Prepared Statement of Barbara Childs Wallace,
Chair, Board of Directors,
Congressional Office of Compliance

Mr. Chairman and Members of the Committee: On behalf of the Board of Directors and staff of the Congressional Office of Compliance ("OOC"), I thank you for this opportunity to participate in this Committee's review of existing training, policies, and mechanisms in place to guard against, report, and seek remedy for sexual harassment in the U.S. House of Representatives.

In the last few weeks, there have been several media reports that reflect a misunderstanding of the process for legislative branch employees to bring a complaint of discrimination, harassment, or retaliation before the OOC. In particular, the process has been described as cumbersome, lengthy, and one-sided. I welcome this opportunity to clarify the OOC's procedures, explain how they work in practice, and discuss the recommendations that the Board has made to Congress over the years to make them even more effective. As I discuss below, the real problem is that many employing offices are insufficiently aware of their obligations under the Congressional Accountability Act ("CAA") and many employees are unaware of their rights under the CAA, including the right to bring their complaints to the OOC.

Overview

The CAA, enacted more than 20 years ago with nearly unanimous approval, protects over 30,000 employees of the United States Congress and its associated offices and agencies, including the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Congressional Accessibility Services, and the OOC. The CAA extends to employees of the legislative branch the protections of Title VII of the Civil Rights Act of 1964, as well as 12 other federal workplace statutes. Congress created the OOC to do the job of multiple agencies in the executive branch, including the Equal Employment Opportunity Commission, the Department of Justice, the Department of Labor, and the Federal Labor Relations Authority.

The OOC is composed of approximately 20 executive and professional staff and has a 5-member, non-partisan Board of Directors. Board members are appointed by unanimous consent of the majority and minority leadership of both the House of Representatives and the Senate, and they are chosen for their expertise in employment and labor law.

Among other functions, the OOC is responsible for adjudicating workplace disputes; carrying out a program to educate and inform Members of Congress, employing

offices, and legislative branch employees of their rights and responsibilities under employment laws made applicable to them through the CAA; and recommending to Congress changes to the CAA to advance the workplace rights of legislative branch employees. This Committee's important work in reviewing the policies and mechanisms in place to guard against, report, and remedy sexual harassment must begin with a clear understanding of these functions.

Dispute Resolution Procedures under the CAA

Subchapter IV of the CAA sets forth a 3-step process that requires counseling and mediation before an employee may file a complaint seeking administrative or judicial relief. Prior to filing a complaint with the OOC pursuant to section 405 of the Act or in the U.S. District Court pursuant to section 408, an employee must do 3 things:

First, the employee must request counseling within 180 days of the date of the alleged violation of a law made applicable by the CAA. "Counseling" is a statutory term that equates to intake. Although the OOC intake counselor does not provide the employee with legal advice, she considers the employee's concerns and "provide[s] the employee with all relevant information with respect to the rights of the employee" including information concerning the applicable provisions of the CAA. The employing office is not notified by the OOC that the employee has filed a request for counseling, and counseling between the employee and the OOC is strictly confidential. Neither the CAA nor the OOC's procedural rules require the employee's in-person attendance at intake counseling. The employee may participate in the counseling process over the telephone, or by similar means, and the employee may be represented at counseling by a representative in the employee's absence. This assists the many employees covered under the CAA who live throughout the United States, far from the Nation's capital where the OOC, with its small staff, maintains its only office.

The CAA also provides that "[t]he period for counseling shall be 30 days unless the employee and the Office agree to reduce the period." Therefore, an employee can request to shorten the counseling period and is advised of that option. An employee may also waive confidentiality during the counseling period to permit the OOC to contact the employing office to seek an immediate solution to the employee's concerns, but this is strictly up to the employee.

Second, if a claim is not resolved during the counseling phase, and the employee wishes to pursue the matter, the CAA requires that the employee file a request for mediation with the OOC. 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 OOC. At the outset of the mediation process, the parties sign an agreement to keep confidential all communications, statements, and documents that are prepared for the mediation. This confidentiality obligation concerns

materials prepared *for the mediation process*—it does not prevent an employee from discussing underlying facts or allegations with others. The confidentiality obligation concerning materials prepared specifically for the mediation process encourages the parties to present their positions freely, which promotes and enhances the mediation process.

