



Washington, DC 20515

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BY FACSIMILE

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Executive Director  
Office of Compliance  
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Dear Executive Director Thompson:

Thank you for this opportunity to offer comments on the Notice of Proposed Rulemaking (NPR) concerning changes to the Office of Compliance's regulations pertaining to the application of the Fair Labor Standards Act of 1938 (FLSA) to covered employees of employing offices. On September 30, 2004, the Board of Directors of the Office of Compliance (the Board) issued a Notice of Proposed Rulemaking (NPR), pursuant to section 304 ("Substantive Regulations") of the Congressional Accountability Act, 2 U.S.C. 1384.<sup>1</sup> This letter provides the comments of the Office of the Architect of the Capitol (AOC) to the NPR.

The rights and protections of certain sections of the Fair Labor Standards Act of 1938 (FLSA) are applied to covered employees in the Congressional Accountability Act ("CAA"), 2 U.S.C. §§ 1301-1438. The CAA specifically applies sections 6(a)(1), 6(d), 7, and 12 of the FLSA, 29 U.S.C. §§ 206(a)(1), 206(d), 207, 212.

Section 541.0 of the NPR erroneously identifies 29 U.S.C. §213, 2 U.S.C. §203, and 2 U.S.C. §304 as the statutory authority for the publication of the proposed regulations. It appears that the Board intended to reference Section 203 of the CAA, 2 U.S.C. §1313, and Section 304 of the CAA, 2 U.S.C. §1384. Accordingly, the erroneous citations should be replaced by the correct statutory citations.

As indicated above, the CAA does not reference Section 13 of the FLSA among the sections applied to covered employees directly through Section 203 of the CAA. Rather, as the existing OOC

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<sup>1</sup> While the NPR is dated September 29, 2004, the Congressional Record of September 29, 2004 was first available on September 30, 2004.

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regulations explain, the FLSA exemptions apply “by virtue of Section 225(f)(1) of the CAA,” 2 U.S.C. 1361(f)(1), entitled “Definitions and Exemptions.” *See* OOC Reg. §C541.01. Thus, 2 U.S.C. §1361(f)(1) should be substituted for 29 U.S.C. §213. This explanation provided in current Board regulation section C541.01(a)-(b) should be incorporated into Proposed Regulation Section 541.0.

The language of Section 541.0 states, inaccurately, that “The equal pay provisions in section 6(d) of the [FLSA] are also administered and enforced by the Office of Compliance.” This new wording reflects the substitution of the OOC for “the United States Equal Employment Opportunity Commission (EEOC), as stated in the DOL regulations. In fact, the OOC under the CAA has few of the authorities that the EEOC uses to enforce the Equal Pay Act provisions of the CAA. This rote substitution of one agency for the other is misleading. At bottom, the sentence is redundant. Ample reason exists for the Board to delete it. If the Board concludes that it is necessary to retain some semblance of this sentence, it might read: “The equal pay provisions as applied by section CAA Section 203 are administered and enforced through the administrative and judicial dispute resolution procedures established by Title IV of the CAA, 2 U.S.C. §1401-1416.”

Further, Section 541.1 of the NPR cites only CAA section 203(a)(2) for the definition of “interns.” For the sake of completeness, it should also cite the OOC regulations, given that the law instructs the OOC to define the term by regulation. *See* OOC Regulation C501.102(h).

Finally, in Section 541.4, the sentence “Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the Act” should be deleted because the CAA does not reference any such laws, regulations or ordinances as being applied to employing offices.

We appreciate your considering these comments.

Sincerely,



Kevin Mulshine  
Associate General Counsel  
Office of the Architect of the Capitol