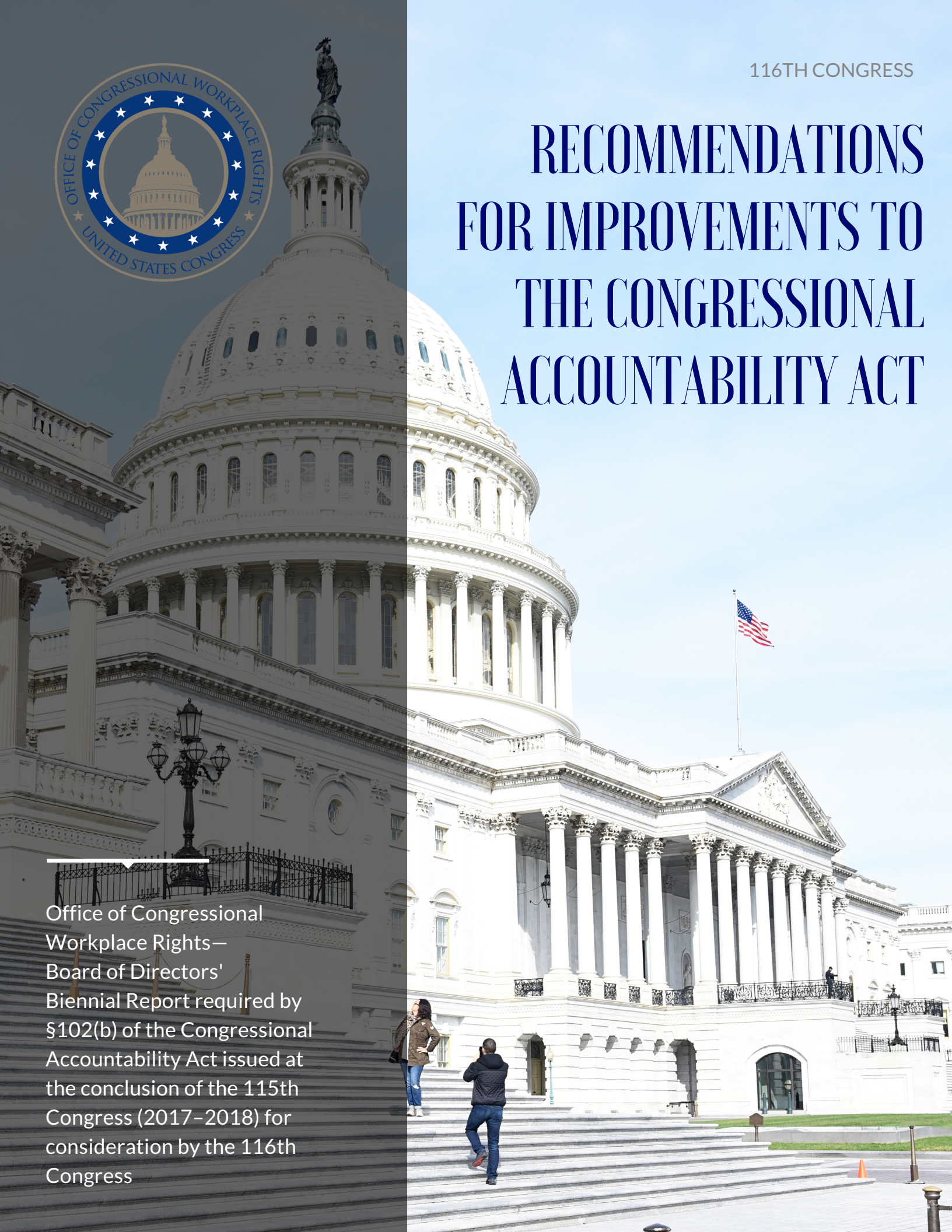


116TH CONGRESS

RECOMMENDATIONS FOR IMPROVEMENTS TO THE CONGRESSIONAL ACCOUNTABILITY ACT

Office of Congressional Workplace Rights—
Board of Directors'
Biennial Report required by §102(b) of the Congressional Accountability Act issued at the conclusion of the 115th Congress (2017–2018) for consideration by the 116th Congress

