

**Statement of
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Office of Congressional Workplace Rights
Before the Subcommittee on the Legislative Branch,
Committee on Appropriations, United States House of Representatives
Fiscal Year 2023 Budget Request
April 5, 2022**

Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Legislative Branch Subcommittee, thank you for allowing me the opportunity to submit for the record this statement regarding the budget request for FY 2023 for the Office of Congressional Workplace Rights (OCWR). On behalf of the Board and staff of our office, I would like to express our appreciation for this Subcommittee's continued support of the OCWR and its mission to advance workplace rights, safety, and health for employees in the legislative branch, and accessibility for members of the public. This year, the OCWR is requesting to remain at the FY 2022 funding level of \$7,500,000, with \$2,000,000 remaining available until September 30, 2024. The OCWR is also requesting one additional FTE.

The OCWR's Statutory Mandate

When Congress enacted the Congressional Accountability Act (CAA) in 1995, it made a promise to the American public that it would abide by the same federal workplace, accessibility, and safety and health laws that it applies to private sector employers and executive branch agencies. Congress established the OCWR to administer the CAA and ensure that this promise is kept.

With 31 FTE positions inclusive of a part-time Board of Directors, the OCWR is a very small office with a very broad mission. Our office performs many of the same functions in the legislative branch that are performed by multiple agencies in the executive branch that are charged with enforcing workplace rights, safety, and accessibility laws, including the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Department of Labor, and the Federal Labor Relations Authority. We are responsible for enforcing 14 federal workplace and accessibility laws that cover more than 30,000 employees in the legislative branch, including the House of Representatives, the Senate, the United States Capitol Police, the Library of Congress, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Congressional Accessibility Services, and our own office, among others. We administer the administrative dispute resolution (ADR) process established by the CAA to resolve workplace disputes; we carry out a program of training and education on the laws applied to the legislative branch by the CAA; and we advise Congress on needed changes and amendments to the CAA.

In addition, our General Counsel is responsible for inspecting—at least once each Congress—over 18 million square feet of facilities and grounds in the legislative branch for compliance with the Occupational Safety and Health (OSH) Act, as well as the public areas of all facilities in the legislative branch for compliance with titles II and III of the Americans with Disabilities Act

(ADA). The General Counsel is also responsible for investigating allegations of OSH, ADA, and unfair labor practice (ULP) violations filed under the Act, and for filing and prosecuting complaints of OSH, ADA and ULP violations.

The CAA Reform Act

On June 19, 2019, the new provisions of the Congressional Accountability Act of 1995 Reform Act became fully effective. Focused on enhancing workplace protections and strengthening transparency and accountability, the Reform Act refined the adjudication process, expanded the number of employees covered by the CAA, and dramatically expanded the OCWR's duties and responsibilities. Notwithstanding the challenges presented by the COVID-19 pandemic, the OCWR continues to fully implement the CAA, providing critical services to the legislative branch community.

The OCWR's FY 2023 Budget Justification

The OCWR's budget request for FY 2023 maintains its focus on the OCWR's statutory mandates and on improving the delivery of services to stakeholders in the legislative branch. The requested amount is necessary for the Office's operations, including conducting hearings, mediations, safety and health inspections, unfair labor practice investigations, and ADA inspections, as well as our statutory mission to educate and train the legislative branch community on their rights and responsibilities under the CAA.

Although many of the initial changes mandated by the Reform Act have been fully implemented, ongoing funding will be required to expand on these efforts moving forward, especially with respect to our Information Systems program. For example, the OCWR's secure e-filing system requires continued cybersecurity monitoring and modifications to assure information security and confidentiality. Online educational modules also must be continually updated to reflect changes in the law and to fully discharge our mandate to educate and assist legislative branch offices and employees. New ADR procedures under the Reform Act, such as preliminary review by hearing officers of all claims, affect the costs associated with adjudication of those claims. Moreover, the legislative branch climate survey requires ongoing funding to administer every 2 years, as mandated by the Reform Act.

Approximately 70 percent of the requested amount for FY 2023 reflects personnel costs, including increased compensation and benefits associated with additional staff hired during this fiscal year. The remainder of the requested amount would pay for contract services, including cross-servicing providers such as the Library of Congress and the National Finance Center, and other services, equipment, and supplies needed to operate the OCWR.

Of the FY 2023 requested amount, the OCWR is requesting that a total of \$2,000,000 remain available until September 30, for the services of essential contractors, including hearing officers, mediators, and safety and health inspectors, and for the ongoing costs associated with administering the biennial climate survey of the legislative branch work environment.

Alternative Dispute Resolution Program

The OCWR requests a total of \$450,000 for non-personnel services for FY 2023 for the administration of its ADR program, which represents our best estimate of the costs in the coming fiscal year. The CAA establishes an ADR process that provides employing offices and covered employees a neutral, efficient, and cost-effective means of resolving workplace disputes. We strive to ensure that stakeholders have full access to these ADR procedures. The OCWR enjoys a 100 percent affirmance rate in employment cases by the U.S. Court of Appeals for the Federal Circuit. The OCWR continues to do more with less, maintaining a flat rate of pay for contract mediators, a standardized hourly fee for hearing officers, and rate limitations for other outside service providers.

