



Office of Compliance

FY 2008 Annual Report

advancing safety, health, and workplace rights in the legislative branch

March 2009



From the Chair of the Board of Directors:



Fiscal year 2008 was a year of accomplishment for the Office of Compliance and we are proud of the achievements noted in the Annual Report.

Office of Compliance staff has made great strides towards completing the goals and initiatives outlined in our Strategic Plan. Thanks to the commitment and dedication of the Office's staff, the Office will complete its strategic plan goals during the upcoming fiscal year and it has begun the process of drafting a new strategic plan with follow-on goals and initiatives designed to respond to the evolving needs of our covered community.

During this past year, the Office played an important role in the opening of the Capitol Visitor Center. It was our responsibility to inspect the new facility through the later stages of construction to ensure the safety and health of both employees and visitors to the glorious new Center. We are proud of the role we played in the successful opening of this historic building.

This past fiscal year, the Office continued in its role of overseeing the abatement of the utility tunnels hazards which were the subject of the Office's earlier complaint. Correcting this dangerous situation has been a priority for the Board of Directors. The Board appreciates the work of the Office of the Architect of the Capitol which has ensured that abatement remains on schedule and that interim measures for employee protection are in place.

Another priority for the Board during fiscal year 2008 was the submission of regulations applicable to military service by employees of the legislative branch. The Congressional Accountability Act as amended provides that members of the military with civilian employment will not be penalized for time spent away from their employers while serving in the military. The Board adopted implementing regulations, specific to the legislative branch, for the Veterans' Employment Opportunities Act (VEOA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). The Board is grateful for the comments and input given to the Office by its stakeholders. The Board continues to work with the Office's oversight committees to achieve Congressional approval of the regulations in the 111th Congress.

The Board reflects on fiscal year 2008 with the satisfaction of a job well done. Because we take our responsibilities for the health and welfare of the legislative branch community so seriously, there is always more to do. We will continue to work to meet the needs of our covered community by providing the technical assistance and expertise that the employees and employing offices of the legislative branch require.



Letter from the Executive Director



Fiscal year 2008 marks another year of achievement for the Office of Compliance. Through the cooperation of our stakeholders, we have assisted the legislative branch in advancing workplace rights, safety, and health on Capitol Hill. Our current strategic plan, which has been our roadmap for success since fiscal year 2007, has guided us toward significant improvements in four major programmatic areas: safety and health, dispute resolution, education and outreach, and intra-agency efficiencies.

One of our most privileged accomplishments this past fiscal year included our assistance with the opening of the Capitol Visitor Center. To have played a role in conducting pre-inspections and ensuring fire safety and equal access for those visitors with disabilities underscores the honor behind the work conducted by the Office of Compliance. We value the opportunity to be of service to our stakeholders, and assisting in the opening of the Capitol Visitor Center was one such opportunity. Another safety and health notable this past fiscal year included our work in addressing fire safety concerns in House and Senate Office buildings. Recognizing the importance of maintaining the beauty and historicity behind the architecture of these buildings, the Office of Compliance has been proud to work with its stakeholders, in particular, the Office of the Architect of the Capitol, to ensure the beauty of the Capitol continues while its staff and visitors remain safe from fire hazards.

Fiscal Year 2008 provided the Office of Compliance many opportunities to make true our offer of technical assistance and guidance to the covered community. Not only did we extend our hand in assisting offices in their efforts to ensure fair and safe work places, but we were called upon by several entities within the legislative branch to impart our expertise and assist in resolving problems and addressing issues. Our successful workshops for employing offices and labor organizations on such topics as alternative dispute resolution and the application of the Labor-Management provisions of the Congressional Accountability Act provided the covered community with support and the necessary tools to deal with various workplace issues. Indeed, the technical assistance we have provided this past fiscal year is manifested in the record-breaking number of Safe Office Awards received by 37 Member offices in the House and the Senate.

Within our internal operations, the Office of Compliance achieved its most significant accomplishment through the direct involvement and assistance from our oversight committees. An amendment to the Congressional Accountability Act now allows for a current employee of the Office of Compliance to be promoted to one of its statutory positions: Executive Director, General Counsel, or either of the two Deputy Executive Directors. Through the work of our oversight committees, the agency is now in a position to engage effectively in succession planning, as well as maintain institutional knowledge and continuity efforts.

Additionally, the agency developed and implemented both a telework schedule and an alternative work schedule for our workforce. Although separate and distinct policies, they both help to achieve efficiency in operations, increase staff morale, and contribute toward the “greening” of the Capitol complex.

Our successes in fiscal year 2008 go beyond that which is mentioned in this summary. I invite you to read on and learn of the contributions that the Office of Compliance has made to the fair and safe operations of the legislative branch. In collaboration with our stakeholders, we continue to strive toward creating a model workplace within the Capitol complex. We have enjoyed a positive and productive working relationship with our stakeholders, and we look forward to those continued efforts in fiscal year 2009.



FY 2008 Annual Report

December 2008

Section 301(h) of the Congressional Accountability Act requires the Office of Compliance to:

“... compile and publish statistics on the use of the Office by covered employees, including the number and type of contacts made with the Office, on the reason for such contacts, on the number of covered employees who initiated proceedings with the Office under this Act and results of such proceedings, and on the number of covered employees who filed a complaint, the basis for the complaint, and the action taken on the complaint.”

Additionally, this report is submitted to report annual progress against our Strategic Plan. To continue and enhance our operational efficacy and mission goals, and to establish baselines against which to measure future success, the Office of Compliance drafted its first Strategic Plan covering Fiscal Years 2004 - 2006 and a successor covering Fiscal Years 2007 - 2009. See www.compliance.gov for full text.

Now two-thirds through the latter period, all information and statistics in this report, unless otherwise specified, cover the period October 1, 2007 through September 30, 2008.



About the Congressional Accountability Act

The Congressional Accountability Act (CAA), enacted in 1995, was the first piece of legislation passed by the 104th Congress. The CAA, which received broad bipartisan support, requires covered legislative branch entities to follow many of the same employment and workplace safety laws applied to businesses and the federal government.

The CAA protects more than 30,500 employees of the legislative branch, including employees of the House of Representatives and the Senate, the Capitol Guide Service, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance (OOC), and the United States Capitol Police. Certain provisions of the CAA also apply to the Government Accountability Office (GAO) and the Library of Congress (LOC). The CAA protects both current employees and job applicants, and in certain instances, former employees and members of the public.

The CAA, as amended, is implemented through the federal Office of Compliance. Included in the CAA's ambit are twelve civil rights, labor, and workplace safety laws, including:

The Age Discrimination in Employment Act of 1967

The Americans with Disabilities Act of 1990

Title VII of the Civil Rights Act of 1964

The Employee Polygraph Protection Act of 1988

The Fair Labor Standards Act of 1938

The Family and Medical Leave Act of 1993

Chapter 71 of the Federal Services Labor-Management Relations Act

The Occupational Safety and Health Act of 1970

The Rehabilitation Act of 1973

Uniformed Service Members Employment and Reemployment Rights
under Chapter 43, Title 38 of the U.S. Code

The Worker Adjustment and Retraining Notification Act of 1989

The Veterans Employment Opportunities Act.