The CAA further provides that mediation "shall involve meetings with the parties separately or jointly." As with counseling, an employee may participate in mediation over the telephone, or by similar means, and the employee may be represented by a representative in the employee's absence. Contrary to some inaccurate reports in the media, there is no requirement that the employee be in the same room as the accused during mediation.

The CAA also specifies that the mediation period "shall be 30 days," which may be extended only upon the joint request of the parties. Even if mediation fails to settle the matter within 30 days, it is not uncommon for the parties jointly to request such an extension or to revisit negotiations later in the process. Resolving cases during mediation can save the parties from burdensome litigation, which can be expensive, time consuming, and a drain on resources and workplace productivity. Mediation also allows the parties to craft a resolution of the workplace dispute that meets their unique needs.

If the parties fail to resolve their dispute in mediation, a covered employee may elect to proceed to the third step in the process, either by filing an administrative complaint with the OOC, in which case the complaint would be decided by an OOC 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. A party dissatisfied with the decision of the Hearing Officer may file a petition for review with the OOC 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.

Although the OOC works with its congressional oversight committees, the CAA explicitly prohibits oversight with respect to the disposition of individual cases. Due to the program's counseling and mediation processes, the OOC's experience has been over many years that a large percentage of controversies were successfully resolved without formal adversarial proceedings. The OOC continues to work with the covered community to encourage compliance with the CAA, and to promote fair, effective, and efficient methods to settle workplace disputes.

Education and Outreach

When it passed the CAA, Congress recognized that ensuring compliance with the incorporated workplace laws would require clear guidance regarding appropriate workplace behavior and the consequences of violating the CAA. The CAA thus requires that the OOC carry out a program of education for Members of Congress and other employing authorities of the legislative branch respecting the laws made applicable to them and a program to inform individuals of their rights under those laws.

For over 20 years, the OOC has been engaged in outreach within the congressional community and in producing educational tools focused on discrimination and retaliation. Generally, the OOC's training programs are tailored to a requestor's needs, ranging from small and informal discussions with employees regarding the CAA to full-fledged training and panel presentations. Training involves staff from all departments in the Office, including the Office of the Executive Director, the Office of General Counsel, and the Office of Alternative Dispute Resolution programs.

All of the OOC educational materials can be accessed at www.compliance.gov, including training videos, online interactive learning modules, hundreds of publications, posters, brochures, Power Point presentations, and a myriad of other information covering all the laws in the CAA. In-person courses listed on the HouseNet include sessions on preventing sexual harassment and other forms of discrimination, requesting family and medical leave, and understanding veterans' rights, to name a few.

Every month, the OOC issues a new publication that highlights an important workplace law incorporated in the CAA and outlines its applicability to the legislative branch. Our most recent OOC Compliance@Work publication features an article written by the Deputy Executive Director for education programs, titled "The Importance of Training."

As a regular presenter at the Congressional Research Service's District/State Staff Institute conferences, the OOC also has an opportunity to connect with hundreds of congressional staffers who live and work outside of Capitol Hill. The OOC also worked with the Congressional Budget Office in 2016 to provide in-person training to their managers and equal employment opportunity counselors. Training included an overview of the CAA processes as well as discussion of the law governing workplace discrimination, sexual harassment, family and medical leave, the Americans with Disabilities Act, and retaliation for exercising workplace rights.

Recognizing that busy schedules, resource constraints, and geography may make in-person training impractical, the OOC has also developed web-based training programs. The OOC's first online interactive training module, entitled "Preventing Sexual Harassment in the Workplace," is intended to foster a safe and productive work

environment by training employees to identify behavior that constitutes sexual harassment and providing them with the resources to prevent and report it. The second online training module covers reasonable accommodation in the workplace for an employee with a qualified disability under the Americans with Disabilities Act. The third module will cover the Family and Medical Leave Act, a fourth will focus on an overview of the OOC, and a fifth will further discuss anti-discrimination and retaliation.

