

**Written Statement of John D. Uelmen, General Counsel, Office of Congressional Workplace Rights
Before the Committee on House Administration**

**Oversight of Section 220 of the Congressional Accountability Act:
Implementing the Rights of Congressional Staff to Collectively Bargain
March 2, 2022**

Good afternoon Chairperson Lofgren, Ranking Member Davis, and other members of the Committee. Thank you for this opportunity to speak with you today about implementing the rights of Congressional staff to organize for the purpose of collective bargaining under Section 220 of the Congressional Accountability Act (CAA), 2 U.S.C. § 1351, which grants certain employees the right to form, join, or assist a labor organization without fear of penalty or reprisal.

As the General Counsel of the Office of Congressional Workplace Rights (OCWR), I have specific responsibilities under Section 220 of the CAA. The statute grants me the authority to investigate and prosecute cases involving unfair labor practices. It also allows me to investigate issues raised by labor-management petitions to the OCWR Board of Directors when directed to do so by the Board. I also advise the Board and the Executive Director on collective bargaining matters and defend the Board's decisions in most of these matters before the U.S. Court of Appeals for the Federal Circuit. For those of you who are not familiar with the concept of "unfair labor practices" under this section of the statute, an unfair labor practice is committed when an employing office or a union fails to comply with a statutory duty imposed by Section 220. Since an unfair labor practice can be committed at any stage of the collective bargaining process – from the earliest organizing efforts all the way through the termination of a collective bargaining agreement – my staff and I are generally familiar with the stages of the collective bargaining process and how these rights are implemented through the various processes provided by the OCWR under the CAA. However, because I am not directly responsible for the processing of representation petitions, I may not be able to answer certain questions without consulting with others in the office.

I know that members of the Committee have many questions about how the collective bargaining rights of Congressional staff would be implemented if the House approved the Regulations adopted by the OCWR Board, so I want to keep my opening remarks brief. But to provide a framework for my answers to your questions, there are three topics that I need to cover briefly.

First, since the topic of this hearing is implementing collective bargaining rights for Congressional staff, I will briefly review with you the mechanics of how these rights can be activated under the CAA. Second, since implementing these rights involves approving regulations, I will briefly describe the procedures we have established in these regulations to resolve issues that occur during the collective bargaining process. Finally, I will provide you with my answers to two "big picture" questions that have been posed. I say these are "my" answers because I am appearing here today solely as the General Counsel of the OCWR and any opinion or suggestion that I express here today is not necessarily that of the OCWR Board of Directors or the Executive Director, or the official position of the Office of Congressional Workplace Rights.

With that caveat, let me move to my first topic. As you know, Section 220 of the CAA incorporates most of the statutory provisions contained in the Federal Service Labor-Management Relations Statute and applies those provisions to employing offices, covered employees, and union representatives in the legislative branch. Under this section of the CAA, covered employees are granted collective bargaining rights and employing offices are guaranteed certain management rights. Although Congressional staffers working for Member and Committee offices are "covered employees" under the CAA, their statutory right to collectively bargain does not become effective until the effective date of regulations covering their offices. See 2 U.S.C. §§ 1351(e), 1351(f)(2). The regulations for these offices must be proposed, adopted, and issued by the OCWR Board, but the Board cannot issue these regulations until a resolution approving them is passed by the House or the Senate, or both the House and the Senate. A one-house approval resolution allows the Board to issue regulations for the offices of that house only.

So, where are we now in this process? In 1996, the Board of Directors of the OCWR (then known as the Office of Compliance) did propose and adopt the regulations needed to effectuate the rights of Congressional staff to collectively bargain, and sent them to both the House and the Senate for approval. No action was taken on this approval request until recently when House Resolution 915 was introduced, which would apply the regulations solely to House offices and employees. That resolution is now before this Committee. The regulations themselves are straightforward: They state that the same regulations that already apply to all of the other employees, labor representatives, and offices in the legislative branch covered by the CAA (i.e., the existing OCWR Substantive Regulations on Collective Bargaining and Unionization) would apply to the employees, labor representatives, and offices listed in section 220(e)(2) of the CAA, which includes Member and Committee offices. Recently, in response to a letter from Chairperson Lofgren, the OCWR Board confirmed that it unanimously agrees with the majority of the 1996 Board that these are the regulations that Congress should approve. These letters are included with my statement.

Since the resolution is now before this Committee for consideration, the first step probably should be to review carefully its wording for technical accuracy to ensure that the resolution does what its proponents want it to do. The CAA is very specific regarding what language “shall” be used in a one-house approval resolution. This language is set forth in 2 U.S.C. § 1384(c)(4). While the CAA is silent about what happens if this language is not used, I wanted to make sure that you are aware of this provision.

What happens, then, if the House passes a resolution approving regulations that cover House offices? Under the CAA, the regulations must still be formally issued by the OCWR Board. This happens after the OCWR Board formally transmits them to the House and the Senate for publication in the Congressional Record. 2 U.S.C. § 1384(d)(1). The date of issuance is the date they are published. 2 U.S.C. § 1384(d)(2).