About the Office of Compliance

The Office of Compliance advances safety, health, and workplace rights in the U.S. Congress and the legislative branch. Established as an independent agency by the Congressional Accountability Act of 1995, the Office educates employees and employing offices about their rights and responsibilities under the Act, provides an impartial dispute resolution process, and investigates and remedies violations of the Act.

The Office of Compliance has a number of core functional responsibilities:

Education and Information



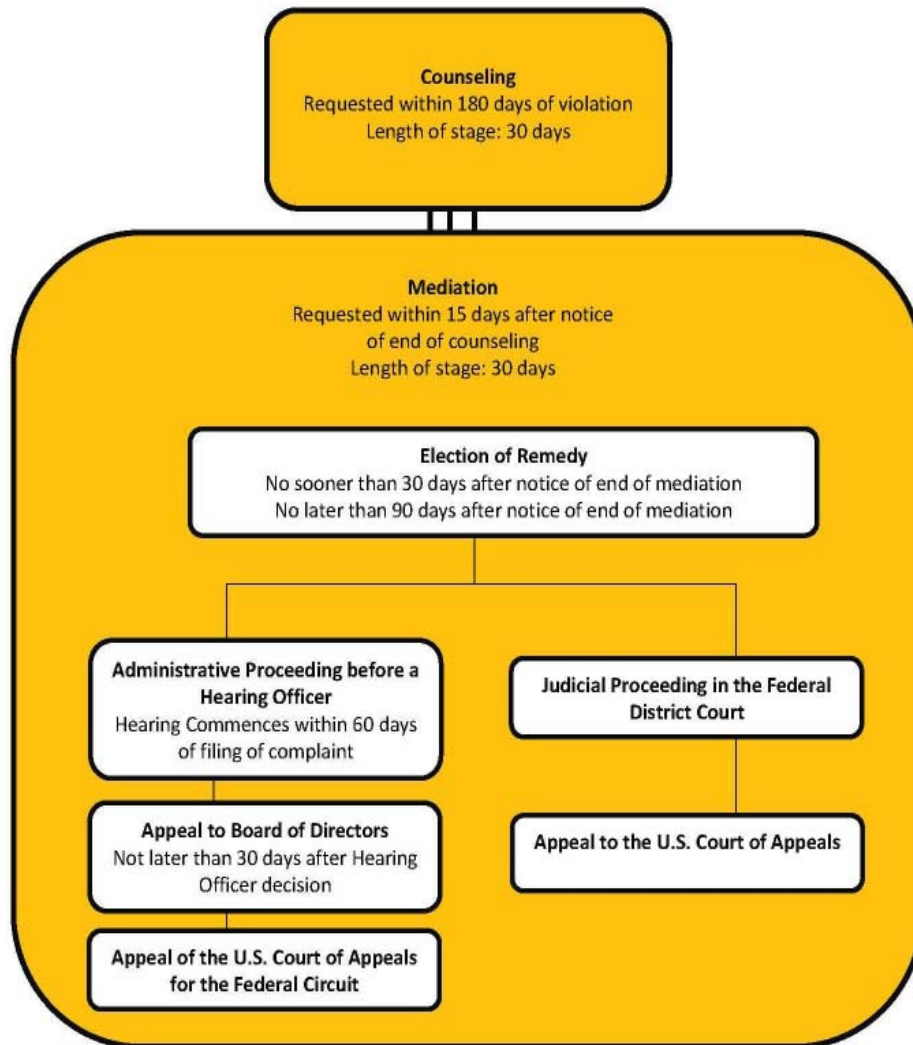
Section 301(h)(1) of the CAA mandates that the Office “carry out a program of education for Members of Congress and other employing authorities of the legislative branch ... respecting the laws made applicable to them and a program to inform individuals of their rights under laws applicable to the legislative branch....” To this end, the Office engages in comprehensive education and information activities including developing and distributing written materials and publications; maintaining a dynamic website – www.compliance.gov; conducting briefings, workshops and conferences; and providing, information, and training to employees and employing offices on an individual or group basis, in Washington, DC and/or in a state or district.

Reports and Recommendations to Congress

Section 102(b)(2) of the CAA requires the Board of Directors to submit a biennial report to Congress on the applicability to the legislative branch of any employment laws and regulations not already made applicable by the CAA. Section 301(h) of the CAA requires an annual report to Congress presenting statistics on the use of the Office of Compliance by covered employees and employing offices in the legislative branch. Sections 210(f)(2) and 215(e)(2) of the CAA require that the General Counsel of the Office of Compliance submit biennial reports to Congress on the results of the periodic Americans with Disabilities Act and Occupational Safety and Health inspections, respectively.



Figure 1: Dispute Resolution Process: Workplace Rights



Dispute Resolution

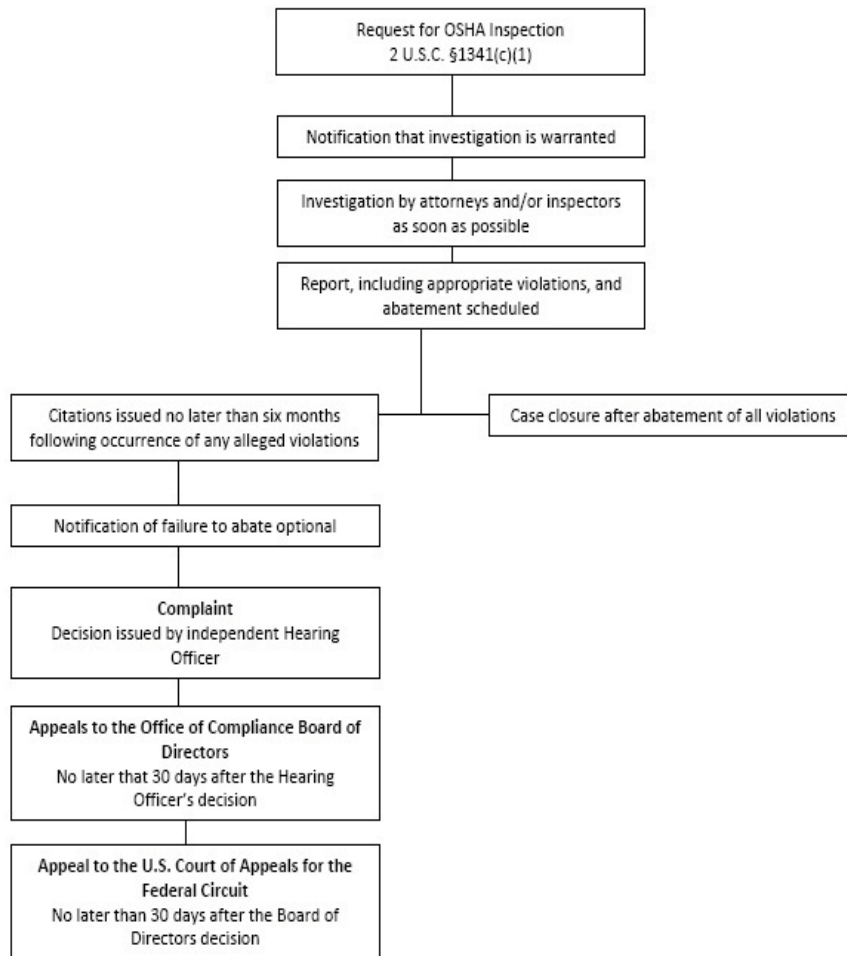
Subchapter IV of the CAA establishes a mandatory dispute resolution process for covered employees that are administered by the Office of Compliance as a neutral and independent agency. If the parties involved are not able to resolve their dispute through statutorily-required counseling and mediation, an employee may either pursue a non-judicial administrative hearing process with the Office of Compliance or file suit in Federal court. The administrative hearing process offers quicker resolution and greater confidentiality than a Federal civil suit while still offering the same remedies that a court can provide.



