

**PREPARED TESTIMONY**

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**OFFICE OF COMPLIANCE**

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**SENATE COMMITTEE ON APPROPRIATIONS**

**SUBCOMMITTEE ON THE LEGISLATIVE BRANCH**

**March 1, 2012**

Mr. Chairman, Senator Hoeven, and distinguished Members of the Subcommittee, I am honored to appear before you, representing the Office of Compliance. Joining me today are General Counsel Peter Ames Eveleth, Deputy Executive Director Barbara J. Sapin, Deputy Executive Director John P. Isa, and Budget and Finance Officer Allan Holland. Collectively, we present to you the Agency's request for appropriations for fiscal year 2013, and we seek your support for our request.

Before I go into our appropriations request, I'd like share a little about the work of the Office of Compliance and the value we add to the Congressional community.

**HISTORY OF THE CAA AND THE OOC**

The mission of the Office of Compliance is simple: we work with Congress to ensure a fair and safe workplace for Members, their staff, and their constituents. Congress saw fit in 1995 to apply workplace laws to the Legislative Branch, and the Congressional workplace is a better environment because of that decision.

Before Congress enacted the Congressional Accountability Act ("CAA"), there were certain administrative procedures in place for employees to contest allegations of workplace discrimination, but there were no laws protecting employees from discrimination. The majority of staff with allegations of discrimination either remained silent, let bad feelings fester, or made their concerns public, seeking remedies through the media. None of those approaches was ideal for resolving workplace claims of discrimination, and none ensured employees of the Legislative Branch a fair system to address their concerns. Frequently, "remedies through the media" was the most effective approach for an employee.

Prior to 1995 and the enactment of the CAA, Occupational Safety and Health Act protections did not apply to the Legislative Branch, and, unlike with allegations of discrimination, there were no internal controls to ensure the application of OSH protections. Consequently, many employees – including our electricians, landscapers, and utility tunnel workers – worked without the protections that apply in the private sector and Executive Branch to help prevent harmful, and sometimes deadly, results.

Also prior to the CAA's passage in 1995, the Legislative Branch was not fully accessible to the public. Constituents with disabilities often confronted substantial barriers when trying to enter Congressional buildings. The Americans with Disabilities Act required public facilities such as schools and hospitals to provide access for people with mobility, vision, hearing, or other impairments. But people with disabilities were not guaranteed access to the very Senators and Congressmen who were their elected representatives. With the passage of the CAA, they now enjoy full access to Committee proceedings, or to observe debate in the Senate or House.

Congress passed the CAA in 1995 with nearly unanimous, bipartisan support. In doing so, Congress sought to give employees an avenue of redress for their claims of discrimination; to hold itself out as a premier employer subject to the same responsibilities and employee protections as private sector employers; and to demonstrate accountability to its constituents. It was the right thing to do.

The CAA established the Office of Compliance. With a 5-member non-partisan Board of Directors, four appointed executive staff, and a modest pool of talented and dedicated employees, the Office of Compliance performs the work of the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the Occupational Safety and Health Administration, and several divisions of the Department of Justice and the Department of Labor. We perform our duties independently, efficiently, collaboratively, and cost effectively.

### **THE VALUE OF OOC SERVICES**

Much of the work of the OOC can involve contentious issues: employees alleging discrimination or unsafe working conditions, people with disabilities alleging barriers to access, veterans seeking credit for service in applying for legislative jobs. Unlike the services provided by other agencies (e.g. beautifying efforts of the Architect of the Capitol, security efforts of the United States Capitol Police, and the research services provided by the Library of Congress), the value of the services provided by OOC may not be so easily recognized. So, let me explain the crucial nature of the work we do.

Because of the CAA and the OOC, allegations of discrimination in the Congressional workplace can now be addressed confidentially and comprehensively. Professional counselors well-versed in the substantive protections of the CAA can help an employee work through a claim without disrupting the employing office's work environment. These objective and neutral counselors can also be helpful to an employing office when an office contacts the OOC for help in resolving an issue before it disrupts the workplace. During confidential mediation, a certified and neutral third-party will meet with an employee and the employing office to facilitate a mutually acceptable solution to a problem.

On average, over 90% of claims presented to our agency are resolved within our administrative procedures. It is fair to say that without the continued effectiveness of these statutorily mandated programs, Congress would be seeing many more cases proceed to litigation or to the press.

Due to the passage of the CAA, the 30,000 employees of the Legislative Branch can perform their duties with the same OSHA protections as private sector workers across the country. OOC safety and health staff inspect workplaces to identify hazards so they can be remedied before accident or injury occurs. Since the 109<sup>th</sup> Congress, when OOC began conducting comprehensive safety and health inspections of workplaces in the Washington, DC metropolitan area, our safety and health staff have facilitated a 60% reduction in the safety and health hazards affecting Legislative Branch employees. In the 109<sup>th</sup> Congress, our inspectors identified 13,140 hazards. In the 110<sup>th</sup> Congress, there were 9,200 hazards identified; and in the 111<sup>th</sup> Congress, there were 5,400 hazards identified. This reduction is due in large part to the skill and dedication of our inspectors, the technical assistance and education we provide to employing offices, and the collaboration and cooperation of employing offices in abatement efforts.

When Congress enacted the CAA, it guaranteed for the first time that all members of the public, including people with disabilities, had access to Legislative Branch facilities. At the request of this Subcommittee and its counterpart in the House, our inspectors performed an ADA "preinspection" of the Capitol Visitor Center before its December 2008 opening. OOC inspectors identified dozens of access barriers in the CVC's 580,000 square feet, involving doors, ramps, restrooms, dining areas and other facilities. Because our team was brought in before the contractors had finished their work, many of the barriers were corrected more quickly and at lower cost than might otherwise have been the case. As a result, the CVC welcomes hundreds of thousands of visitors every year and offers comprehensive, barrier-free access to all.