But what is the effective date of the regulations? Under the CAA, regulations become effective not less than 60 days after they are issued, but the Board may provide for an earlier date if good cause is found. Should the Committee believe that there is good cause for specifying an earlier effective date, it might want to describe that good cause in any report that is issued. Remember, under the CAA, the effective date for statutory collective bargaining rights is the effective date of the regulations.

Now that we have covered the mechanics of how collective bargaining rights for Congressional staff can become effective, let me proceed to my second topic, which is to briefly describe how the current OCWR procedures would implement these rights. Covered employees would have a protected right to discuss in the workplace their desire to form, join, and assist a labor organization without reprisal. Typically, unionization of an employing office begins when an established labor union tries to organize a group of employees in an employing office for the purpose of collective bargaining. The union will make an initial determination of who should be in the bargaining unit and then start obtaining written consent for an election from at least 30% of the bargaining unit members. Upon obtaining consent to an election from 30% of the members, the union will file a petition for an election with the OCWR together with proof that there is a sufficient “showing of interest” – that is, documentation showing that at least 30% of the members of the proposed bargaining unit want to have an election. A copy of the petition is served on the employing office, the OCWR can require that the petition be posted and distributed in certain ways, and procedures are in place to resolve any pre-election issues.

Many pre-election issues concern the appropriateness of the proposed bargaining unit. There may be disagreements over who should be included in or excluded from the bargaining unit. There is guidance in the statute and the case law regarding what factors should be considered when determining the appropriateness of a unit; ultimately, the issue comes down to whether there is a “community of interest” – i.e., whether it makes sense for this particular group of employees to bargain collectively over their working conditions. When there is an issue regarding who should be excluded from the bargaining unit, it usually involves whether certain employees are management officials or confidential employees. Management officials are those employees whose duties and responsibilities require or authorize the individual to formulate, determine, or influence the policies of the employing office. Confidential employees are those employees who work in a confidential capacity with respect to a management official. Frankly, these issues are often resolved by the parties themselves, since both union and

management have a vested interest in getting the bargaining unit right; however, if the parties cannot reach an agreement, there are procedures in place to resolve these disputes, which can include investigations, hearings, and testimony to resolve any factual disputes and determine who should or should not be part of the bargaining unit.

After all pre-election issues are resolved, an election is conducted by the OCWR. If a majority of the voting bargaining unit members vote to be represented by the union, the OCWR certifies the union as the exclusive representative for all of the members of the bargaining unit. No member of the bargaining unit can be compelled to join the union as a dues-paying member, and the union must fairly represent all bargaining unit employees regardless of their union membership. Once a union is certified as the exclusive representative, the employing office must negotiate conditions of employment with union and cannot directly negotiate with bargaining unit employees who are not union representatives. Bargaining between union representatives and management officials usually continues until a collective bargaining agreement is reached. There are various procedures under the regulations that can be used to resolve issues over the negotiability of proposals made during collective bargaining. There are also procedures in place to resolve impasses in bargaining should they occur.

After giving you this very cursory description of how the union organizing process works under the CAA, I can attempt to answer two “big picture” questions about unionization: how will the House Member offices unionize, and how will Committee offices unionize? To answer these questions, we must start with the basic definitions of “covered employee” and “employing office” in Section 101 of the CAA. Under the CAA, the term “covered employee” means any employee of the House of Representatives (2 U.S.C. § 1301(3)(A)), which in turn means any individual occupying a position “the pay for which is disbursed by the Chief Administrative Officer of the House of Representatives” or “a position in an entity that is paid with funds derived from the clerk-hire allowance” that is not employed by another employing office (2 U.S.C. § 1301(7)). Using this definition, I believe there are approximately 10,000 “covered employees” in the House.

Turning now to the definition of “employing office,” the first thing to note is that the House of Representatives itself is not an employing office. Instead, the employing offices in the House are the personal offices of Members, Committees of the House, and “any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions or privileges of the employment of an employee of the House of Representatives.” 2 U.S.C. § 1301(9). Consequently, if you add up all the Member offices, Committees, and other offices headed by a person with hiring and firing authority, I believe there are approximately 500 “employing offices” in the House.

What this means, of course, is that because union organizing must take place at the employing office level, it must be done separately within each Member’s office or Committee office. This answers one of the questions that I have heard: Can there be one bargaining unit to represent all House staffers? No, it is not possible to create one bargaining unit representing all or most House employees. Similarly, collective bargaining takes place at the employing office level; however, there could be opportunities for multiple House offices to collectively bargain jointly.

Likewise, there cannot be one bargaining unit to represent all Committee staffers. In fact, there is a possibility that some House Committees will have more than one bargaining unit. In House Committees, the Chairperson does not usually set the terms and conditions of employment for minority staff; these are usually determined by the Ranking Member. It is likely that there would have to be separate bargaining units based upon party affiliation. Again, if there are any disputes about the appropriateness of a bargaining unit that cannot be resolved by the labor and management representatives, there are procedures in place to resolve these disputes.