Safety and Health Inspections

The General Counsel of the Office of Compliance is required to inspect covered employing office facilities in the legislative branch for compliance with safety and health standards at least once each Congress and to report those findings to Congressional Leadership. The CAA also gives covered employees and offices the right to request inspections of potentially hazardous conditions in work areas. When a Request for Inspection is received, the General Counsel of the Office of Compliance initiates an on-site investigation and sends a detailed report to the requestor and employing office explaining any steps that may be needed to remedy the problem. If the General Counsel finds a violation, either as a result of a biennial or requestor initiated inspection, a notification or citation may be issued to the offices responsible for correcting the problem. If the violation is not corrected after a citation has been issued, the General Counsel may file a complaint before an independent hearing officer with the Office of Compliance.

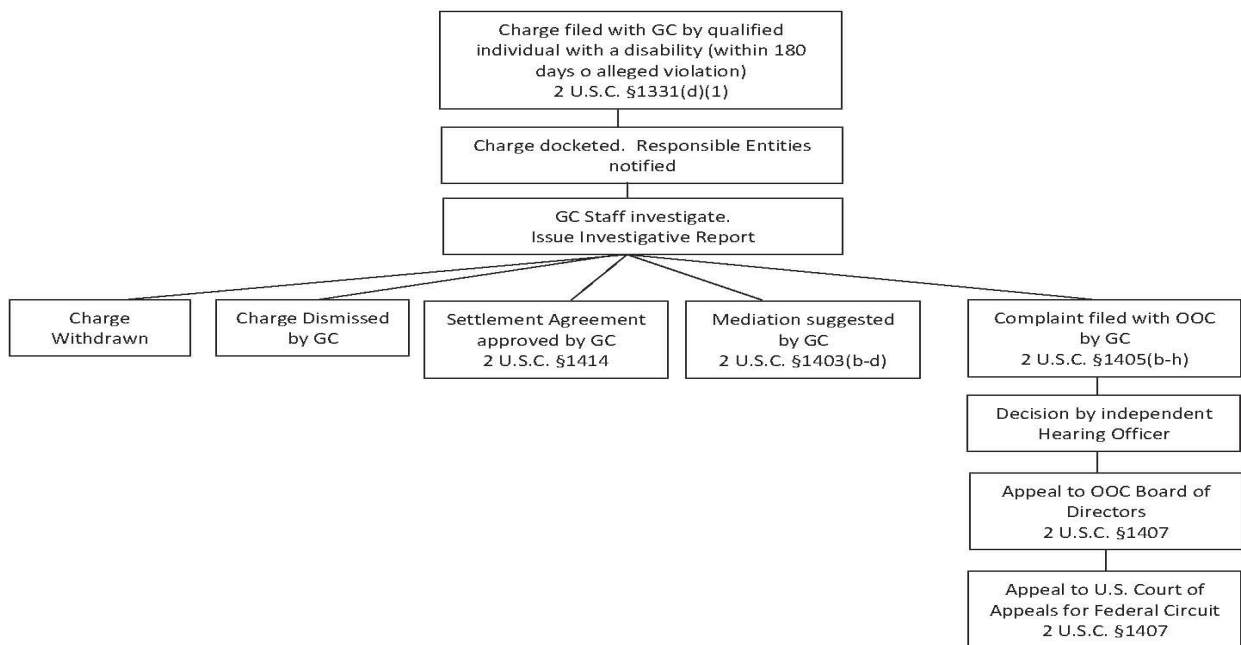
Figure 2: Dispute Resolution Process – OSHA



Disability Access Inspections

The General Counsel is required to conduct inspections at least once each Congress to determine compliance with the rights and protections against discrimination in the provision of public services and accommodations established by the Americans with Disabilities Act (ADA). The General Counsel is also responsible for investigating charges of disability access discrimination. If an investigation reveals that a violation has occurred, the General Counsel may request mediation to resolve the dispute or may file a complaint before an independent hearing officer with the Office of Compliance against the entity responsible for correcting the alleged violation.

Figure 3: Dispute Resolution Process: ADA



Labor-Management Relations

The Office carries out the Board of Directors' investigative authorities under Section 220 of the CAA concerning the appropriateness of bargaining units for labor organization representation, the duty to bargain, and exceptions to arbitrators' awards. The Board exercises adjudicatory authority over these matters, including unfair labor practice complaints at the appellate stages.

Unfair Labor Practices

The General Counsel is responsible for investigating allegations of unfair labor practices and for filing and prosecuting complaints of unfair labor practices before an independent hearing officer with the Office of Compliance.



Office of Compliance: FY 2008 Goals and Accomplishments

To inform and structure this Annual Report, reference is made to the goals established by our Strategic Plan, and the initiatives and measures we identified therein as the agents for accomplishing those goals. The Office of Compliance is proud to report both our significant accomplishments and our continuing challenges during the period October 1, 2007 to September 30, 2008:

Goal I:

Protect the health and safety of legislative branch employees, assure equal access for individuals with disabilities, and provide for the prompt and fair resolution of labor relations disputes.

Goal I Initiatives:

- A. Improve overall case-handling effectiveness and monitoring abatement of inspection violations.
- B. Maintain and enhance the existing Occupational Safety and Health Act (OSH Act) and Americans with Disabilities Act (ADA) violation record-keeping system (FMA), and complete data input/conversion of prior case data.
- C. Expand the scope of the data monitored to improve compliance with safety and health and disability access requirements.
- D. Provide increased safety and health and ADA technical assistance, focusing on the service needs of the regulated community.

Goal I Measures: ¹

- 1. Enforce the abatement of 90% of all Risk Assessment Code (RAC) 1 (higher risk) violations identified during the 110th Congress biennial OSH inspections within 30 days of the date of the issuance of the OGC's hazards summary report. Abate 90% of RAC 2 violations within 90 days of the date of the issuance of the report.
- 2. Effect a reduction in the number of OSH and ADA violations identified during the 110th Congress biennial inspections by 10% from the 109th Congress inspections.
- 3. By the end of FY 2007, reduce by 25% the number of OSH and ADA requestor-initiated cases and citations that are open for 12 months or more from the FY 2006 total, and resolve (through abatement, closure, dismissal or other dispositive action) all such backlogged cases and citations by the end of FY 2009.