In 2016, the OOC rolled out its Brown Bag Lunch series, which the OOC General Counsel designed to inform legal counsel about the latest case law developments under the laws applied by the CAA, including Title VII disparate treatment and hostile work environment. All of the comprehensive brown bag case law outlines are available on our website and are also accessible through our quarterly electronic newsletter, which is emailed to all legislative branch employees.

The OOC website is frequently updated and enhanced with new features. Current videos on the site cover our claims process and what to expect at mediation or during an appeal of a claim. We use social media platforms to disseminate information as well. Although the OOC has made progress on the education and training front, our challenge has been getting the attention of the legislative branch employees who are very busy and otherwise not engaged on the topic of their workplace rights and responsibilities.

Despite the many educational resources regarding harassment and discrimination available through the OOC, training is not mandatory within the congressional community. Because decisions have been left to the discretion of each employing office, both training and general employee awareness of their rights and responsibilities under the CAA have been inconsistent, at best, throughout the legislative branch. Even a short investment of time with the OOC's resources, however, can help an employing office maintain compliance with workplace laws and promote an inclusive and respectful working environment, and help employees to understand and exercise their rights under the CAA. We look forward to continuing to assist Congress and the legislative branch agencies by providing the necessary educational and informational resources to achieve these goals. Publicizing information about the OOC will result in legislative branch employees realizing that they do have a place to turn when they experience discrimination, harassment, or retaliation, as Congress originally intended.

Board Recommendations to Congress

The CAA was crafted to provide for ongoing review of the workplace laws that apply to Congress. Section 102(b) of the CAA therefore tasks the Board of Directors to do just that. Thus, every Congress, the Board is required to report on: first, whether or to what degree provisions of federal law relating to terms and conditions of employment and access to public services and accommodations are applicable to the legislative branch; and second, with respect to provisions not currently applicable to the legislative

branch, whether such provisions should be made applicable to the legislative branch. We continue to believe that the adoption of the recommendations discussed below will best promote a legislative branch free from unlawful discrimination and retaliation.

Mandatory Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Training for All Congressional Employees and Managers

In its 2016 biennial section 102(b) report, the Board recommended, as it has in prior reports, that Congress mandate anti-discrimination, anti-harassment, and anti-retaliation training for all Members, officers, employees and staff of the United States Congress and employing offices in the legislative branch.

Education directly impacts employee behavior, and in the area of harassment and discrimination prevention, a comprehensive training program continues to be the most effective investment an organization can make in reducing complaints and creating a more productive workforce. In the interests of prevention, the executive branch requires each federal agency to provide employees training regarding their rights and remedies under anti-discrimination and anti-retaliation laws (Section 202(c) of the Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (No FEAR Act)). The No FEAR Act mandates that all current employees and managers be trained by a date certain, and training thereafter must be conducted no less than every 2 years. New employees must receive training as part of a new-hire orientation program, and where there is no new hire orientation program, new employees are to receive the applicable training within 90 days of their appointment.

Unlike in the executive branch, however, there is no current obligation on the part of Congress to inform or train legislative branch employees on their rights and responsibilities under anti-discrimination laws that apply to them through the CAA. Training for new employees on workplace rights is essential to creating and maintaining workplaces in the legislative branch that are free from unlawful discrimination and retaliation. Failing to educate and update employees on workplace behaviors and rights increases the risk of legal violations that could lead to great harm to employees and costly and disruptive litigation. Additionally, many employees of the legislative branch, especially Member office staff, are entering the workforce for the first time. Enhancing their understanding of how federal workplace laws contribute to a fair, safe, and accessible workplace will be invaluable as they become the employers and leaders of the future.

Currently, however, training is voluntary. In the case of some employing offices, the training does not involve or mention the OOC as a resource for information or assistance in resolving workplace disputes. To ensure that the congressional community is aware of the laws affecting the workplace, we recommend mandatory training on the

CAA for every new employee and biennial update training for all employees and supervisory personnel.