116TH
CONGRESS

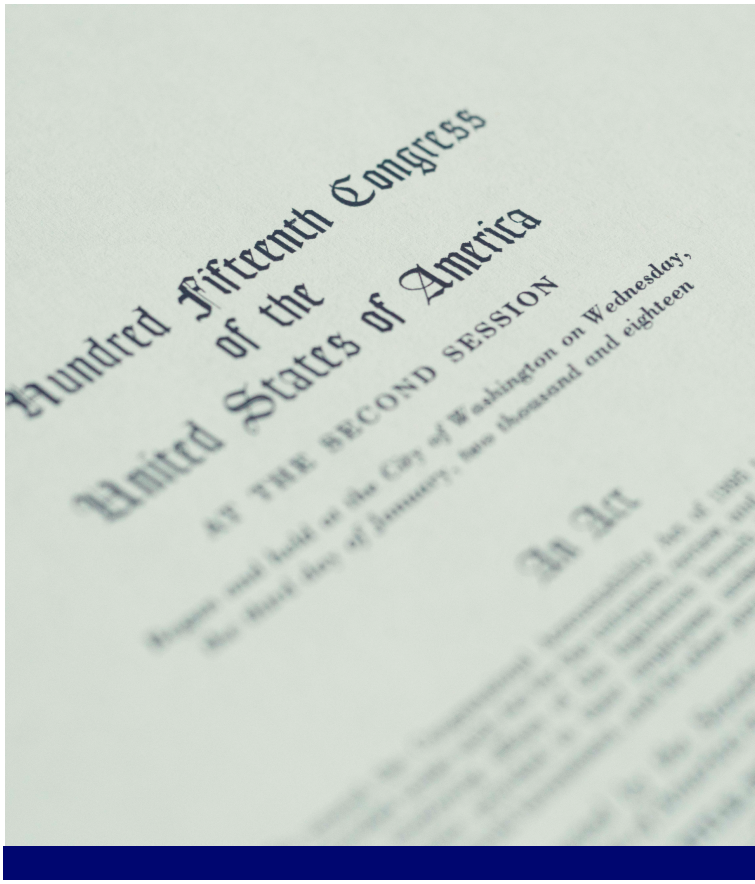
STATEMENT FROM THE BOARD OF DIRECTORS

The Congressional Accountability Act of 1995 (CAA) embodies a promise by Congress to the American public that it will hold itself accountable to the same federal workplace and accessibility laws that it applies to private sector employers and executive branch agencies. This landmark legislation was also crafted to provide for ongoing review of the workplace and accessibility laws that apply to Congress. Section 102(b) of the CAA thus tasks the Board of Directors of the Office of Congressional Workplace Rights (OCWR)—formerly the Office of Compliance—to review legislation and regulations to ensure that workplace protections in the legislative branch are on par with private sector and executive branch agencies. Accordingly, every Congress, the Board reports on:

> *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 (2B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch.*

This section of the CAA also requires that the presiding officers of the House of Representatives and the Senate cause our report to be printed in the Congressional Record and refer the report to committees of the House and Senate with jurisdiction.

On December 21, 2018, as we were in the process of finalizing our Section 102(b) Report for the 115th Congress, the Congressional Accountability Act of 1995 Reform Act, S. 3749, was signed into law. Not since the passage of the CAA in 1995 has there been a more significant moment in the evolution of legislative branch workplace rights. The new law focuses on protecting victims, strengthening transparency, holding violators accountable for their personal conduct, and improving the adjudication process. Some of the changes in the CAA Reform Act are effective immediately, such as the name change of our Office, but most will be effective 180 days from enactment, i.e., on June 19, 2019.



The CAA Reform Act incorporates several of the recommendations that the OCWR has made to Congress in past Section 102(b) Reports and in other contexts, such as in testimony before the Committee on House Administration (CHA) as part of that committee's comprehensive review in 2018 of the protections that the CAA offers legislative branch employees against harassment and discrimination in the congressional workplace. These changes include the following:

MANDATORY ANTI-DISCRIMINATION, ANTI-HARASSMENT, AND ANTI-RETALIATION TRAINING.

The Board has consistently recommended in its past biennial Section 102(b) Reports and in testimony before Congress that anti-discrimination, anti-harassment, and anti-reprisal training should be mandatory for all Members, officers, employees and staff of Congress and the other employing offices in the legislative branch. Last year, the House and the Senate adopted resolutions (S.Res 330 and H.Res. 630) that require all of its Members, Officers and employees, as well as interns, detailees, and fellows, to complete an anti-harassment and anti-discrimination training program.

We are pleased that the CAA Reform Act includes these broader mandates for the congressional workforce at large. Under the new law, employing offices (other than the House of Representatives and the Senate) are also required to develop and implement a program to train and educate covered employees on the rights and protections provided under the CAA, including the procedures available under CAA title IV, which describes the OCWR administrative and judicial dispute resolution procedures. 509(a), 2 U.S.C. § 1438(a). Employing offices must submit a report on the implementation of their CAA-required training and education programs to the CHA and the Committee on Rules and Administration of the Senate no later than 45 days after the beginning of each Congress, beginning with the 117th Congress. For the 116th Congress, this report is due no later than 180 days after the enactment of the CAA Reform Act, which is June 19, 2019. 509(b)(1), (b)(2), 2 U.S.C. § 1438(b)(1), (b)(2)

The OCWR stands ready to assist employing offices in developing their anti-discrimination, anti-harassment, and anti-reprisal programs by providing training opportunities and materials that are easily understood, practical rather than legalistic, proven effective, and which emphasize the change of culture on Capitol Hill. Through these programs, we can achieve the goal of a legislative branch that is free from discrimination, harassment and reprisal.