¹ Because the Strategic Plan covers three fiscal years, 2007-2009, performance measures span that three-year period, as well. In some cases, these measures have been wholly satisfied upon completion of the 110th Congress OSH biennial inspection. In other cases, where the measure was not satisfied by the projected target date, we report on progress to date.



4. In FY 2007, reduce the average time between the inspection and the delivery of the OGC charts tabulating the inspection findings to the responsible employing office by 30% over FY 2006.
5. By the end of FY 2007, ascertain the abatement status of all RAC 1 and RAC 2 violations identified during the 109th Congress biennial inspections.
6. During the 110th Congress biennial inspections, ascertain the abatement status of all RAC 1 violations identified during the 110th Congress biennial inspections within 30 days of the date of the OGC's hazard findings report, and all RAC 2 violations within 90 days of the report.

Discussion Goal I

A. Improve overall case-handling effectiveness and monitoring abatement of inspection violations.

Since 2004, the Office of the General Counsel (OGC) of the Office of Compliance has endeavored to improve upon the effectiveness and efficiency of its biennial occupational Safety and Health (OSH) inspections, giving priority to accelerating the abatement of those hazards that create the highest risk of death or serious injury.

In FY 2007, the OGC entered into a formal settlement with the Architect of the Capitol (AOC) of the first-ever complaint issued against a legislative branch agency. The settlement provides for a five year abatement plan to correct serious health and safety hazards in the U.S. Capitol Power Plant utility tunnels, with a complete abatement date of June 11, 2012. Four tunnel abatement Quarterly Safety and Health Audits and Progress Reports covering FY 2008 were submitted by the AOC and reviewed by the OOC. During FY 2008, significant progress was made towards meeting the hazard abatement benchmarks required by the settlement agreement. The AOC has taken substantial steps to remove asbestos, install tunnel ceiling supports, make concrete repairs, install an effective emergency communication system, create emergency egress locations, and improve ventilation in order to reduce heat stress problems.

Fire safety within the Capitol Complex continued to be a priority during FY 2008. While several of the fire safety citations issued in 2000 and 2001 remain open and require substantial measures to achieve full abatement, improvement in the level of fire protection throughout the Capitol Complex is continuing to be achieved. Installation of new smoke detectors and sprinklers has raised the over-all level of fire protection within several of the Complex's buildings. Other improvements since the citations were issued, such as the creation of new exits and protected stairways, have also increased the level of fire protection within the Complex. The OGC will continue to work with the AOC to ensure that the full abatement of all open fire safety citations is achieved as quickly and efficiently as possible.

Two noteworthy fire protection accomplishments in FY 2008 were the review of the acceptance testing plan for the Capitol Visitor Center (CVC) fire alarm system and the review and approval of the AOC's strategy for abating fire safety hazards within the Cannon and Russell Office Buildings. When acceptance testing of the



complex CVC fire alarm system began in the fall of 2007, serious questions were raised by AOC contractors and others regarding the level and scope of acceptance testing chosen by the Architect. The OGC was asked by the Architect to provide expert advice and assistance. After review and analysis, the OGC concluded that the Architect's choice of acceptance testing plans was not only prudent but that deviation from this plan would result in significant, and in all likelihood, costly deficiencies within the CVC's fire alarm and security system. Accordingly, the OGC supported the Architect's acceptance testing plan and is confident that the testing program will assure that the fire alarm system will be operable.

Collaborative efforts were undertaken with the AOC in the review of the AOC's plans for abating fire hazards within the Cannon and Russell buildings. These hazards were the subject of Citations issued by the General Counsel in 2000. In FY 2008, the AOC approached the OGC with plans to address the cited fire hazards within these two historic buildings through a system of fire zoning. After reviewing the plans, meeting with AOC officials, inspecting the buildings and the areas affected by the fire zoning plan, and considering other methods of achieving similar levels of fire protection without compromise to the buildings' historic features, the OGC approved the AOC's plans. In FY 2009, the OGC will seek to resolve outstanding fire protection issues affecting the Capitol. Attention will be paid to whether the fire zoning principles slated for application within the Cannon and Russell buildings may be effectively applied within the Capitol. See the *Biennial Report on Occupational Safety and Health Inspections* conducted during the 110th Congress.

B. Maintain and enhance the existing OSH and ADA violation record-keeping system (FMA), and complete data input/conversion of prior case data.

The development and utilization of the OGC's Facility Management Assistant (FMA) record-keeping system has enabled us to accurately record and track abatement of OSH hazards and Americans with Disabilities Act (ADA) public access barriers. Our office, in consultation with the AOC, has been working to enhance the FMA system to more easily and promptly exchange information between the OGC and the employing offices responsible for abating identified hazards. We have recently contracted with the FMA vendor to host a secure website that will enable employing offices to enter data to be reported to the OGC on their abatement progress. We anticipate that these upgrades, which will eliminate duplicative and time-consuming efforts in the exchange of hazard findings and abatement data, will be operative by the start of the biennial inspections during the 111th Congress. These enhancements will also assist OGC in determining both progress in, and impediments to, timely abatement of hazards, particularly high risk RAC 1 and RAC 2 hazards.

C. Inspect new facilities to improve compliance with safety and health and disability access requirements.

In anticipation of the CVC's occupation by legislative branch employees, Congressional Committees and visitors, the AOC and Congress requested that the OGC conduct a comprehensive pre-inspection of the CVC and Congressional expansion space during final stages of construction and before occupation by visitors and staff to promptly identify any potential OSH hazards and ADA barriers. The early identification and correction of these deficiencies was necessary so that the CVC could open on schedule as a safe and ADA accessible facility. Since February 2008, OGC inspectors and attorneys devoted well in excess of 2,000 hours to the CVC pre-inspections during this fiscal year.² Working collaboratively with the AOC and other stakeholders, OOC

² Given the scope of these pre-inspections and the number of potential hazards and accessibility barriers that were identified, the cost of conducting the CVC pre-inspections was underestimated and exceeded the amount budgeted for this purpose. Consequently, OOC two-year funding for health and safety inspectors was nearly exhausted.



conducted a comprehensive fire and electrical safety pre-inspection throughout the entire facility. In particular, the inspections covered such issues as fire alarm testing protocols, electrical devices, slip and trip hazards, radon, hand rails, ADA accessibility and emergency egress, emergency action plans, fire exit and wayfinding signage, emergency lighting, and fire door compliance. In addition, the facility has hundreds of doors and dozens of ramps that required inspection for compliance with ADA requirements. Hundreds of potential safety hazards and barriers to public access and egress were identified and corrected early enough so that the most serious issues could be successfully resolved and the proposed CVC opening date could be met.

In addition to the CVC pre-inspections, the OGC was able to meet its statutorily mandated obligation to conduct biennial inspections of all covered facilities within the legislative branch, except for state, district and other remote offices located outside of the Washington, DC metropolitan area. Biennial inspections are conducted throughout the two-year term of each Congressional session. Remote facilities, however, have not been inspected by the OGC because of a lack of inspector resources. Since FY 2007, the OGC has requested funds to design and implement a remote offices' OSH/ADA inspection education plan, for conducting OGC-monitored self-inspections by these offices. Currently, the OGC participates in periodic CRS educational briefings for staff from state and district offices and has published *Fast Facts* to assist remote offices in identifying safety hazards and barriers to access. See, for example, www.compliance.gov/forms-pubs/eresources/fastfacts_safeofficechecklist.pdf.