In any given year, it is difficult to predict the number of cases that will be filed with the OCWR's ADR program, the complexity or duration of administrative proceedings, or the overall costs associated with case processing and adjudication. Recent developments add to the difficulty of making such predictions. Notably, fiscal years 2020-2022 included an unprecedented period of telework in the legislative branch as a result of the COVID pandemic. Although our Confidential Advisor continues to receive inquiries from legislative branch employees at the same rate as before the pandemic began, the fact that most employees are no longer in the physical workplace may have had a significant, albeit temporary, impact on the number of claims filed. Furthermore, recent changes to the law—including the amendment of the CAA's Family and Medical Leave Act provisions to provide paid parental leave benefits to legislative branch employees and the enactment of the Fair Chance to Compete for Jobs Act—may also have an impact on the number of claims filed with the OCWR in the future.

The new ADR process has resulted in an increase in the cost of adjudicating individual claims and will continue to do so. This is because the Reform Act procedures require, among other things, that a "preliminary hearing officer" be appointed at the outset to conduct a preliminary review of every claim filed. Preliminary review did not take place prior to the Reform Act, and a hearing officer was only appointed in those cases that were not resolved during the mandatory counseling or mediation phases, and only if the claimants in those cases requested a hearing on the merits. Our budget justification takes these considerations into account in arriving at our best estimate of the costs for administering this program in FY 2023.

Education and Training Programs

The OCWR is requesting a total of \$260,000 for non-personnel services for FY 2023 for its Education and Training Programs.

The OCWR has a statutory mission to educate and train Members of Congress and legislative branch employees on their rights and responsibilities under the CAA. In FY 2021 and 2022, the OCWR continued to deliver training in person, online, and via video conferencing to legislative branch staff throughout the country. In light of the unique demands presented by the COVID pandemic, the OCWR also created numerous online videos to enhance remote learning, and implemented improved web-conferencing capability for effective, real-time training. In addition

to providing training to employing offices, the OCWR conducted seminars for staff on their rights and responsibilities under the CAA.

The OCWR website at www.ocwr.gov was also completely overhauled. The new site provides enhanced functionality, is fully compliant with the updated accessibility requirements for information and communication technology covered by section 508 of the Rehabilitation Act, and enables easy access to various training modules that inform staff of their workplace rights, including courses on Recognizing and Preventing Discrimination and Harassment, Preventing Sexual Harassment in the Workplace, and Bystander Awareness. The OCWR also added a Web Specialist position to manage the website in-house, eliminating the costs for vendor updates.

The OCWR will require substantial funds in FY 2023 to continue building on these accomplishments, which are vital to our mission to provide stakeholders with current, dynamic, and innovative educational and outreach materials that are tailored to the legislative branch.

Safety and Health and Public Access

The OCWR is requesting a total of \$150,000 for non-personnel services for FY 2023 for its Occupational Safety and Health and ADA public access inspection programs. Since the CAA was enacted in 1995, OCWR occupational safety and health inspections and investigations have led to the discovery and abatement of thousands of serious fire and other safety hazards in House and Senate buildings and around the Capitol. OCWR ADA inspections and investigations have also led to the identification and removal of thousands of barriers to access on the campus.

The OGC initiated investigations in 11 new OSH cases in FY 2021. Four of these cases arose out of the events of January 6, 2021; three pertained to COVID-19 safety protocols; and the others involved asbestos, fire safety, a vehicular fatality, and a series of concerns in a single workplace including hazard communication, air quality, and safety training. The OGC also issued a special report in July, 2021, detailing safety violations by the U.S. Capitol Police in connection with events of January 6, 2021, and issued a citation.

The OGC also provided online resources regarding COVID-19, as well a videoconference presentation regarding returning to work that included pandemic-related safety information, and responded to numerous individual inquiries regarding COVID-19 safety measures in legislative branch workplaces. Despite the lack of an enforceable OSHA standard governing COVID-19 safety in the workplace, the OGC worked with employing offices to ensure that they had appropriate administrative, engineering, and PPE controls in place to prevent the spread of the virus.

The OCWR OGC will continue to work directly with the Architect of the Capitol and other offices on the Hill to provide technical support and develop cost-effective solutions to safety and access problems. Our budget request will allow us to continue to provide the level of expertise and assistance that the community requires.

Information Systems

The OCWR is requesting a total of \$1,112,000 for non-personnel services for FY 2023 for the Information Systems Program. As mandated by the Reform Act, the OCWR successfully implemented its secure online claims reporting and tracking e-filing system. In FY 2022, the OCWR continued to enhance this system, conducting periodic security reviews and testing by an independent assessor to identify strengths, weaknesses, and potential risks to ensure the integrity of its cyber security posture.

In FY 2021, the OCWR also completed the development of the Risk Management Suite (RMS). The new system will be both robust and secure. It will leverage a supported Microsoft platform to better assist OCWR safety professionals and provide enhanced data security. Full integration of the system will occur in FY 2023.

As required by the Reform Act, we have designed and implemented a permanent record retention policy that meets all statutory requirements. To address risks, we are also developing policies, procedures, and access controls for authorized users.

The OCWR continues to utilize the Library of Congress as its service provider for operations, maintenance, and security of the OCWR's IT systems and other support services, such as User Access Management, day-to-day IT Service Desk requests, and hardware and software maintenance. Additionally, the OCWR maintains separate secure data applications that house program-essential information.

To date, the OCWR has spent over \$500,000 updating its cybersecurity to safeguard critical information assets through continuous monitoring, assessing and upgrading in accordance with industry standards. Thus, the integrity of the program depends upon ongoing funding in FY 2023 and beyond.

Additional Services

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

Thank you very much for providing us with this opportunity to brief you on our FY 2023 budget request. As the Acting Executive Director of the OCWR, I am proud of the work that our highly professional and talented staff members perform every day. We are available to answer any questions or to address any concerns that the Members of this Subcommittee may have.

Teresa M. James

Acting Executive Director