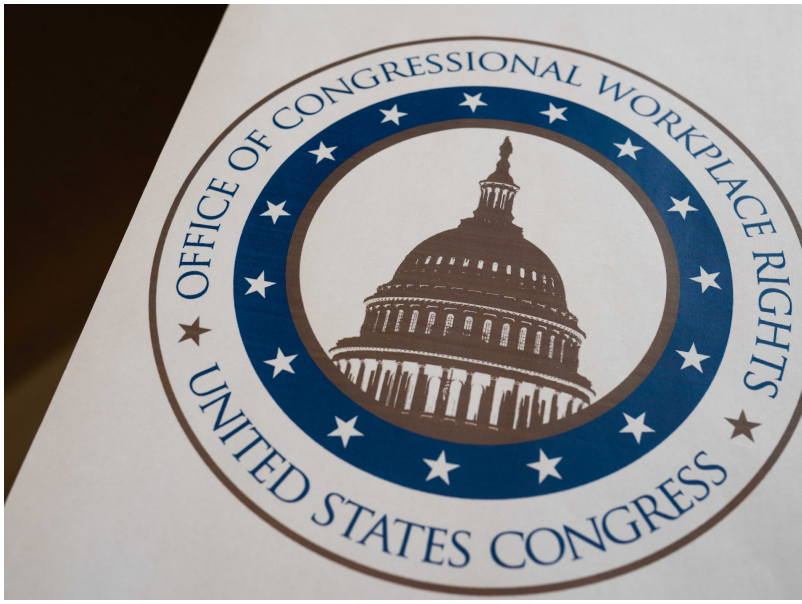
ADOPT ALL NOTICE-POSTING REQUIREMENTS THAT EXIST UNDER THE FEDERAL ANTI-DISCRIMINATION, ANTI-HARASSMENT, AND OTHER WORKPLACE RIGHTS LAWS COVERED UNDER THE CAA.

The Board has long been concerned that employees who experience harassment or discrimination in the legislative branch may be deterred from taking action simply due to a lack of awareness of their rights under the CAA. The Board has therefore consistently recommended in its Section 102(b) reports that Congress adopt all notice-posting requirements that exist under the Federal antidiscrimination, anti-harassment, and other workplace rights laws covered under the CAA. Through permanent postings, current and new employees remain informed about their rights regardless of their location, employee turnover, or other changes in the workplace. The notices also serve as a reminder to employers about their workplace responsibilities and the legal ramifications of violating the law. They are also a visible commitment by Congress to the workplace protections embodied in the CAA.

The CAA Reform Act now requires that employing offices post and keep posted in conspicuous places on their premises the notices provided by the OCWR, which must contain information about employees' rights and the OCWR's ADR process, along with OCWR contact information. 2 U.S.C. § 1362.

NAME CHANGE

As the Board advised Congress in 2014, changing the name of the office to "Office of Congressional Workplace Rights" would better reflect our mission, raise our public profile in connection with our mandate to educate the legislative branch, and make it easier for employees to identify us when they need assistance. Effective December 21, 2018, the Reform Act renamed the "Office of Compliance" as the "Office of Congressional Workplace Rights." This name change notifies legislative branch employees that the Office is tasked with protecting their workplace rights through its programs of dispute resolution, education, and enforcement. As the Office embraces its new name, it remains committed to the mission of advancing workplace rights, safety and health, and accessibility for workers and visitors on Capitol Hill, as envisioned in the CAA and the CAA Reform Act.