Additional inspector resources will also be necessary to conduct the biennial OSH and ADA inspections for the 111th Congress as other facilities come on line, such as the Library of Congress' Packard Campus of the National Audio-Visual Conservation Center in Culpeper, Virginia (416, 000 square feet); the Library of Congress book storage modules 3 and 4 at Fort Meade (78,000 square feet); the Capitol Visitor Center and Congressional expansion space (580,000 square feet); and space occupied by covered employing offices located within the Government Printing Office (square footage not yet known). While the CVC was pre-inspected before it was occupied, the facility will need to be inspected during the 111th Congress once it is fully operational. During this inspection, the OGC will also ascertain whether all previously identified potential hazards have been abated and all disability barriers removed. The Office estimates that approximately 1 million square feet will be added to our inspection responsibilities with the addition of the foregoing spaces.

D. Provide increased safety and health and ADA technical assistance, focusing on the service needs of the regulated community.

During the 110th Congress, the OGC responded to numerous requests for technical assistance from Members of Congress, their staffs, and other employing offices. These ranged from inquiries concerning whether portable space heaters are approved for use to questions about emergency preparedness procedures. Employing offices increasingly have requested inspector guidance on how to meet statutory safety and health requirements. Consequently, the OGC is devoting more and more resources to technical assistance. As employing offices and employees become more aware of the availability of our technical assistance services, we anticipate receiving more such requests in the future.

As discussed more fully at paragraph E(3) below, by way of technical assistance, the OGC anticipates working with employing offices during the 111th Congress to review and provide expert advice respecting their safety programs and their accident and injury experience. During the 110th Congress, the OGC continued to create *Fast Facts*, brief handouts that inspectors distribute during their inspections that address common



occupational safety and health hazards and barriers to public access and other subjects. Published monthly on www.compliance.gov, *Fast Facts* are the OOC website's most frequently downloaded products. Titles of *Fast Facts* published or updated during FY 2008, include "Missing Ceiling Tiles," "Lock Out/Tag Out," "Labor-Management Relations," "ADA Checklist for Office Managers," "Storage in Corridors and Exit Pathways," "Methylene Chloride," "Indoor Air Quality," and "Radon."

In March and April 2008, respectively, the OGC published its *110th Congress Progress Report on Occupational Safety and Health Inspections* and *Biennial Report on the Health and Safety Inspections* conducted during the 109th Congress. The OGC *Report on Americans with Disabilities Act Inspections relating to Public Services and Accommodations* for the 109th Congress was published in July 2007. These publications serve to assist employing offices and their employees regarding the status of health and safety on Capitol Hill.

Finally, during the 111th Congress, the OGC intends to continue to offer technical assistance to employing offices in developing abatement plans in more complex cases, such as is being done with respect to the fire safety citations, discussed above, and in reviewing certain safety and health programs, as discussed below.

E. Additional Compliance Activities

During FY 2008, the OGC initiated a number of new or expanded initiatives to enhance health and safety on Capitol Hill:

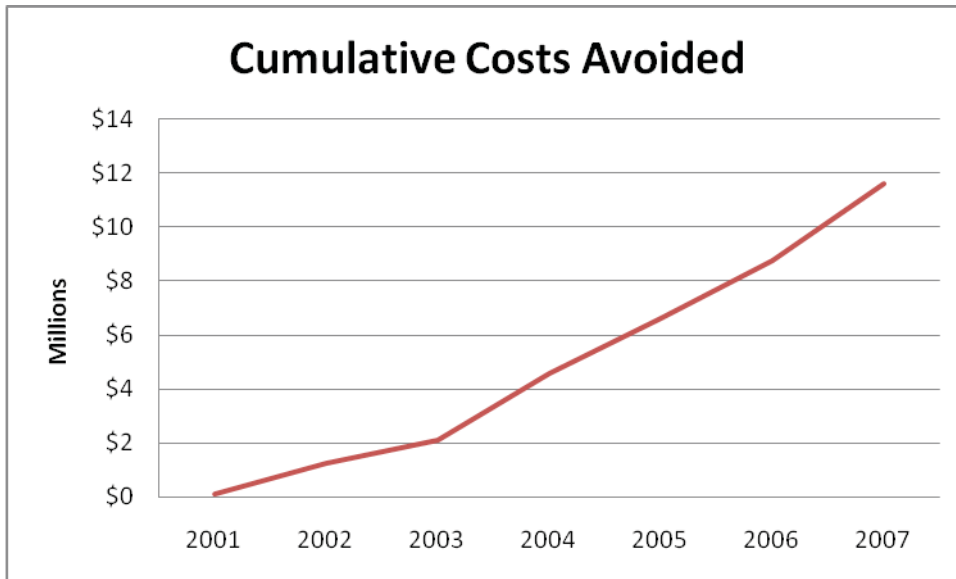
1. Worker Injury Reduction Program Studies

During FY 2008, the OGC commenced a study of the injury rates and associated costs in employing offices in the legislative branch as part of its zero accident initiative based upon summary injury rate data and other information obtained from the Office of Worker Compensation Programs in the U.S. Department of Labor and interviews with employing office personnel. The Library of Congress, the first office studied, has implemented safety programs and made substantial progress in lowering the number of new injuries occurring over the last 7 years. It appears from preliminary available information, that the LOC achieved significant injury cost avoidance -- in excess of \$11M -- during this period that otherwise would have resulted but for their efforts to reduce lost time injuries. Based on this limited study, the OOC believes that employing office investment in injury prevention programs can result in far less injuries occurring and substantial cost avoidance.

It also appears that all but one of the major covered employing offices have experienced injury reductions, the latter office reporting substantial increase in injuries and in Lost Production Days due to these new injuries over the last four years. If the OGC-requested accident reduction initiative is funded in FY 2009, we hope to expand our study and publish additional information on accident prevention programs and injury reduction data, together with estimated cost avoidance figures. We also hope to work with employing offices and provide technical assistance to them in creating effective injury reduction programs, as well as advise the Congress regarding the efficacy of such programs.



Figure 4: Library of Congress: Injury Reduction and Cost Avoidance, 2001-2007



2. Drafting Inspection Procedures

At the completion of its biennial inspections, the OGC meets with employing offices to review the conduct of the inspections in order to elicit suggestions for improvements in procedures to incorporate in the 111th Congress biennial inspection. To further improve the quality and consistency of its inspection processes, the OGC intends to create a manual to document how inspectors conduct OSH inspections. Much like OSHA's Field Operations Manual, these written procedures should help to provide guidance to standardize how inspections are conducted, how OOC inspectors gather information about hazards, and evaluate the risk level posed by identified hazards. Once completed, this draft inspection guidance manual will be circulated to the employing offices for feedback. During FY 2008, the OGC completed a draft manual on conducting requestor-initiated inspections. The draft manual will be circulated for comment in early FY 2009. These initiatives are part of our ongoing efforts undertaken in direct response to recommendations of the Government Accountability Office in its February 2004 report to Congressional Committees, *Office of Compliance Status of Management Control Efforts to Improve Effectiveness* (GAO-04-400), pp. 35-39.

