW ADA REGULATIONS WILL IMPACT LEGISLATIVE BRANCH

On July 23, 2010, U.S. Attorney General Eric Holder signed final regulations revising the Department of Justice's ADA regulations, including its ADA Standards for Accessible Design. These regulations were published in the Federal Register on September 15, 2010. The revised regulations amend Title II regulation, 28 C.F.R. Part 35, and the Title III regulation, 28 C.F.R. Part 36. The OOC will administer the new ADA regulations in the Legislative Branch. The regulations became effective on March 15, 2011. On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations. The OOC anticipates that the regulations will impact any remodeling or new construction of Congressional facilities that occurs after March 15, 2012.



2010 STANDARDS FOR ACCESSIBLE DESIGN

Below are some highlights of the regulations on the 2010 Standards for Accessible Design and what types of facilities within the Legislative Branch they will impact:

	Standard	Legislative Branch Accommodations and Services that will be Affected
Detention and Correctional Facilities (Sections 232, 807)	At least one of each type of general holding cells, general housing cells, medical care facilities, and visiting areas must be accessible. In addition, at least one of each type of special holding cells or special housing cells also must be accessible. Also, at least one of each type of central holding cells, court-floor holding cells, and visiting areas in a judicial facility must be accessible. 3% of newly constructed or altered cells must be accessible.	Any new construction or alterations to USCP detention facilities that occurs after March 12, 2012.
Reach Range Requirements (Section 308)	The reach range requirements have been changed to provide that the side reach range must now be no higher than 48 inches (instead of 54 inches) and no lower than 15 inches (instead of 9 inches). The side reach requirements apply to operable parts on accessible elements, to elements located on accessible routes, and to elements in accessible rooms and spaces.	Any new construction or alteration to facilities occurring after March 12, 2012.
Water Closet Clearances in Single User Toilet Rooms (Sections 603, 604)	In single-user toilet rooms, the water closet now must provide clearance for both a forward and a parallel approach and, in most situations, the lavatory cannot overlap the water closet clearance. The in-swinging doors of single use toilet or bathing rooms may swing into the clearance around any fixture if clear floor space is provided within the toilet room beyond the door's arc.	Any new construction or alteration to facilities occurring after March 12, 2012.
Assembly Areas (Sections 221, 802)	The design requirements for assembly areas have been revised to provide more specific guidance about the appropriate vertical and horizontal dispersion of accessible seating, sightlines over standing spectators, and the provision of companion seating. In addition, lawn seating areas and exterior overflow areas without fixed seats must now connect to an accessible route.	Any new construction or alteration to facilities occurring after March 12, 2012.

PUBLIC SERVICES & ACCOMMODATIONS



	Standard	Legislative Branch Accommodations and Services that will be Affected
Common Use Circulation Paths in Employee Work Areas (Sections 203.9, 206.2.8)	Under the 1991 Standards, it was necessary to design work areas to permit an employee using a wheelchair to approach, enter, and exit the area. Under the 2010 Standards, it will be necessary for new or altered work areas to include accessible common use circulation paths within employee work areas, subject to certain specified exceptions.	Any new construction or alteration to facilities occurring after March 12, 2012.
Location of Accessible Routes (Section 206)	All accessible routes connecting site arrival points and accessible building entrances now must coincide with or be located in the same general area as general circulation paths. Also, where a circulation path is interior, the required accessible route must also be located in the interior of the facility.	Any new construction or alteration to facilities occurring after March 12, 2012.
Location of Accessible Routes to Stages (Section 206)	In situations where a circulation path directly connects a seating area and a stage (either a permanent or temporary stage), both title II and title III entities must now provide an accessible route that directly connects the accessible seating and the stage. However, where a direct circulation path from the seating area to the stage does not exist, a direct accessible route need not be constructed. This provision is in addition to the pre-existing requirement to provide an accessible route to connect the accessible seating and the stage and other ancillary spaces used by performers.	Any new construction or alteration to facilities occurring after March 12, 2012.
Direct Access Entrances from Parking Structures (Section 206)	Where levels in a parking garage have direct connections for pedestrians to another facility, all of these direct entrances must now be accessible.	Any new construction or alteration to facilities occurring after March 12, 2012.

OTHER DOJ ADA REGULATIONS

Service Animals

The new regulation defines “service animal” as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The rule states that:

- Other animals, whether wild or domestic, do not qualify as service animals.
- Dogs not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals.
- Individuals with mental disabilities who use service animals trained to perform a specific task are protected.

Trained miniature horses, as alternatives to dogs, may be used, subject to certain limitations, but miniature horses are not included in the definition of “service animal.”

Wheelchairs & Other Power-Driven Mobility Devices

The new regulation adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and “other power-driven mobility devices.” “Other power-driven mobility devices” include a range of devices not designed for individuals with mobility impairments

(such as the Segway® PT), but which are often used by individuals with disabilities as their mobility device of choice. Wheelchairs (and other devices designed for use by people with mobility impairments) must be permitted in all areas open to pedestrian use. “Other power-driven mobility devices” must be permitted to be used unless the covered entity can demonstrate that such use would fundamentally alter its programs, services, or activities, create a direct threat, or create a safety hazard. The rule also lists factors to consider in making this determination.