EXTENDING COVERAGE TO INTERNS, FELLOWS, AND DETAILEES

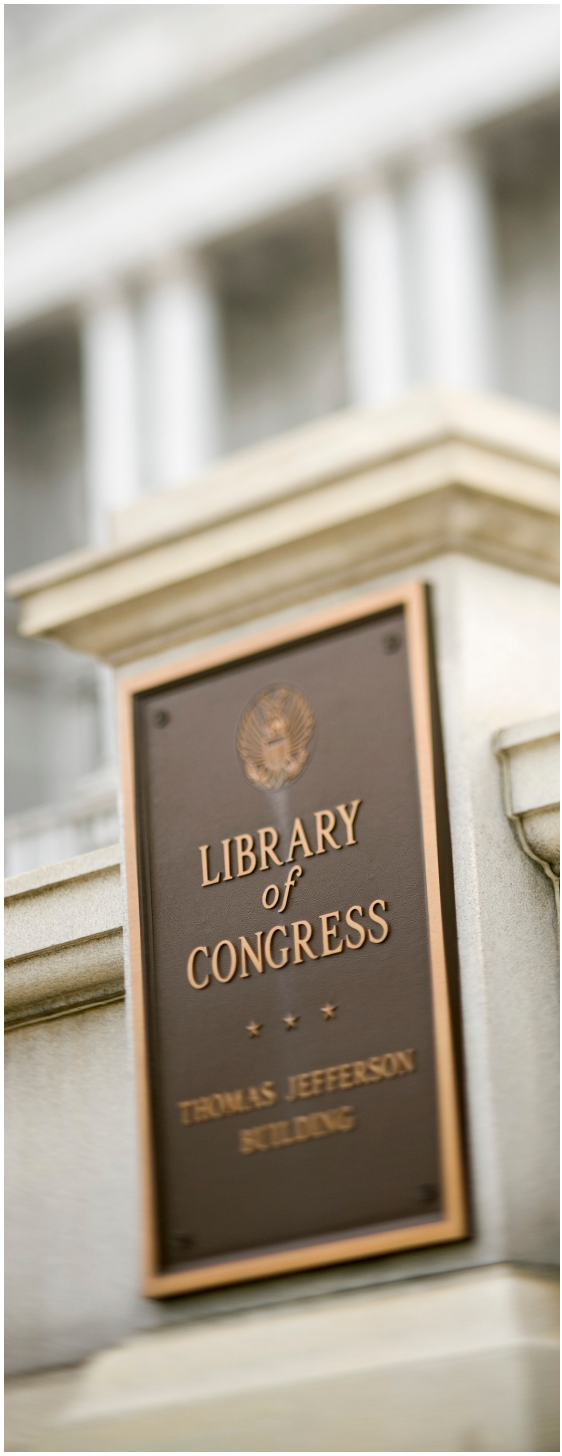
The Board also has consistently recommended in its Section 102(b) Reports that Congress extend the coverage and protections of the anti-discrimination, anti-harassment, and anti-reprisal provisions of the CAA to all staff, including interns, fellows, and detailees working in any employing office in the legislative branch, regardless of how or whether they are paid.

The CAA Reform Act amends section 201 of the CAA—which applies title VII of the Civil Rights Act of 1964 (outlawing discrimination based on race, color, religion, sex, or national origin), the Age Discrimination in Employment Act, the Rehabilitation Act, and title I of the Americans with Disabilities Act—to apply the protections and remedies of those laws to current and former "unpaid staff." "Unpaid staff" is defined in the Reform Act as "any staff member of an employing office who carries out official duties of the employing office but who is not paid by the employing office for carrying out such duties . . . including an intern, an individual detailed to an employing office, and an individual participating in a fellowship program[.]" These laws apply to unpaid staff "in the same manner and to the same extent as such subsections apply with respect to a covered employee[.]" 201(d), 2 U.S.C. § 1311(d). The Reform Act thus ensures that unpaid interns, fellows, and detailees are covered by the CAA.

EXTENDING COVERAGE TO LIBRARY OF CONGRESS EMPLOYEES

Prior to 2018, only certain provisions of the CAA applied to employees of the Library of Congress (LOC), and the Board expressed its support for proposals to amend the CAA to include the LOC within the definition of "employing office," thereby extending CAA protections to LOC employees for most purposes. The 2018 omnibus spending bill amended the CAA to bring the LOC and its employees within the OCWR's (then OOC's) jurisdiction. That bill amended the definition of "covered employee" under the CAA to include employees of the LOC, and it added the LOC as an "employing office" for all purposes except the CAA's labor-management relations provisions. Among other changes, the bill gave to LOC employees a choice on how to pursue complaints of employment discrimination—allowing them to pursue a complaint either with the LOC's Office of Equal Employment Opportunity and Diversity Programs or with the OCWR.

The Reform Act incorporates these statutory changes and further clarifies the rights of LOC employees in this regard as well as others. Its provisions are effective retroactive to March 23, 2018. 2 U.S.C. § 1401(d)(5).



CHANGES TO THE DISPUTE RESOLUTION PROCEDURES UNDER THE CAA

In testimony before the CHA as part of that committee's comprehensive review of the CAA and the protections that law offers legislative branch employees against harassment and discrimination in the congressional workplace, OCWR Executive Director Susan Tsui Grundmann conveyed the Board of Directors' considered recommendations for changes to the ADR procedures set forth in the Act, discussed below.