3. Reviewing Specific Safety and Health Programs

The AOC has made significant strides in abating hazards identified during our biennial and requestor-initiated inspections. We anticipate that most of these serious conditions should be corrected within the next several years. As discussed below under *Goal I Measures: Progress to Date*, the abatement of the highest risk RAC 1 and RAC 2 hazards will be our highest priority during the 111th Congress. Furthermore, we intend to work with employing offices to begin reviewing safety and health programs that are designed to prevent occupational hazards and illnesses, particularly programs related to hazards and illnesses most frequently occurring in their offices. Accordingly, in January 2008, the OGC announced its intention to move beyond



the traditional “sticks and bricks” inspection of physical hazards, such as machine guarding and basic fire safety during the 111th Congress biennial inspections, and begin review of employing office safety and health programs. In some of the substantive safety and health standards promulgated under OSHA regulations (29 C.F.R. Parts 1910 and 1926) employers are required to develop programs and procedures, conduct employee training, and maintain records; these requirements are part and parcel of such standards.³

Heretofore, the OGC has not reviewed compliance with these requirements on a systematic basis during its biennial inspections because of limited resources. Some offices have reported that they have been developing or implementing required programs. However, in too many instances, inspectors have reported that, during the course of their inspections, they learned that some required programs were non-existent or substantially deficient. This has led the General Counsel to conclude that a more formalized review of these essential, mandatory programs is necessary to assure adequate protection to covered employees in the legislative branch.

The Office stands ready to assist employing offices by providing guidance and technical assistance in the assessment and development of their safety and health programs. Since the OGC’s health and safety experts will also be engaged in conducting inspections and related responsibilities, the scope of their technical assistance reviews will depend upon their availability as well as the extent of employing office participation and resources they are able to devote to this undertaking.

Goal I Measures: Progress-to-date

- 1. Enforce the abatement of 90% of all Risk Assessment Code (RAC) 1 (highest risk) violations identified during the 110th Congress biennial OSH inspections within 30 days of the date of the issuance of the OGC’s hazards summary report. Abate 90% of RAC 2 violations within 90 days of the date of the issuance of the report.**

During the 110th Congress, the OGC inspectors identified 23 continuing or newly discovered RAC 1 hazards and 2,307 RAC 2 hazards. Employing offices reported that of the RAC 1 hazards, five have been abated, and of the RAC 2 hazards, 1,292 were reported as abated. With respect to those RAC 2 hazards identified for the first time during this inspection, the OGC did not have adequate resources to reinspect in order to confirm whether these hazards were fully abated but will endeavor to do so during the 111th Congress, as described below. Where a particularly dangerous RAC 1 hazard is identified, it is the practice of the inspectors to issue a Notice of Serious Deficiencies that ordinarily requires abatement within 24 hours. In such instances, inspectors follow up with the employing office to confirm that abatement has been achieved.

To assure that high risk hazards identified during the 111th Congress biennial inspection are abated within the above time frames, sufficient inspector resources will be required: first, to inform the employing offices of the existence of these hazards immediately after they have been identified; second, to ascertain from the employing offices at the due date for abatement whether they have been abated; and third, if reported by the employing offices as being abated, to confirm the adequacy of abatement through a reinspection so that the employing office is notified that the matter is closed. Particular emphasis should be placed on the abatement of

³ Examples of such programs, where applicable, are Emergency Action plans, Hazard Communication programs, and Personal Protective Equipment programs, as well as Fall Protection, Permit-Required Confined Spaces, Control of Hazardous Energy and/or Electrical (Logout/Tag Out) and Electrical PPE; and, if applicable, any substance covered by a “Specific Substance” standard.



hazards identified in previous inspections. Consequently, OGC's highest priority for the 111th Congress will be to work with the employing offices to confirm the current status of these hazards, and assure that an enforceable timetable for the abatement of each open RAC 1 and RAC 2 hazard is agreed upon. While our success in meeting this measure will depend largely on the actions of the responsible employing offices, we recognize that the OOC has significant assistive educational and enforcement roles to play in this respect:

- The OOC believes that the establishment of a full-time Compliance Officer position within the OGC is essential to the prompt abatement of high risk hazards as contemplated by this measure. In that position, the incumbent would review and confirm the abatement status of all RAC 1 and RAC 2 hazards; provide abatement advice and assistance to the employing offices as requested; review corrective measures proposed by those offices to assure they are timely and adequate to assure full abatement; and track the hazards through to their abatement. Accordingly, in its FY 2008 budget request the OOC requested, and Congress authorized this position. Due to financial constraints, however, the authorized position was not funded in FY2008. The Office hopes to receive funding to fill this position in FY 2009.
- To more promptly advise employing offices of the inspectors' identification of high risk hazards and to assist in the tracking of abatement progress, the OGC reallocated FY2008 funds to upgrade its FMA OSH hazard management system to an online database. This secure database, hosted by the vendor of FMA, would be accessible to both the OGC and to those employing offices subscribing to the system. These upgrades are designed to be able to generate more timely hazard findings reports to employing offices as well as track, in real time, the status of hazard abatement. In this way, employing offices will be able to commence more promptly abatement of high risk hazards and create the capacity to greatly accelerate the exchange of information with the OGC.
- Once the Compliance Officer/Abatement Monitor position is filled and the enhanced FMA database is fully operational, the OOC should be able to make substantial progress toward the achievement of faster hazard abatement as contemplated by this measure.

The highest risk hazards mostly involve long standing fire safety violations. Achieving abatement of these hazards is particularly challenging because it will require reconfiguration of exit pathways within historic office buildings on Capitol Hill. This is necessary in order to rectify the absence of enclosed stairwells and adequate fire doors necessary for safe egress from the Capitol, House and Senate Office Buildings, and Library facilities in a fire emergency. These hazards were the subject of unabated Citations issued in 2000 and 2001. See *Biennial Report on Occupational Safety and Health Inspections* during the 109th Congress, pp. 3-4 (April 2008); *110th Congress Progress Report on Occupational Safety and Health Inspections*, pp. 5-6 (March 2008). Abatement will require major expenditures to assure safe facilities for staff and visitors and carefully designed solutions that are consistent with the preservation of all significant architectural features of these national landmarks.

During FY 2008, the OGC devoted significant resources in working with the AOC to develop acceptable abatement plans to remedy these RAC 1 Fire Safety Citations. The OGC approved the AOC's abatement plans for the Longworth, Cannon, and Rayburn House Office Buildings and the Russell Senate Office Building. Progress was also made toward the development of a fully compliant abatement plan for the Capitol. During



FY 2009, the OGC will continue to work with the AOC and the LOC with respect to the abatement of fire safety hazards in the LOC facilities on Capitol Hill. In addition, a limited number of other RAC 1 and RAC 2 hazards related to notices of Serious Deficiency Needing Prompt Attention are being monitored by our inspectors.

2. Effect a reduction in the number of OSH and ADA violations identified during the 110th Congress biennial inspections by 10% from the 109th Congress inspections.