I know that members of the Committee may have questions about how we are planning for the possible implementation of collective bargaining rights in the House. I can assure you that we are actively developing plans in three areas: education of stakeholders, refresher training for OCWR staff, and resource acquisition. If you have specific questions about these plans, I will be happy to answer them as best I can, either during this hearing or during separate discussions with the Committee’s staff.

Having now covered my three topics, I am ready to answer your questions. Please note that we have prepared a document containing answers to Frequently Asked Questions (FAQs) which is either on our website or in the process of being posted to the website. I have also included the latest draft of this document with my statement and I hope you will find it useful.

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February 8, 2022

Ms. Barbara Childs Wallace
Chair of the Board of Directors
Office of Congressional Workplace Rights
110 Second Street, SE
Room LA-200
Washington, D.C. 20540-1999

Dear Ms. Wallace,

As you are aware, when Congress overwhelmingly passed the Congressional Accountability Act of 1995 (CAA) on near unanimous votes in both the House and Senate, it extended a number of statutory protections for workers in the private sector to employees in the legislative branch. Among others, Congress expressly provided for employees to organize and bargain collectively. However, the CAA required the Office of Congressional Workplace Rights (then called the Office of Compliance) to issue regulations which would first have to be approved by Congress.

The following year, in 1996, OCWR fulfilled its role by adopting regulations and submitting them to Congress for approval. The regulations proposed by OCWR provided additional guidance for how legislative branch employees could exercise their statutory right to form or join labor organizations, as Congress expressly intended. Congress failed to act on the proposed regulations at that time.

The Committee on House Administration (CHA) recently held an oversight hearing on OCWR, on November 9, 2021, which included discussion of this specific issue. In her testimony, your colleague, Director Barbara Camens noted that in the ensuing quarter century since OCWR recommended regulations to Congress, the current members of the Board of Directors “have not looked at them, we have not reexamined them, and we have not taken a position on them.” Ms. Camens also noted that OCWR’s adoption of regulations in 1996 predated the service of the “current iteration of the board.”

Much has changed since 1996. For example, CHA recently took a lead role in drafting and enacting a reform law with significant bipartisan input and support to update the protections of the CAA to provide greater protections for legislative branch employees, including making it easier for them to assert their rights and protections under the law. Accordingly, I request that

the Board of Directors of the Office of Congressional Workplace Rights review the regulations it proposed in 1996 related to collective bargaining. It is my hope that an expeditious review will inform the House's consideration of how to better improve the workplace for our Congressional staff.

I appreciate your quick attention to this matter. If you have any questions, please do not hesitate to contact me directly or the Committee Staff Director, Jamie Fleet.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren
Chairperson



Office of Congressional Workplace Rights

February 22, 2022

Via: Electronic Mail

Hon. Zoe Lofgren
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairperson Lofgren:

I have received your letter dated February 8, 2022 requesting that the OCWR Board of Directors (Board) conduct an expeditious review of the regulations adopted by a previous Board in 1996 that were promulgated under section 220(e)(1) of the Congressional Accountability Act (CAA) [2 U.S.C. § 1351(e)(1)] and would govern unionizing and collective bargaining rights in the personal offices of Members of the House of Representatives or Senators, as well as in committee, leadership and other enumerated offices.

The Board has conducted a thorough review and now unanimously endorses the regulations adopted by the 1996 Board and urges Congress to approve these regulations.

As you know, while Congress has not yet approved the Board's adopted regulations under CAA section 220(e)(1), Congress did approve the Board's adopted regulations under CAA section 220(d) that apply to all covered employees, labor representatives, and employing offices not identified in section 220(e)(2). The section 220(d) regulations are on our website as the Substantive Regulations on Collective Bargaining and Unionization and can be found here: https://www.ocwr.gov/wp-content/uploads/2021/09/final_regulations_lmr_19960930.pdf. The section 220(d) regulations were issued by the Board on October 1, 1996, and became effective on November 30, 1996. Like the regulations under section 220(e), the section 220(d) regulations are required by the CAA to be the same as the comparable FLRA regulations except where good cause exists for a modification that would be more effective for implementation of the rights and protections under this section. Consequently, the regulations issued by the Board in 1996 under section 220(d) closely follow the comparable FLRA regulations. Like the FLRA regulations upon which these regulations are based, the section 220(d) regulations provide procedures for resolving all disputes that may arise during organizing and collective bargaining, including potential exemptions from those rights, in a manner that is both informed and impartial.

The regulations adopted by the Board in 1996 under section 220(e) of the CAA are quite straightforward. They state that the same regulations that apply to all of the other employees, labor representatives, and offices in the legislative branch covered by the CAA (the existing

OCWR Regulations on Collective Bargaining and Unionization) will apply to the employees, labor representatives, and offices listed in section 220(e)(2).

In your letter, you specifically requested that the Board review the 1996 section 220(e) adopted regulations in light of the changes made by the CAA Reform Act in 2018. Since none of the Reform Act changes made in 2018 affected section 220 of the CAA, the Board has concluded that there is no need for any changes to the regulations adopted by the Board in 1996. While the CAA Reform Act changed the name of the Office of Compliance to the Office of Congressional Workplace Rights, the Reform Act also provides that “[a]ny reference to the Office of Compliance in any law, rule, regulation, or other official paper in effect as of such date shall be considered to refer and apply to the Office of Congressional Workplace Rights.” Pub. L. 115-397, title III, § 308(d) (Dec. 21, 2018). For this reason, the Board does not believe that it even needs to propose a technical change to the name of the office in the adopted regulations.