PRE-REFORM ACT PROCEDURES UNDER THE CAA

As stated above, the effective date for the new ADR procedures under the Reform Act is June 19, 2019. Currently, prior to filing a complaint with the OCWR pursuant to section 405 of the Act or in the U.S. District Court, the CAA requires that an employee satisfy two jurisdictional prerequisites: mandatory counseling and mandatory mediation. If a claim is not resolved during the counseling phase and the employee wishes to pursue the matter, the CAA currently requires the employee to file a request for mediation with the OCWR. When a case proceeds to mediation, the employing office is notified about the claim and the parties attempt to settle the matter with the assistance of a trained neutral mediator appointed by the OCWR.

If the parties fail to resolve their dispute in mediation, a covered employee may elect to proceed directly to the third step in the process, either by filing an administrative complaint with the OCWR, in which case the complaint would be decided by an OCWR Hearing Officer in a confidential setting, or by filing a lawsuit in a U.S. District Court, in which case the proceedings would be a matter of public record. By statute, this election—which is the employee's alone—must occur not later than 90 days, but not sooner than 30 days, after the end of the period of mediation. This statutory timing requirement creates a 30-day period—sometimes referred to as a "cooling off period"—before the employee can proceed.

A party dissatisfied with the decision of the Hearing Officer may file a petition for review with the OCWR Board of Directors, and any decision of the Board may be appealed to the U.S. Court of Appeals for the Federal Circuit. If, instead of filing a request for an administrative hearing, the employee files a civil suit in Federal district court, an appeal of that decision would proceed under the rules of the appropriate U.S. Court of Appeals.

As is discussed below, the Board has advocated in the legislative process for several procedural changes now provided for in the Reform Act, which potentially shorten the case handling process without compromising its effectiveness in resolving disputes under the CAA.

COUNSELING AND MEDIATION CHANGES

In testimony before the CHA, Executive Director Grundmann explained that counselors often provide covered employees with their first opportunity to discuss their workplace concerns and to learn about their statutory protections under the CAA. She conveyed the Board's view that, although counseling need not remain mandatory under the CAA, the CAA should not be amended in such a manner as to eliminate the availability of an opportunity for employees to voluntarily seek confidential assistance from our office. Under the new procedures set forth in the CAA Reform Act, counseling will no longer be mandatory. Rather, the CAA Reform Act provides for the optional services of a confidential advisor—an attorney who can, among other things, provide information to covered employees, on a privileged and confidential basis, about their rights under the CAA. 2 U.S.C. § 1402(a)(3).

As with counseling, the Executive Director also conveyed to the CHA the Board's view supporting the elimination of mediation as a mandatory jurisdictional prerequisite to asserting claims under the CAA. The Board nonetheless recommended that mediation be maintained as a valuable option available to those parties who mutually seek to settle their dispute. The OCWR's experience over many years has been that a large percentage of controversies were successfully resolved without formal adversarial proceedings, due in large part to its mediation processes. Mediation can save the parties from burdensome litigation, which can be expensive, time consuming, and a drain on resources and workplace productivity. Mediation also gives the parties an opportunity to explore resolving the dispute themselves without having a result imposed upon them. Furthermore, OCWR mediators are highly skilled professionals who have the sensitivity, expertise, and flexibility to customize the mediation process to meet the concerns of the parties. In short, the effectiveness of mediation as a tool to resolve workplace disputes cannot be understated.

Under the CAA Reform Act, mediation still remains available, but it is optional. It is no longer a jurisdictional prerequisite to asserting claims under the CAA, and it will take place only if requested and only if both parties agree.

"COOLING OFF" PERIOD

As stated above, the CAA presently requires an employee to wait 30 days after mediation ends to pursue a formal administrative complaint or a lawsuit in a U.S. District Court. In her testimony before the CHA, Executive Director Grundmann conveyed the Board's recommendation that this period be eliminated from the statute. The Reform Act amendments do so.

As the changes set forth in the Reform Act take effect, the Board will carefully monitor their effectiveness and advise Congress of its findings in this regard.

In this Report, we also highlight key recommendations that the Board has made in past Section 102(b) Reports that have not yet been implemented. (see note 1.) We continue to believe that the adoption of these recommendations, discussed below, will best promote a model workplace in the legislative branch. The Board welcomes an opportunity to further discuss these recommendations and asks for careful consideration of the requests by the 116th Congress.

Sincerely,

Barbara Childs Wallace
Chair, Board of Directors

Barbara L. Camens

Alan V. Friedman

Roberta L. Holzwarth

Susan S. Robfogel

1 The Board has long advocated for legislation granting the OCWR General Counsel the authority to investigate and prosecute complaints of discrimination, harassment and reprisal in order to assist victims and to improve the adjudicatory process under the CAA. As discussed in this Report, the Reform Act establishes new procedures that are also clearly intended to further these policy goals. Under these circumstances, the Board believes that the best course of action is to evaluate the efficacy of the new Reform Act procedures once they have been implemented before revisiting the issue of whether the OCRW General Counsel should be granted such investigatory and prosecutorial authority. Accordingly, this recommendation is not discussed further below.