The OOC has exceeded this measure substantially due to the efforts of the employing Offices. Compared to the 109th Congress, there has been a 30% reduction in the number of hazard findings identified in the 110th Congress. The average number of hazards identified in Member offices dropped by 50%.

3. By the end of FY 2007, reduce by 25% the number of OSH and ADA requestor-initiated cases and citations that are open for 12 months or more from the FY 2006 total, and resolve (through abatement, closure, dismissal or other dispositive action) all such backlogged cases and citations by the end of FY 2009.

In part, the Office of Compliance has accomplished this goal. All public access ADA cases filed by qualified individuals with disabilities have been resolved and closed, but questions regarding potential disability barriers with the CVC remain to be addressed. Further, as the chart below indicates, the OOC has been able to exceed the 25% reduction measure in open OSH requestor-initiated inspection cases more than a year old. Between FY 2007 and FY 2008, the OGC experienced a reduction in the number of requestor-initiated OSH cases filed that freed up resources to address the resolution of older, unresolved requestor-initiated inspection cases and open citations.

Chart 1: Occupational Safety and Health – Number of OSH Cases

| Fiscal Year | FY07 | FY08 |
|---|------|------|
| Cases open at start of FY | 67 | 38 |
| New Cases | 22 | 11 |
| Cases Closed (Cases older than 1 year from start of the FY) | 33 | 5 |
| Total Closed during FY | 51 | 12 |



Chart 2: Occupational Safety and Health – Number of Open OSH Citations

| Fiscal Year | FY07 | FY08 |
|---|------|------|
| Citations open at start of FY | 34 | 27 |
| New Cases | 4 | 1 |
| Citations Closed (Citations older than 1 year from start of the FY) | 11 | 7 |
| Total Closed during FY | 11 | 8 |

Although no measures were established by the Strategic Plan for that portion of Goal I requiring the OOC to “provide for the prompt and fair resolution of labor relations disputes,” the OGC was able to achieve a substantial reduction in the number of open cases.

Chart 3: Occupational Safety and Health – Number of LMR Cases

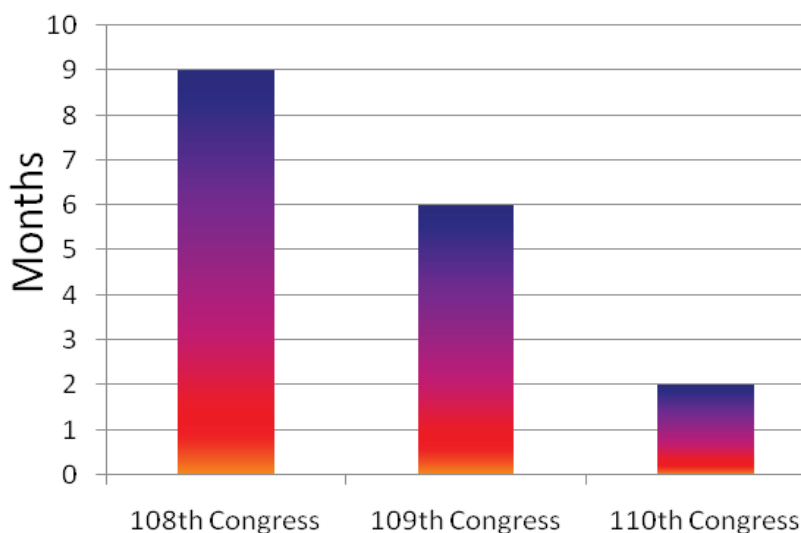
| Fiscal Year | FY07 | FY08 |
|---|------|------|
| Cases open at start of FY | 5 | 6 |
| New Cases | 5 | 10 |
| Cases Closed (Cases older than 1 year from start of the FY) | 2 | 2 |
| Total Closed during FY | 4 | 10 |

4. In FY 2007, reduce the average time between the inspection and the delivery of the OGC charts tabulating the inspection findings to the responsible employing office by 30% over FY 2006.

The OOC satisfied this performance measure in FY 2007. The chart on page 19 represents the progress the OOC has made over the past three Congresses in reducing the time between an inspection and the issuance of the hazard findings report.



Figure 5: Average time between inspection and issuance of the hazards findings reports



As the chart above indicates, the Office has been able to substantially reduce the time between an inspection of a facility and the issuance of a hazard findings report, depending on the size of the facility inspected and the number of hazards identified. The OGC has developed a plan to further decrease the time between inspections and the issuance of the hazard findings reports during the 111th Congress. In particular, as previously noted under the discussion of Measure 1, we are working to upgrade our FMA hazard tracking system. Preliminary findings of the inspectors, if entered into the system at the time of the inspection, will be electronically accessible in real time to those employing offices who have subscribed to the system. Formal findings will then be issued after the preliminary findings have been reviewed for quality and consistency. Hence, employing offices will get a “head start” in being able to identify and track hazards within a comparatively short time following an inspection, thereby substantially reducing reporting time from our office. Furthermore, employing offices will be able to continue to track abatement progress of hazard findings until abatement is fully achieved.

5. By the end of FY 2007, ascertain the abatement status of all RAC 1 and RAC 2 violations identified during the 109th Congress biennial inspections.

During the course of the 110th Congress biennial inspections, OGC inspectors initiated the process of systematically examining the abatement status of the more than 13,000 hazard findings identified during the 109th Congress, with particular on RAC 1 and RAC 2 hazards. This effort, together with periodic updates on abatement status, provided to the OGC by the employing offices, has enabled the OGC to begin to confirm whether hazards identified during previous Congresses have been fully remedied as represented by the employing offices. See discussion of Measure 1 with respect to our plans to accelerate progress in meeting this measure.



6. During the 110th Congress biennial inspections, ascertain the abatement status of all RAC 1 violations identified during the 110th Congress biennial inspections within 30 days of the date of the OGC’s hazard findings report, and all RAC 2 violations within 90 days of the report.

Employing offices are required to update the status of all hazard findings within thirty (30) to forty-five (45) days of receiving the OGC’s hazard findings report for each facility as it is inspected. As discussed under Measure 1, there were insufficient inspector personnel to conduct re-inspections during the 110th Congress in order to verify the abatement status of hazards first identified during that Congress within these time targets. Satisfying this measure is particularly challenging because of the volume of new and continuing RAC 2 hazards identified during our inspections. More than 2,200 RAC 2 hazards were identified during the 110th Congress biennial inspection. The OOC was unable to systematically monitor the status of abatement of all of these hazards given extensive biennial inspection demands, including the CVC pre-inspection. However, adding a Compliance Officer to our resources should allow the OGC to effectively monitor progress in the abatement of these higher risk hazards.

Goal II

Assist employees and employing offices to achieve the model workplace envisioned by the Congressional Accountability Act by fairly and promptly resolving disputes.