Effective Communication

The new regulation includes video remote interpreting (VRI) services as a kind of auxiliary aid that may be used to provide effective communication. VRI is an interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images. The Department of Justice has established performance standards for VRI that the OOC will administer in the Legislative Branch, and requires training for users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI system.







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appendix

APPENDIX A: ACRONYMS

Alternative Dispute Resolution: ADR

Americans with Disabilities Act: ADA

Architect of the Capitol: AOC

Capitol Visitor Center: CVC

Congressional Accountability Act of 1995: CAA

Congressional Budget Office: CBO

Congressional Management Foundation: CMF

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, 2010 to September 30, 2011.

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.
5. Secure ADA transition plans for all covered Washington, DC area buildings and facilities.



SUMMARY OF ACCOMPLISHMENTS:

During FY 2010, the OOC began developing a plan to target for inspection those workplaces and operations that present the highest potential occupational safety and health risks to Legislative Branch employees. The OOC consulted with staff from the OOC's oversight and appropriations committees, as well as employing office representatives, employees, and unions representing covered employees, in order to prepare a program of risk-based inspections to commence in the 111th Congress. The OOC intends to include RAC 1 and RAC 2 hazards in the high-risk areas to be inspected as part of the statutorily-mandated biennial inspection process. Once the OOC has identified the hazards, the OOC will continue working with employing offices to ensure their prompt abatement.

The OOC continued to post monthly *Fast Facts* on the OOC's website in order to provide informal, readily-accessible guidance to members of the covered community on relevant safety and health topics. The OOC also sponsored quarterly meetings of the OSH/ADA Working Group that offered more in-depth information on appropriate subjects, including Safety and Health Issues for an Aging Workforce and an update on the new ADA Public Access Guidelines published by the U.S. Department of Justice. The OOC also provided technical assistance to employing offices that sought guidance on such subjects as injury and illness prevention and lockout/tagout programs. The OOC anticipates that budget cuts may limit the OOC's efforts in these areas in future fiscal years.

The OOC continued discussions with employees, union representatives and employing office staff regarding ADA public access issues. The OOC worked successfully with the nation's premier public access inspection firm to obtain state-of-the-art software for conducting public access inspections. As resources permit, the OOC will identify barriers to access in the Legislative Branch, and will work with stakeholders to develop transition plans to remove these barriers and otherwise provide access to Legislative Branch facilities for all.

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:

In FY 2010, the OOC worked to improved utilization of a new case tracking system to enhance reporting functionality, to spot trends, and to improve allocation of services. The OOC engaged in continuing education for staff provided by the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, DC Bar, and various employment law practitioner conferences. The OOC developed a Memorandum of Understanding with related Federal agencies to obtain professional services at a significant cost savings to the OOC (Federal Mediation & Conciliation Service, Merit Systems Protection Board), and utilized a non-reimbursable detailee from a Federal agency to support the work of the Board of Directors.

Additionally, the OOC conducted training for Congressional staff on discrimination and sexual harassment. The OOC interacted with Legislative Branch offices on employment law issues, including participating in the "State of Diversity on the Hill" and the House Safety Fair, and provided training to Legislative Branch offices concerning the application of the CAA and the OOC's procedures. The OOC actively participated as a member of the Legislative Branch Diversity Council. The OOC also coordinated and hosted quarterly meetings of the Legislative Branch Employment Dispute Resolution Council, briefed foreign dignitaries on the CAA and the OOC's administrative responsibilities, and provided local media outlets, including The Washington Post, Roll Call, The Hill, and Politico, with information on the CAA's protections and the application of the OOC's Procedural Rules.

In FY 2010, the OOC conducted a representation election among Visitor Assistants and Capitol Guides of the Capitol Visitor Center, and certified a labor organization as the representative of the employees for purposes of collective bargaining.

The OOC was diligent and actively pursued Congressional approval of the Board's substantive regulations for the implementation of the VEOA. The OOC began development of recommendations for amendments to the OOC's Proce-

dural Rules based on the OOC's experience in implementing the provisions of the CAA. Additionally, the Board of Directors issued three decisions in matters on appeal from a hearing officer decision, further clarifying the application of the rights of Legislative Branch employees.

Finally, the OOC developed procedures for obtaining interpretive services for people with disabilities and created a referral list of Executive Branch agencies for issues not covered by the CAA.

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:



FY 2010 was a very busy year for the OOC. The OOC continued its grassroots efforts to reach Members of Congress and their staff. The OOC engaged committee staff in ongoing discussions about the OOC and the important training and educational opportunities the OOC provides to the Legislative Branch. The OOC worked alongside the Committee on House Administration to ensure that Members and staff were aware of their rights under the CAA and that the OOC was a valuable resource to them. The OOC continued its commitment to State and District staffers as well, by providing them with educational information through the Congressional Research Service State and District staff training sessions. This outreach opportunity has proved to be an extremely successful way to expand the OOC message to staffers outside the DC metropolitan area.