RECOMMENDATIONS FOR THE 116TH CONGRESS

APPLY THE WOUNDED WARRIOR FEDERAL LEAVE ACT OF 2015 TO THE LEGISLATIVE BRANCH (PUBLIC LAW 114-75)

The Wounded Warrior Federal Leave Act, enacted in 2015, affords wounded warriors the flexibility to receive medical care as they transition to serving the nation in a new capacity. Specifically, new federal employees who are also disabled veterans with a 30% or more disability may receive 104 hours of "wounded warrior leave" during their first year in the federal workforce so that they may seek medical treatment for their service-connected disabilities without being forced to take unpaid leave or forego their medical appointments. The Act was passed as a way to show gratitude and deep appreciation for the hardship and sacrifices of veterans and, in particular wounded warriors, in service to the United States. Although some employing offices in the legislative branch offer Wounded Warrior Federal Leave, the Board reiterates the recommendation made in its 2016 Section 102(b) Report to extend the benefits of that Act to the legislative branch with enforcement and implementation under the provisions of the CAA.

UPDATE: On December 21, 2018, Public Law No. 115-364 was signed by the President. That law makes it clear that disabled veterans in the legislative branch are covered under the provisions of the Wounded Warrior Act. As such, they may receive wounded warrior leave during their first year in the workforce for treatment for their service-connected disabilities. The law further requires that by September 2019, employing offices in the legislative branch must prescribe regulations and procedures for certifying Wounded Warrior Leave requests.

APPROVE THE BOARD'S PENDING REGULATIONS

The CAA directs the OCWR to promulgate regulations implementing the CAA to keep Congress current and accountable to the workplace laws that apply to private and public employers. The Board is required to amend its regulations to achieve parity, unless there is good cause shown to deviate from the private sector or executive branch regulations. The Board recommended in its 2016 section 102(b) Report to the 115th Congress that it approve its pending regulations that would implement the FMLA, ADA titles II and III, and USERRA in the legislative branch.

The Board-adopted regulations ensure that same-sex spouses are recognized under the FMLA, in accordance with Supreme Court rulings, and further extend important protections for military caregivers and service members. The Board's adopted ADA regulations will avoid costly construction and contracting errors that result when there is

uncertainty or ambiguity regarding what standards apply, and will improve access to Capitol Hill for visitors and employees with disabilities.

The Board of Directors also transmitted to Congress its adopted USERRA regulations on December 3, 2008 and identified "good cause" to modify the executive branch regulations to implement more effectively the rights and protections for veterans as applied to the Senate, the House of Representatives, and the other employing offices. These rules are necessary to fulfill the commitments set forth in USERRA to our nation's veterans in the legislative branch.

ANALYSIS OF PENDING FMLA REGULATIONS:

On June 22, 2016, the Board of Directors adopted and transmitted to Congress for approval its regulations necessary for implementing the Family and Medical Leave Act (FMLA) in the legislative branch. In accordance with the CAA, those regulations are the same as the substantive regulations adopted by the Secretary of Labor, 2 U.S.C. § 1312(d)(2), except where good cause was shown that a modification would be more effective in implementing FMLA rights under the CAA.

We seek congressional approval of these important FMLA regulations. The FMLA regulations provide needed clarity on important aspects of the law, including essential requirements for certifying leave and documentation, defining "spouse" to include same-sex spouses as required by the Supreme Court precedent, and adding military caregiver leave. Adoption of these regulations will reduce uncertainty for both employing offices and employees and provide greater predictability in the congressional workplace.

First, these FMLA regulations add the military leave provisions of the FMLA, enacted under the National Defense Authorization Acts (NDAA) for Fiscal Years 2008 and 2010 (see note 2), that extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a service member's deployment. They also define those deployments covered under these provisions, extend FMLA military caregiver leave for family members of current service members to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty, and extend FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses.

As noted, the FMLA amendments providing additional rights and protections for service members and their families were enacted into law by the NDAA for Fiscal Years 2008 and 2010. The congressional committee reports that accompany the NDAA for Fiscal Years 2008

2. Pub. L. 110–181, Div. A, Title V §585(a)(2), (3)(A)– (D) and Pub. L. 111–84, Div. A, Title V §565(a)(1)(B) and (4).

and 2010 and the amended FMLA provisions do not "describe the manner in which the provision of the bill [relating to terms and conditions of employment]... apply to the legislative branch" or "include a statement of the reasons the provision does not apply [to the legislative branch]" (in the case of a provision not applicable to the legislative branch), as required by section 102(b)(3) of the CAA. (see note 3)

Consequently, when the FMLA was amended to add these additional rights and protections, it was not clear whether Congress intended that these additional rights and protections apply in the legislative branch. To the extent that there may be an ambiguity regarding the applicability to the legislative branch of the 2008 and 2010 FMLA amendments, the Board makes clear through these regulations that the rights and protections for military servicemembers apply in the legislative branch, and that protections under the CAA are in line with existing public and private sector protections under the FMLA.