Upon receiving your letter, we circulated it among the majority and minority staff of our oversight committees in both the House and the Senate and requested comments. We received comments suggesting that no changes need to be made to the 1996 adopted regulations. We also received comments suggesting that the Board should carefully review the 1996 adopted regulations to determine whether technical changes should be made because some office names have changed and some changes may have been made to the underlying statutes. Although CAA section 220(e)(2)(H) allows the Board to identify by regulation other Congressional offices that perform functions comparable to those listed in section 220(e)(2), it is not necessary for the Board to do so given its conclusion that the same regulations should apply to all offices. While this analysis would be necessary if the Board adopted special regulations for the Congressional offices identified in section 220(e)(2), no such special regulations are being proposed.

Regarding the underlying statute, section 220 incorporates specific sections of the Federal Service Labor Management Relations Statute (FSLMRS). Since 1996, there have been no significant changes to those sections of the statute that would affect the implementation of collective bargaining and unionization in the Congressional offices identified in CAA section 220(e)(2).

For these reasons, the Board does not see the need for any technical changes and unanimously requests that Congress approve the 1996 section 220(e) regulations previously adopted by the Board so that the Board can formally issue them. A copy of those regulations is attached. As provided in the CAA, the substantive rights under the FSLMRS made applicable to Congressional offices do not apply until the section 220(e) regulations are issued.

The Board will be publishing your letter and this response on our website and in the *Congressional Record* for public information.

Very respectfully yours,



Barbara Childs Wallace
Chair of the Board of Directors

1996 ADOPTED REGULATIONS

Sec.

2472 Specific regulations regarding certain offices of Congress

2472.1 Purpose and Scope

The regulations contained in this section implement the provisions of chapter 71 as applied by section 220 of the CAA to covered employees in the following employing offices:

(A) the personal office of any member of the House of Representatives or of any Senator;

(B) a standing select, special, permanent, temporary, or other committee of the Senate or House of Representatives, or a joint committee of Congress;

(C) the Office of the Vice President (as President of the Senate), the office of the President pro tempore of the Senate, the Office of the Majority Leader of the Senate, the Office of the Minority Leader of the Senate, the Office of the Majority Whip of the Senate, the Office of the Minority Whip of the Senate, the Conference of the Majority of the Senate, the Conference of the Minority of the Senate, the Office of the Secretary of the Conference of the Majority of the Senate, the Office of the Secretary of the Conference of the Minority of the Senate, the Office of the Secretary for the Majority of the Senate, the Office of the Secretary for the Minority of the Senate, the Majority Policy Committee of the Senate, the Minority Policy Committee of the Senate, and the following offices within the Office of the Secretary of the Senate: Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest, Printing Services, Captioning Services, and Senate Chief Counsel for Employment;

(D) the Office of the Speaker of the House of Representatives, the Office of the Majority Leader of the House of Representatives, the Office of the Minority Leader of the House of Representatives, the Offices of the Chief Deputy Majority Whips, the Offices of the Chief Deputy Minority Whips, and the following offices within the Office of the Clerk of the House of Representatives: Offices of Legislative Operations, Official Reporters of Debate, Official Reporters to Committees, Printing Services, and Legislative Information;

(E) the Office of the Legislative Counsel of the Senate, the Office of the Senate Legal Counsel, the Office of the Legislative Counsel of the House of Representatives, the Office of the General Counsel of the House of Representatives, the Office of the Parliamentarian of the House of Representatives, and the Office of the Law Revision Counsel;

(F) the offices of any caucus or party organization;

(G) the Congressional Budget Office, the Office of Technology Assessment, and the Office of Compliance; and

(H) the Executive Office of the Secretary of the Senate, the Office of Senate Security, the Senate Disbursing Office, the Administrative Office of the Sergeant at Arms of the Senate, the Office of the Majority Whip of the House of Representatives, the Office of the Minority Whip of the House of Representatives, the Office of House Employment Counsel, the Immediate Office of the Clerk of the House of Representatives, the Immediate Office of the Chief Administrative Officer of the House of Representatives, the Office of Legislative Computer Systems of the House of Representatives, the Office of Finance of the House of Representatives and the Immediate Office of the Sergeant at Arms of the House of Representatives.

2472.2 Application of Chapter 71.

(a) The requirements and exemptions of chapter 71 of title 5, United States Code, as made applicable by section 220 of the CAA, shall apply to covered employees who are employed in the offices listed in section H2472.1 in the same manner and to the same extent as those requirements and exemptions are applied to other covered employees.

(b) The regulations of the Office, as set forth at section 2420-29 and 2470-71, shall apply to the employing offices listed in section 2472.1, covered employees who are employed in those offices, and representatives of those employees.