During the past fiscal year, the OOC also worked diligently to produce timely educational materials, such as *Fast Facts* and *fyi's*. These informational handouts serve as a great resource for keeping workplaces safe and hazard free, as well as educating employees about their rights in the Legislative Branch.

One of OOC's greatest educational accomplishments in FY 2010 was the revamping of the website, www.compliance.gov. Not only is the OOC's new website more user friendly, but it is filled with updated information, presentations, and detailed explanations of the OOC's services and workplace rights covered by the CAA.

GOAL IV:

Maximize OOC employee capability and contribution by increasing employee 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 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 FY2010, 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 2010, the OOC took steps to enhance its work environment for its staff. In the first quarter of FY 2010, the OOC created an Affirmative Action Policy and Plan. The OOC has taken its Policy Statement, posted it in a prominent place, and have appointed an Equal Employ-

ment Opportunity Coordinator to ensure compliance with the Plan. Although the OOC did not have any vacancies to fill during FY 2010, the OOC anticipates that, when there are any vacancies, the OOC will follow the Plan and ensure recruitment efforts include reaching out to minorities, women, and people with disabilities.

With the assistance of a technical consultant, the OOC formulated a strategy to develop a cost effective solution to provide for future IT growth without the need for significant additional resources. In consultation with the LOC, the OOC purchased a network switch and a firewall in order to upgrade the current equipment, increase the available connections, and protect and restrict network traffic to the network connections within the OOC. This equipment will allow the OOC to eliminate all internal network equipment and migrate onto the external LOC network for cost-savings, efficiency, and more improved telework capabilities. In addition, the OOC purchased a server and patch management software which will provide an automated method for ensuring all agency computer equipment will receive the most recent software and anti-virus updates.

The OOC met with staff of the LOC to customize e-mail accounts for the OOC, with a specific domain recognizing the OOC. Historically, LOC has maintained external email accounts for the OOC using LOC's domain: user@loc.gov. The change will allow OOC staff to have more appropriate e-mail addresses: firstname.lastname@compliance.gov and will eliminate the misperception that the OOC is a function of the Library of Congress.

Since the inception of the OOC, staff have occupied the same space in the John Adams Building of the Library of Congress. Despite the growth of staff since 1996, there had been minimal increase in the OOC's workspace. The OOC has been engaged in efforts since 2002 to acquire additional workspace for its staff. Though the option of leased space was explored and discussed, in these time of cost-savings and fiscal reductions, it is impossible for the OOC to acquire leased space to address its needs.

The OOC continued to work with our oversight committees in both the House and the Senate, as well as staff of the House and Senate Appropriations Subcommittees on the Legislative Branch. These efforts proved successful, as additional space in the Adams building was provided to the OOC as a result of meetings with Appropriations staff. Staff of the OOC worked with staff of the LOC to acquire an additional room down the hall from the main office where the OOC can arrange three additional work stations. Although the

space does not address many needs of the OOC, it does assist in temporarily providing additional work stations for staff, which was the OOC's primary and immediate need.

As with other Legislative Branch agencies, the OOC must be ready to conduct its operations off-site, should an emergency situation require the OOC to continue its operations remotely. To this end, the OOC has begun the development of a Continuity of Operations Plan (COOP). The COOP was initially drafted some years ago; however, with an increased-knowledge base in the area of emergency planning, the OOC determined that significant editing was needed and decided to redraft the COOP. As a result, the COOP now reflects a plan that is current and in line with industry standards. The COOP is still in draft form as the OOC's resources needed to finalize the COOP are also needed in other areas. Although still in draft form, the COOP provides the basics to operate and recover if an emergency incident arises.

The OOC has instituted a recycling program that has proven successful. The OOC's paper and plastic are no longer thrown away, but placed in receptacles around the office for recycling. Toners are also properly recycled and the OOC has implemented steps to reduce unnecessary printing.

In an effort to increase efficiencies, the OOC has streamlined certain administrative processes and has engaged in a campus-wide effort to share services with sister agencies. The OOC has partnered with the Department of Treasury to improve the disbursement of settlement funds. Though focused on maintaining the confidentiality of claimants, the OOC's previous system was cost-prohibitive. Implemented in FY 2010, the new method maintains the confidentiality of claimants and, during FY 2010, saved taxpayer dollars. During FY 2010, the OOC also implemented a new time and attendance system—WebTA—that is more secure, provides better information to users, is more efficient, and, as a web-based system, reduces the use of paper in the OOC. The WebTA system also contains built-in systems to allow for better internal controls for time and attendance reporting.

Working with the Legislative Branch Financial Managers Council, the Legislative Branch Procurement Group, and the Chief Administrative Officers' Council, the OOC continues to seek opportunities to share services with other agencies in the area of negotiated contract vehicles to save money and improve contracting efficiency.





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