The CAA is a unique law and its processes and programs are unique to the legislative branch workforce. Training on the CAA informs managers of their workplace responsibilities and provides them one more avenue to seek information about best practices and how to handle discrimination and retaliation issues. Employing offices must understand the importance of curtailing objectionable behavior at the outset. Training can and does accomplish this goal. Where victims receive training, they may recognize that they do not have to endure a harassing and hostile workplace. Studies have found that sexual harassment in any workforce can be grossly underreported based on the high profile and public nature of an allegation and the backlash that an accuser may suffer, and can lead to increased absence from work, decrease in productivity, and eventual resignation from an otherwise suitable position.

The OOC has the statutory mandate from Congress to carry out a program of education under the CAA, and the practical and subject matter expertise to effectively work with Members, employing offices, and individuals as a neutral and independent educator. Mandatory training for all congressional employees and managers would go far in creating a model workplace free from discrimination and retaliation. To meet this mandate, additional resources will be required. Specifically, the OOC needs three (3) additional full-time employees: an individual to further develop content for various training media, a technical specialist who can provide additional IT expertise and support, and an administrator to manage the increased demand in training for the 30,000 employees of the legislative branch.

Require Notice-Posting of Congressional Workplace Rights in All Employing Offices

In its 2014 biennial section 102(b) report, the Board recommended, as it had in prior reports, that Congress adopt all notice-posting requirements that exist under the Federal anti-discrimination, anti-harassment, and other workplace rights laws covered under the CAA, and no longer exempt itself from the responsibility of notifying employees about their rights through this medium.

Almost all Federal anti-discrimination and other workplace rights laws require that employers prominently post notices of those rights and information pertinent to asserting claims for alleged violations of those rights. Indeed, Title VII requires private sector and Federal executive branch employers to notify employees about Title VII's protections and that personnel actions affecting covered employees shall be free from discrimination or harassment on the basis of race, color, religion, sex, and national origin. Because this legal obligation results in 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.

Even though Federal law imposes notice-posting on private and public sector employers, most notice-posting requirements do not apply to the legislative branch. Although the CAA does require the OOC to distribute informational material "in a manner suitable for posting," it does not mandate the actual posting of the notice. The failure to require notice-postings in the congressional workplace may explain recent findings by the Congressional Management Foundation that most congressional employees have limited to no knowledge of their workplace rights. Exemption from notice-posting limits congressional employees' access to a key source of information about their rights and remedies.

Accordingly, the Board continues to recommend that Congress adopt all notice-posting requirements that exist under the Federal anti-discrimination, anti-harassment, and other workplace rights laws covered under the CAA.

Adopt Recordkeeping Requirements under Federal Workplace Rights Laws

Although some employing offices in the legislative branch keep personnel records, there are no legal requirements under workplace rights laws to do so in Congress. In its 2012 biennial section 102(b) report, the Board recommended that Congress adopt all recordkeeping requirements under Federal workplace rights laws, including Title VII.

Most federal workplace rights statutes that apply to private and public sector employers require the employer to retain personnel records in a certain manner and for a certain period of time. Title VII requires an employer to maintain certain personnel records, although no particular form of retention is specified. All personnel and employment records made or kept by an employer, including applications and records pertaining to hiring, promotion, demotion, transfer, layoff or termination, pay rates and other compensation terms, and training must be retained for 1 year from the date of making the record or the personnel action involved, whichever is later. Title VII further requires that once a discrimination claim is filed, all personnel records relevant to the claim must be retained until final disposition of the charge or action.

Personnel records may be essential for congressional employees to effectively assert their rights under the CAA. Such records may also be critical evidence for employers to demonstrate that no violations of workplace rights laws occurred. Accordingly, the Board continues to recommend that Congress adopt all recordkeeping requirements under Federal workplace rights laws, including Title VII.

Thank you for soliciting the Board's views on this most important matter. The OOC stands ready to work with this Committee in ensuring a workplace for legislative branch employees that is free from unlawful harassment, discrimination, and retaliation.