Labor-Management Relations in the Legislative Branch Frequently Asked Questions (FAQs)

The Office of Congressional Workplace Rights (OCWR) administers the [Congressional Accountability Act \(CAA\)](#) and works to guarantee the rights provided by the CAA to employees and employing offices within the legislative branch. Pursuant to Section 220 of the CAA, [2 U.S.C. § 1351](#), for employees who are eligible to join a union, the OCWR investigates and processes petitions for union representation and union elections, and the OCWR General Counsel investigates and prosecutes charges alleging unfair labor practices (ULPs). Below are FAQs about the representation process, negotiability and impasse procedures, and ULP charges and complaints.

The framework for the labor-management program in the legislative branch is set forth in the CAA and described in more detail in the OCWR's [substantive regulations on collective bargaining and unionization](#). These regulations are cited in these FAQs as "OCWR Substantive Regulations."

Disclaimer: These FAQs contain general information and are not legal authority or legal advice. Particular answers may have unstated exceptions, qualifications, and/or limitations, or may become outdated due to changes in the law. For these reasons, please consult with an attorney prior to initiating any proceeding described in these FAQs.

If you have additional questions about labor-management issues in the legislative branch, please email LMR@ocwr.gov.

General Labor-Management FAQs

Do I have the right to unionize?

➤ Covered legislative branch employees under CAA Section 220(d) and other laws

The CAA currently provides union rights to many legislative branch employees, including employees of the United States Capitol Police, the Office of the Architect of the Capitol, the Office of Congressional Accessibility Services, the Office of Attending Physician, the Stennis Center for Public Service, and offices in the Senate and House of Representatives that are not listed in Section 220(e)(2) of the CAA.

Some legislative branch offices have union rights under laws other than the CAA. The Federal Service Labor-Management Relations Statute (FSLMRS) provides union rights to employees of

the Library of Congress and Government Publishing Office. [5 U.S.C. § 7103](#). Similarly, while the FSLMRS itself does not grant union rights to employees of the Government Accountability Office (GAO), the GAO Personnel Act guarantees the rights of GAO employees to form, join, or assist, or not to form, join, or assist, an employee organization freely and without fear of penalty or reprisal. [31 U.S.C. § 732\(e\)](#). These rights are enforced by the GAO Personnel Appeals Board.

➤ **Covered legislative branch employees under CAA Section 220(e)**

The general definition of “covered employee” in the Congressional Accountability Act includes employees of the House of Representatives and the Senate. However, Section 220(e) requires that additional regulations be adopted and approved before the employees of the offices listed in Section 220(e)(2) have the right to organize for the purpose of collective bargaining. These regulations were adopted by the OCWR Board under Section 220(e)(1) in 1996 but have not yet been approved by Congress. A House resolution was introduced in the 117th Congress to approve the regulations for House employees. A similar resolution may be introduced in the Senate to approve the regulations for Senate employees.

The Senate and House employing offices listed in Section 220(e)(2) are:

- (1) the personal office of any Member of the House of Representatives or of any Senator;
- (2) a standing, select, special, permanent, temporary, or other committee of the Senate or House of Representatives, or a joint committee of Congress;
- (3) the Office of the Vice President (as President of the Senate), the Office of the President pro tempore of the Senate, the Office of the Majority Leader of the Senate, the Office of the Minority Leader of the Senate, the Office of the Majority Whip of the Senate, the Office of the Minority Whip of the Senate, the Conference of the Majority of the Senate, the Conference of the Minority of the Senate, the Office of the Secretary of the Conference of the Majority of the Senate, the Office of the Secretary of the Conference of the Minority of the Senate, the Office of the Secretary for the Majority of the Senate, the Office of the Secretary for the Minority of the Senate, the Majority Policy Committee of the Senate, the Minority Policy Committee of the Senate, and the following offices within the Office of the Secretary of the Senate: Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest, Printing Services, Captioning Services, and Senate Chief Counsel for Employment;
- (4) the Office of the Speaker of the House of Representatives, the Office of the Majority Leader of the House of Representatives, the Office of the Minority Leader of the House of Representatives, the Offices of the Chief Deputy Majority Whips, the Offices of the Chief Deputy Minority Whips and the following offices within the Office of the Clerk of the House of Representatives: Offices of Legislative Operations, Official Reporters of Debate, Official Reporters to Committees, Printing Services, and Legislative Information;
- (5) the Office of the Legislative Counsel of the Senate, the Office of the Senate Legal Counsel, the Office of the Legislative Counsel of the House of Representatives, the Office of

the General Counsel of the House of Representatives, the Office of the Parliamentarian of the House of Representatives, and the Office of the Law Revision Counsel; and

(6) the offices of any caucus or party organization.

In addition, employees of the Congressional Budget Office (CBO) and the Office of Congressional Workplace Rights do not currently have the right to unionize, because these offices are also identified in Section 220(e)(2) of the CAA.