The Board-adopted FMLA regulations implement leave protections of significant importance to legislative branch employees and employing offices. Accordingly, the Board recommends that Congress approve the Board's adopted FMLA regulations.

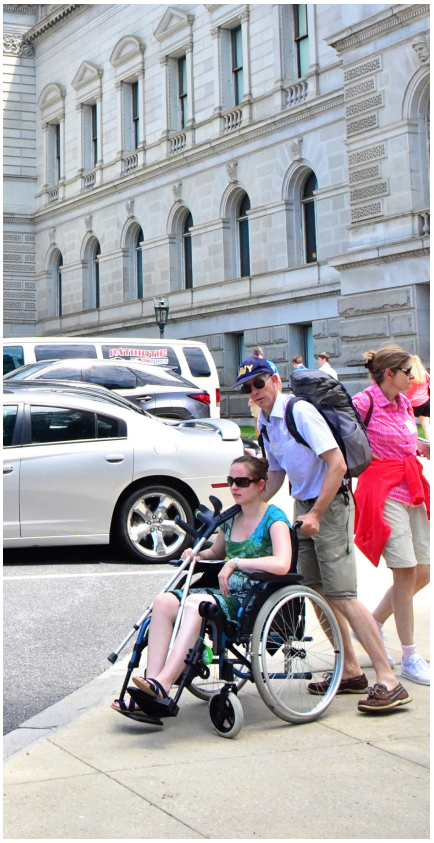
Second, these regulations set forth the revised definition of "spouse" under the FMLA in light of the DOL's February 25, 2015 Final Rule on the definition of spouse, and the United States Supreme Court's decision in Obergefell, et al., v. Hodges (see note 4), which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

ANALYSIS OF PENDING ADA REGULATIONS:

Public access to Capitol Hill and constituent access to district and state offices has been a hallmark of many congresses. The Board recommends that Congress approve its adopted regulations implementing titles II and III of the ADA to Capitol Hill and the district offices. First, the Board's ADA regulations clarify which title II and title III regulations apply to the legislative branch. This knowledge will undoubtedly save taxpayers money by ensuring pre-construction review of construction projects for ADA compliance— rather than providing for only post-construction inspections and costly redos when the access is not adequate. Second, under the regulations adopted by the Board, all leased spaces must meet some basic accessibility requirements that apply to all federal facilities that are leased or constructed. In this way,Congress will remain a model for ADA compliance and public access.

Under the authority of the landmark CAA, the OOC has made significant progress towards making Capitol Hill more accessible for persons with disabilities. Our efforts to improve access to the buildings and facilities on the campus are consistent with the priority guidance in the Board's ADA regulations, which it adopted in February 2016. Congressional approval of those regulations would reaffirm its commitment to provide barrier-free access to the visiting public to the Capitol Hill complex.

3. U.S.C. §1302(3); House Committee on Armed Services, H. Rpt. 110–146 (May 11, 2007), H. Rpt. 111– 166 (June 18, 2009)
4. Obergefell v. Hodges, 135 S. Ct. 2584 (2015)



ANALYSIS OF PENDING USERRA REGULATIONS:

On December 3, 2008, the Board of Directors adopted USERRA regulations to apply to the legislative branch. Those regulations, transmitted to Congress over 10 years ago, should be immediately approved. They support our nation's veterans by requiring continuous health care insurance and job protections for the men and women of the service who have supported our country's freedoms. The 114th Congress was particularly focused on issues concerning veterans health, welfare, access, and employment status. Approving the USERRA regulations will assist servicemembers in attaining and retaining a job despite the call to duty. The regulations commit to anti-discrimination, anti-retaliation, and job protection under USERRA.

Approving USERRA regulations would signal congressional encouragement to veterans to seek work in the legislative branch where veteran employment levels have historically been well below the percentage in the executive branch, or even in the private sector, which is not under a mandate to provide a preference in hiring to veterans. Indeed, many reports have put the level of veteran employees on congressional staffs at two to three percent or less.

The Veterans Congressional Fellowship Caucus, started in 2014, has supported efforts to bridge the gap between military service and legislative work. In addition, the Wounded Warrior Fellowship Program exists in the House Chief Administrative Officer (CAO) where Members can hire veteran fellows for 2-year terms. In the Senate, the Armed Forces Internship Program exists to provide on-the-job training for returning veterans with disabilities.