As is clear, services provided by the OOC minimize disruption to the important work you do on behalf of the American people. These services help to create the workplace envisioned by the

CAA. We are required to resolve workplace rights issues quickly so that the essential work of the Legislative Branch can continue. We are required to identify safety and health hazards - including emergency evacuation - so they can be corrected before an employee, Senator, or Representative is injured. We are required to ensure public access to the Legislative Branch for all, including people with disabilities. We are required to educate the Congressional community on the rights and responsibilities provided in the CAA. We recognize the positive impact that these statutory mandates have on the Congressional community, and we are asking for the funding necessary to continue this essential work.

### **NECESSARY FUNDING FOR FY 2013**

For fiscal year 2013, OOC is requesting a total of \$4,206,000: 12% less than our FY 2012 appropriations request and 10.19% (\$389,000) above our fiscal year 2012 enacted funding level of \$3,817,000. This small requested increase restores a portion of the 13.1% reduction in funding the OOC has absorbed over the last two fiscal years: 6.7% in FY 2011, and 6.4% in FY2012.

### **WHAT WE HAVE NOT REQUESTED IN THE PAST**

Mindful of the fiscal constraints facing the Federal Government, over the last two appropriations cycles, OOC has worked to keep its funding requests to a minimum, resulting in a shortage of necessary funds.

During fiscal year 2011, the OOC worked to develop the risk-based inspection and abatement approach that the Conference Committee on FY2010 Legislative Branch Appropriations directed OOC to institute. Developing and implementing that approach required an additional safety and health inspector, as risk-based inspections are more complex than the wall-to-wall inspections we had performed previously. We didn't request funding for that purpose. Instead, we renewed our fiscal year 2010 request to the Occupational Safety and Health Administration to detail one or more safety and health inspectors on a short-term, non-reimbursable basis, to provide temporary inspection assistance at no additional expense to the OOC. As in fiscal year 2010, however, budget constraints continued to prevent the Department of Labor and other agencies from supplying non-reimbursable detailees. Because we had been advised that no detailee would be available in FY2010, FY2011, or the foreseeable future, we did not make a third request in FY2012. In fiscal year 2012, the need for an additional inspector was still pressing, yet, in an effort to present a minimal budget, we refrained from asking this Subcommittee for the necessary funding.

In addition, to keep our budget requests low, we previously have not requested funding for many initiatives on workplace issues that would benefit agencies, employees, and Member offices. For example, to save time, money, travel, and to provide privacy to employing offices and their staff, offering an online training program directly linked to OOC's website would be the most effective means of educating the covered community on rights and responsibilities under the CAA. However, because of the need to minimize our budget requests, we have not asked for funding for this type of training.

### **OUR COST-CUTTING MEASURES**

The OOC has been sensitive to the challenges faced by this Subcommittee, and we have kept our budget requests low. In order to continue pursuing our mission with the funding provided to us, we reorganized our staff and cut back services. We were required to lay off an attorney, which left a gap in our case-handling ability. We have had to cut inspector hours by nearly 50% since FY2010 - leaving many workplaces, including Member offices, uninspected. We have been forced to eliminate the technical assistance we provide to employing offices, as those hours are needed to perform inspections of high hazard areas. We have reduced the rates paid to our hearing officers, established a flat per-case rate for our mediators, and brought some mediations in-house. We have eliminated training for all employees and travel for non-Board Members. Because of the reductions in funding, we have had to reduce maintenance on a case tracking system that continues to crash. We have limited travel for our Board Members (all but one of whom lives outside the Washington, DC metropolitan area), cut back the purchase of supplies and information technology equipment, and reduced certain basic custodial services. We have tightened our purse strings, just like every other agency, and figured out a way to get the job done with the funds we have been appropriated.

The job we've been doing, however, is not the job you deserve. Budget cuts seriously threaten our ability to ensure the safety and accessibility of the Congressional workplace and the confidential resolution of workplace disputes.

### **WHAT WE WILL DO WITH REQUESTED FUNDING**

The funding requested in fiscal year 2013 will restore a portion of the funding that was cut over the last two fiscal years. At the requested level for FY2013, the OOC will be able to add one safety and health inspector, which will help us implement the risk-based inspection and abatement approach that you asked us to undertake, and evaluate additional Legislative Branch facilities to identify any barriers to public access for people with disabilities. We will also be

able to maintain our current pool of distinguished mediators and hearing officers, ensuring the continued integrity of our confidential dispute resolution program.

The remainder of the increase will allow the agency to meet its obligations under inter-agency service agreements and replace the dysfunctional case management system. We are still not asking for everything we need, but we are asking for additional funding so that we can restore some of the critical services that make the Legislative Branch a more accessible, fair, and safe workplace.

### **CONCLUSION**

The work of the Office of Compliance adds value to the Congressional campus – that is clear. Because of Congress' decision to apply workplace rights laws, safety laws, and public access laws to the Legislative Branch, the Congressional community is closer to being in line with Executive Branch agencies and the private sector. Funding the OOC at the requested level will help ensure that these laws can be applied as Congress envisioned in the CAA.

The OOC's request for an additional \$389,000 is minimal - less than 1% of the 2012 enacted funding level of any of the agencies for which we provide services. We provide services to 30,000 Legislative Branch employees, whose workplaces span nearly 18 million square feet in the Washington, DC metropolitan area alone. Our requested funding is an infinitesimal sum in light of the enormous responsibility placed upon us by the CAA. Yet, this funding is critical to the operations of our agency and to the services we can provide to you.

On behalf of the Board of Directors and the entire staff of the Office of Compliance, I thank you for your support of this Agency. I would be pleased to answer any questions.