➤ **How would a House or Senate resolution approving regulations adopted by the OCWR Board of Directors affect the union rights of legislative branch employees?**

None of the employees of the offices listed in Section 220(e)(2) of the CAA will have union rights until the House, the Senate, or both pass a resolution approving regulations adopted by the OCWR Board under Section 220(e)(1). These adopted regulations provide that the same regulations applying to all of the other legislative branch offices, employees, and union representatives would apply to the offices listed in Section 220(e)(2) and their employees and union representatives. Should the House pass such a resolution, the employees of the House offices listed in Section 220(e)(2) would have union rights after the OCWR Board formally issues the regulations through publication in the Congressional Record. The same would be true for employees of the Senate offices identified in Section 220(e) if the Senate were to pass such a resolution. Employees of the CBO and OCWR would not have union rights unless both the House and Senate passed a concurrent resolution approving the regulations.

➤ **Are confidential employees and management officials eligible?**

No. Confidential and management employees – including but not limited to supervisors, human resources, and management officials – do *not* have the right to unionize for the purpose of collective bargaining even if they work for a covered employing office. These terms are defined in the [OCWR Substantive Regulations](#) at sections 2421.3(j) (management official) and 2421.3(l) (confidential employee).

➤ **Are unpaid interns eligible employees?**

No. Although the CAA provides unpaid interns with protections against certain types of unlawful discrimination, it does not provide unpaid interns with a statutory right to unionize.

Who can help me with my labor-management related problem?

The Office of Congressional Workplace Rights (OCWR) handles labor-management issues for legislative branch employees. Such matters include identifying appropriate units and supervising union elections, handling negotiability appeals, conducting impasse proceedings, and investigating unfair labor practices.

However, the Federal Labor Relations Authority (FLRA) handles labor-management issues for employees of the Library of Congress and Government Publishing Office, and the GAO Personnel Appeals Board handles labor-management issues for employees of the GAO.

What labor-management rights are protected by the CAA?

The Congressional Accountability Act incorporates by reference 5 U.S.C. §§ 7102, 7106, 7111 through 7117, 7119 through 7122, and 7131 for application to the legislative branch. These sections provide:

- 7102 - Employees' rights.
- 7106 - Management rights.
- 7111 - Exclusive recognition of labor organizations.
- 7112 - Determination of appropriate units for labor organization representation.
- 7113 - National consultation rights.
- 7114 - Representation rights and duties.
- 7115 - Allotments to representatives.
- 7116 - Unfair labor practices.
- 7117 - Duty to bargain in good faith; compelling need; duty to consult.
- 7119 - Negotiation impasses; Federal Service Impasses Panel.
- 7120 - Standards of conduct for labor organizations.
- 7121 - Grievance procedures.
- 7122 - Exceptions to arbitral awards.
- 7131 - Official time.

In addition, the CAA provides the OCWR with the authorities provided to the FLRA in sections 7103(b), 7105, 7111, 7112, 7113, 7115, 7117, 7118, and 7122 of Title 5.

Representation FAQs

What are “representation proceedings”?

The term “representation proceedings” in labor-management relations usually refers to elections, clarifications of bargaining units, consolidations of bargaining units, and/or decertifications of bargaining units. [OCWR Representation Petition Form 1351D](#) is used to request an election, determine eligibility for dues allotment in an appropriate unit without an exclusive representative, and clarify, amend, consolidate, or decertify a bargaining unit.

Election for a Union

How do eligible employees become represented (or not) by a union?

Eligible employees who are not represented by a union may petition for an election to decide whether a union will represent a proposed bargaining unit of eligible employees. This petition and election process involves the following steps:

- (1) The employees provide the union with a “showing of interest,” i.e., signatures of at least 30% of the employees of an appropriate bargaining unit showing their wish to be represented by this union.
- (2) The union petitions the OCWR using the [OCWR Representation Petition Form 1351D](#).
- (3) The OCWR investigates and resolves all pre-election issues raised by the parties.
- (4) Any other union can gain a place on the ballot by filing a petition showing that they are supported by at least 10% of the employees.
- (5) The OCWR holds an election.
- (6) Employees have the opportunity to vote to choose which labor organization, if any, they would like to represent them.
- (7) If a majority of the voting employees vote to be represented by a particular union, the OCWR Board of Directors certifies the union as the employees’ exclusive representative.

What is a “showing of interest”?

A “showing of interest” demonstrates that an employee wants to be represented by a union.

➤ **How many employees must show interest for an election petition?**

At least 30% of employees in the proposed bargaining unit must show interest in voting for a union representative.

➤ **What documentation is needed to show interest for an election petition?**

An “authorization” or “signature” card which is signed and dated by the employee is most often used to show interest. However, other documentation may be used to show interest, such as a document which is signed and dated by multiple employees authorizing the union to represent them, a signed and dated allotment of dues form, and/or evidence of employees’ membership in a union.

➤ **Is an employee’s signature on an authorization card a vote for a union?**

No. An employee who signs a “showing of interest” card is not voting for a union by signing the card; rather, the employee is merely indicating that the employee would like an election to occur. In addition, an employee’s signature on an authorization card or document does *not* commit the employee to vote for the union.

- **Will the OCWR recognize an employee’s electronic signature on an authorization card as valid?**

OCWR Procedural Rule 1.05 allows for electronic signatures on any “filing” that is filed electronically. The OCWR Board has never specifically determined whether this rule applies to authorization cards and petitions filed electronically. If signatures on authorization cards are obtained electronically, it would be a good practice to maintain a record of the email interaction or other similar documentation in case an investigation into the authentication of the signatures is conducted.