An extension of these laudable efforts should include the long-delayed passage of the Board's adopted USERRA regulations which implement protections for initial hiring and protect against discrimination based on military service. Congress can lead by example by applying the USERRA law encompassed in the CAA.

Approving the three sets of Board-adopted regulations outlined above would not only signify a commitment to the laws of the CAA—which passed in 1995 with nearly unanimous, bi-cameral, and bipartisan support—but would further help legislative branch managers effectively implement the laws' protections and benefits on behalf of the workforce.

PROTECT EMPLOYEES AND APPLICANTS WHO ARE OR HAVE BEEN IN BANKRUPTCY (11 U.S.C. § 525)

Section 525(a) of title 11 of the U.S. Code provides that "a governmental unit" may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person because that person is or has been a debtor under the bankruptcy statutes. This provision currently does not apply to the legislative branch. Reiterating the recommendations made in the 1996, 1998, 2000 and 2006 Section 102(b) reports, the Board advises that the rights and protections against discrimination on this basis should be applied to employing offices within the legislative branch.

PROHIBIT DISCHARGE OF EMPLOYEES WHO ARE OR HAVE BEEN SUBJECT TO GARNISHMENT (15 U.S.C. § 1674(A))

Section 1674(a) of title 15 of the U.S. Code prohibits discharge of any employee because his or her earnings "have been subject to garnishment for any one indebtedness." This section is limited to private employers, so it currently has no application to the legislative branch. For the reasons set forth in the 1996, 1998, 2000 and 2006 Section 102(b) Reports, the Board recommends that the rights and protections against discrimination on this basis should be applied to employing offices within the legislative branch.

PROVIDE WHISTLEBLOWER PROTECTIONS TO THE LEGISLATIVE BRANCH

Civil service law provides broad protection to whistleblowers in the executive branch to safeguard workers against reprisal 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. In the private sector, whistleblowers also are often protected by provisions of specific federal laws. However, these provisions do not apply to the legislative branch.

The OCWR has received a number of inquiries from congressional employees concerned about the lack of whistleblower protections. The absence of specific statutory protection such as that provided under 5 U.S.C. § 2302(b)(8) chills the disclosure of such information. Granting "whistleblower" protection could significantly improve the rights and protections afforded to legislative branch employees in an area fundamental to the institutional integrity of the legislative branch by uncovering waste and fraud and safeguarding the budget.

The Board has recommended in its previous Section 102(b) reports and continues to recommend that Congress provide whistleblower reprisal protections to legislative branch employees comparable to that provided to executive branch employees under 5 U.S.C. § 2302(b)(8), and 5 U.S.C. § 1221. Additionally, as discussed below, the Board recommends that the Office also be granted investigatory and prosecutorial authority over whistleblower reprisal complaints, by incorporating into the CAA the authority granted to the Office of Special Counsel, which investigates and prosecutes claims of whistleblower reprisal in the executive branch.

PROVIDE SUBPOENA AUTHORITY TO OBTAIN INFORMATION NEEDED FOR SAFETY & HEALTH INVESTIGATIONS AND REQUIRE RECORDS TO BE KEPT OF WORKPLACE INJURIES AND ILLNESSES

The CAA applies the broad protections of section 5 of the Occupational Safety and Health Act (OSHAct) to the congressional workplace. The OCWR enforces the OSHAct in the legislative branch much in the same way the Secretary of Labor enforces the OSHAct in the private sector. Under the CAA, the OCWR is required to conduct safety and health inspections of covered employing offices at least once each Congress and in response to any request, and to provide employing offices with technical assistance to comply with the OSHAct's requirements. But Congress and its agencies are still exempt from critical OSHAct requirements imposed upon American businesses. Under the CAA, employing offices in the legislative branch are not subject to investigative subpoenas to aid in inspections as are private sector employers under the OSHAct. Similarly, Congress exempted itself from the OSHAct's recordkeeping requirements pertaining to workplace injuries and illnesses that apply to the private sector.

The Board recommends that legislative branch employing offices be subject to the investigatory subpoena provisions contained in OSHAct § 8(b) and that legislative branch employing offices be required to keep records of workplace injuries and illnesses under OSHAct § 8(c), 29 U.S.C. § 657(c).

ADOPT RECORDKEEPING REQUIREMENTS UNDER FEDERAL WORKPLACE RIGHTS LAWS

The Board, in several Section 102(b) reports, has recommended and continues to recommend that Congress adopt all recordkeeping requirements under Federal workplace rights laws, including title VII. Although some employing offices in the legislative branch keep personnel records, there are no legal requirements under the CAA to do so.