What is a union election?

A union election is the decision to have a labor organization represent employees with management and is made in a secret ballot election among the unit employees. The OCWR supervises the union election and certifies the results of the election. A majority of the employees in the bargaining unit who vote must be in favor of unionization for a labor organization to become their exclusive representative.

What is an election petition?

The [OCWR Representation Petition Form 1351D](#) is the petition form used to request an election to determine whether a group of employees will or will not be represented by a union.

- **Who may file an election petition?**

A labor organization that is interested in representing a group of employees may file a petition form.

- **What to file**

A labor organization must file documentation to establish the proper showing of interest and an alphabetical list of the people showing interest, together with [OCWR Representation Petition Form 1351D](#).

The questions and instructions in the petition form further describe the information required, including but not limited to contact information for all stakeholders, a description and estimated size of the bargaining unit(s) at issue, a statement of the results sought by the petitioner, a verification that the showing of interest requirement has been met for the election petition, and a signature of the person filing the petition. For more information, see sections 2422.2 – 2422.5 of the [OCWR Substantive Regulations](#).

- **Where to file**

The election petition form and supporting documentation must be filed with the OCWR Executive Director. The form may be emailed to ocwrefile@ocwr.gov, faxed to (202) 426-1913 (limit 75 pages), or hand delivered to the Office of Congressional Workplace Rights, John Adams Building, 110 Second Street, SE, Room LA-200, Washington, DC 20540-1999. Please

call the OCWR office at (202) 724-9250 prior to making a hand delivery to ensure that someone is present to receive the document.

What happens after a union files an election petition?

After the election petition is filed, the OCWR Executive Director, acting on behalf of the OCWR Board of Directors, will investigate any issue raised by the parties, including the adequacy of the showing of interest, the appropriateness of the proposed bargaining unit, and any other issue that must be resolved for the election to go forward. The OCWR Executive Director may hold a pre-election investigative hearing.

Can the election petition be challenged?

Yes. Many aspects of the election petition may be challenged, including the validity of the showing of interest, the composition of the bargaining unit, the status of the labor union, and the timeliness of the petition if there is a time bar because of a previous election, collective bargaining agreement, or other bars.

For more information, please see the [OCWR Substantive Regulations](#) at sections 2422.10 (validity of showing of interest), 2422.11 (challenging status of the labor union), or 2422.12 (timeliness).

Can more than one union seek to be the exclusive representative?

Yes, by filing a request to “intervene.” Any other union can gain a place on the ballot by filing a request to intervene before the pre-election investigatory hearing opens, showing they are supported by at least 10% of the employees.

Can the union and employing office agree to the details of the election?

Yes. Parties may enter into a voluntary election agreement, and are encouraged to do so.

What happens if the parties cannot agree on the election details?

If the parties are unable to agree on procedural matters – e.g., how long an employee must be working for the employing office to be eligible to vote, method of election, dates, hours, location of the election, etc. – the OCWR Executive Director decides the election procedures and issues a Direction of Election.

How does the election process work?

A notice of election will be posted by the employing office and/or distributed to employees in the proposed bargaining unit. The notice must contain all the information that employees need in order to vote, including but not limited to the date, time, and location of the election.

The election will follow the parties’ Election Agreement or the Direction of Election. The votes will be cast by secret ballot. A person’s right to vote may be challenged prior to the person voting. After the election is concluded, the OCWR Executive Director or their designee will tally the ballots and certify the election results.

What happens if the labor organization wins the election?

The labor organization is certified by the OCWR Executive Director on behalf of the OCWR Board of Directors and becomes the exclusive representative of the bargaining unit for collective bargaining.

If the labor organization wins the election, do I have to join the union?

No. Under the statute, no employee can be forced to join a union. All employees are free to join, or not join, a union without fear of penalty or reprisal.

What if I am subject to reprisal for engaging in organizing activity or because I joined, or did not join, a union?

This type of reprisal constitutes an unfair labor practice (ULP) and you can file a ULP charge with the OCWR General Counsel. See the [Unfair Labor Practices FAQs](#) below.

Will dues be taken out of my paycheck if the union wins the election?

Many collective bargaining agreements provide that member dues will be deducted from paychecks. This provision is commonly referred to as a “dues check off” provision. Only those employees who join the union pay dues. No dues are deducted until after a collective bargaining agreement with a dues check off provision is reached and becomes effective.

Unit FAQs

What is an “appropriate unit”?

For a bargaining unit to be an “appropriate unit,” the employees must share a “clear and identifiable community of interest” and the unit must promote “effective dealings” with, and efficiency of the operations of, the employing office involved. A pre-election hearing may be necessary to resolve disputes about the appropriateness of a unit proposed in a petition.

What is a “clarification of unit”?

If there is a dispute about whether an employee, or group of employees, should be part of an established bargaining unit, an employing office or union can petition the OCWR to resolve the dispute using the procedures set forth in Section 2422 of the [OCWR Substantive Regulations](#).

What is a “consolidations of units”?

Unions or employing offices may petition to consolidate two or more bargaining units within the same employing office.

Decertification Election FAQs

What is a decertification election?

Employees already represented by a union may petition the OCWR to conduct an election for representation by another union or to be unrepresented.

How do bargaining unit employees decertify (or choose not to decertify) a union?

Bargaining unit employees who are already represented by a union may petition for an election to end the union from being their exclusive representative. A decertification petition involves the following steps:

- (1) The employees gather a “showing of interest,” i.e., signatures of at least 30% of the employees in the bargaining unit, showing their wish to no longer be represented by their existing union.
- (2) The employees petition the OCWR using [OCWR Representation Petition Form 1351D](#).
- (3) The OCWR certifies the validity of the signatures on the petition.
- (4) The OCWR holds an election.
- (5) Employees have the opportunity to vote to choose which labor organization, if any, they would like to represent them.
- (6) If a majority of the voting employees vote that they no longer wish to be represented by their existing union, the OCWR Board of Directors decertifies the union as the employees’ exclusive representative.

Negotiability and Impasse FAQs

What is “collective bargaining”?

“Collective bargaining” is the performance of the mutual obligation of the employing office and the exclusive representative of employees to meet at reasonable times and consult and bargain in a good faith effort to reach agreement on personnel policies, practices, and matters affecting working conditions.

Are there topics that cannot be bargained?

Yes. There are management rights that are not subject to bargaining. A list of these management rights is provided in [5 U.S.C. § 7106\(a\)](#) and includes such topics as determining the mission, budget, organization, number of employees, and internal security practices of the employing office. However, even if a topic is designated as a management right, this does not preclude bargaining over procedures that the employing office will observe when exercising that right or appropriate arrangements for employees adversely affected by the exercise of that right. This is commonly referred to as “impact and implementation” bargaining. See [5 U.S.C. § 7106\(b\)](#).

What happens if an employing office believes that a proposal is not negotiable?

Negotiability disputes can be resolved by filing a petition with the OCWR Board of Directors using the procedures set forth in Section 2424 of the [OCWR Substantive Regulations](#). Alternatively, refusal to bargain over a proposal that is clearly negotiable may constitute an unfair labor practice and a dispute of this nature can be resolved by filing an unfair labor practice charge with the OCWR General Counsel. See the [OCWR Substantive Regulations](#) at section 2423, and the [unfair labor practice FAQs](#) below. A labor organization must choose between the unfair labor practice procedures or the negotiability petition procedures; both set of procedures cannot be used. The regulations and section 8.06 of the [OCWR Procedural Rules](#) provide for expedited review of negotiability disputes.

What happens if the employing office and the union cannot reach a collective bargaining agreement?

Impasse is the point in the negotiation over conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement. The OCWR Board of Directors serves the same function as the FLRA impasse panel and can resolve issues which have caused an impasse. Impasse procedures are initiated by filing an [Impasse Services Request for Assistance form](#) with the OCWR. The complete impasse procedures are set forth in Section 2471 of the [OCWR Substantive Regulations](#).

Unfair Labor Practices FAQs

What are unfair labor practices?

The term “unfair labor practices” (ULPs) refers to provisions of the FSLMRS, as applied by the CAA, that prohibit both employing offices and labor organizations from engaging in conduct that is contrary to the labor-management rights established by law. Both labor organizations and employing offices are prohibited from, among other things:

- interfering with, restraining, coercing, or taking reprisal against employees in the exercise of their labor organizing rights; and
- refusing to negotiate in good faith over terms and conditions of employment.

For a more comprehensive list of unfair labor practices, please see section 2421.4(d) of the [OCWR Substantive Regulations](#).

What can I do about unfair labor practices?

If you believe that an employing office or a labor organization has committed an unfair labor practice, you may file a ULP charge with the General Counsel of the OCWR. The official forms for a [ULP Charge Against an Employing Office](#) or a [ULP Charge Against a Labor Organization](#) contain information about what information to include and how to file. It is best to include as much supporting documentation as you can along with the charge. If you file a charge with the

General Counsel, you must also provide a copy of the signed charge to the charged party or the charged party's representative. See section 2423.6(b) of the [OCWR Substantive Regulations](#) for more information.

How long do I have to file a charge?

You have **180 days** from when the alleged violation occurred to file a timely charge. A charge will be deemed "filed" when it is received by the Office of the General Counsel.

What happens after I file a charge?

Once a charge is filed, attorneys in the OCWR Office of General Counsel determine whether the charge is sufficient to warrant an investigation. They then request position papers from the parties and conduct an investigation to assess the merits of the charge. After a thorough and impartial investigation, if the charge is determined to have merit and the parties are unable to reach a settlement, the General Counsel may file a complaint with the Executive Director of the OCWR. Complaints are adjudicated before a Hearing Officer, whose decision may be appealed to the OCWR Board of Directors and the U.S. Court of Appeals for the Federal Circuit. If the charged party is ultimately found to have committed an unfair labor practice, they will typically be required to post a notice informing bargaining unit employees of the ULP, and other remedies may also be ordered.