Goal II Initiatives:

- A. Utilize the new dispute resolution case tracking system to increase case processing efficiency and better direct resources.
- B. Assist disputants in successfully resolving workplace disputes at the earliest possible step in the Alternative Dispute Resolution (ADR) process. Early resolution reduces the stress on the disputants, eases tension in the workplace, and saves tax-payer dollars.
- C. Continue to survey the stakeholders who have participated in the ADR process to obtain information on the administration of the dispute resolution program.
- D. Endorse and enhance the ADR program to support the recent increase in mediated settlement agreements.
- E. Realize the Board of Directors’ rulemaking authority by monitoring its existing procedural rules and recommending substantive regulations for approval from Congress.

Goal II Measures:

In FY 2008, the Office will increase by 10% the number of participants who report the mediation process to be “fair” or “very fair,” as measured against the FY 2007 survey responses.



Discussion Goal II

A. Utilize the new dispute resolution case tracking system to increase case processing efficiency and better direct resources.

To implement its new case tracking system, the Office created a map of its dispute resolution process to guide the programmer in developing a new system that fully supports the ADR procedures under the Act. Following complete testing of the beta system, a data conversion process will be undertaken. The new case tracking system will enhance operational efficiency by increasing the Office's electronic tracking capabilities, including automatic alert functionality, document merge, and the ability to track related claims and subject matter trends. Trend information will be utilized by the Office's education program to focus educational activities in the specific issue areas that have been identified.

B. Assist disputants in successfully resolving workplace disputes at the earliest possible step in the Alternative Dispute Resolution (ADR) process. Early resolution reduces the stress on disputants, eases tension in the workplace, and saves tax-payer dollars.

Resolving claims filed under the CAA without the need for expensive and protracted litigation is a goal that meets many interests. First, an early negotiated settlement reduces the emotional stress and strain on the parties; second, it allows the parties to retain control over how the matter is resolved; and third, it reduces expenses for the parties - as well as the taxpayers.

The Office is pleased to report that during this fiscal year, we successfully implemented the ADR program to assist employees and employing offices to resolve workplace disputes. As during other fiscal years, each step of the OOC's dispute resolution process during fiscal year 2008 provided an opportunity for employees and employers to resolve disputes. Recognizing these valuable opportunities, the Office encouraged the parties to seize every chance to arrive at a mutually agreeable solution to resolve workplace disputes. In particular, the Office explored potential solutions with employees on an individual basis, as well as with their employer. On a more general scale, we sponsored briefings and conferences for employees, labor organizations and employing offices on dispute resolution techniques to assist them in reaching a voluntary settlement. The programs are discussed more fully below in **"D. Endorse and enhance the ADR program to support the recent increase in mediated settlement agreements."**

Employees, employing offices, and the public may contact the Office for information on the Office's procedures and on the protections, rights, and responsibilities under the CAA. During confidential counseling, the counselor discusses the issues with the employee and may seek an early resolution of the matter where possible. If the matter is not resolved in counseling, an employee may request mediation under the Act. The Office utilizes highly trained and experienced neutrals to assist the parties in seeking an early and appropriate resolution to a dispute.

If, after counseling and mediation is provided by the Office, a matter remains unresolved, an employee may elect to file a formal complaint with the Office; the hearing officer appointed to hear the case will also explore the possibility of a mutually agreeable settlement with the parties prior to issuing a final decision on the matter. As our statistical information shows, in FY 2008, many potential claims were resolved through the



informal advice and information process. In addition, 16 cases were resolved in formal Counseling, and 18 in the mediation process. Resolution may be attributed to many different factors, including formal and informal settlement agreements, an explanation of events, or an explanation of the application of the CAA to the legislative branch and to particular employment situations.

OOC Staff trained in alternative dispute resolution techniques utilize these skills to resolve claims filed under several provisions of the Act. In addition to those claims that must go through the Alternative Dispute Resolution Procedures of the CAA, claims filed under the labor management and OSHA provisions are also effectively and efficiently processed utilizing ADR techniques. In addition to assisting to resolve claims when employees call for advice and information, request counseling or seek mediation, our trained staff resolved many labor-management disputes, including a negotiability appeal and several unfair labor practice charges, utilizing dispute resolution techniques in FY 2008. See charts outlining steps in the various dispute resolution processes, pp.6-8, above.

In FY 2008, the Office processed more than 100 cases through its dispute resolution program, facilitating the resolution of 18 claims with formal settlement amounts totaling almost \$900,000. Many more claims were resolved without monetary awards, but included other terms that were tailored to meet the needs of the disputants. This type of resolution is significant as it often results in a win-win situation for both parties, and it is also a cost-savings measure for the government. During this fiscal year, the OOC played a significant role in fostering creative settlements that saved money. Our trained staff and our mediators help the parties to “think outside the box,” to focus on their interests and needs. Our mediators and our staff facilitate discussions among the disputants that explore fully every aspect of a dispute. This process allows the parties to develop areas of common concern and arrive at settlement terms that are tailored to resolve their particular issues. Such terms may include additional training opportunities, reinstatement of leave, or merely an explanation of events. During this fiscal year, our efforts in assisting the parties in reaching resolution was successful in that employees obtained both monetary relief and non-monetary relief and assisted employees and employing offices to better understand their rights and responsibilities under the CAA.

C. Continue to survey the stakeholders who have participated in the ADR process to obtain information on the administration of the dispute resolution program.

In FY 2008, the Office continued surveying mediation participants and mediators seeking feedback on the users’ experiences in the mediation process. The survey provides the Office with valuable information on the mediation program from the users’ perspective. We survey participants and mediators to identify areas that are working well, and areas where improvement is needed. Where deficiencies are noted, the Office will make adjustments. Where survey responses indicate satisfaction, or suggest improvement, the Office will continue or improve its services as appropriate utilizing the valuable input from stakeholders. Although the total number of completed surveys in FY 2008 decreased slightly from FY 2007, there were fewer requests for mediation in FY 2008. Therefore, the rate of surveys completed in FY 2008 remained essentially level with the rate of completed returns in the previous fiscal year. The Office recognizes that legislative branch stakeholders have many other matters to address and perhaps lack sufficient time to complete the mediation survey. It is with that challenge in mind that we offer our stakeholders several opportunities and much encouragement to complete and return the mediation surveys. Their continued feedback is essential in ensuring the success of our mediation program.



D. Endorse and enhance the ADR program to support the recent increase in mediated settlement agreements.

This year, the Office provided ongoing education to our stakeholders both individually and in formal briefings to enhance their understanding and utilization of the ADR process in resolving workplace disputes.

In May, the Office sponsored a conference on Alternative Dispute Resolution for employing offices to enhance their understanding of the ADR process and to share skills that would assist them in resolving workplace disputes at their onset or in the formal mediation process. Participants at the conference included counsel and representatives from various employing offices. After getting an overview of the CAA, participants learned about interest-based problem solving and had a chance to hone their problem-solving skills by participating in role-play exercises. In addition, in a panel discussion on the insights of Congressional Agency Counsel, participants were able to hear from their peers about common issues and the critical role played by the Office of Compliance in the early resolution of workplace disputes. The conference was well received and provided employing offices with support and the necessary tools to deal with various workplace issues.

In September, the Office conducted a similar conference for labor organizations and employee representatives to discuss the application of the Labor-Management provisions of the CAA and the Office's procedural rules, and to practice dispute resolution techniques. As was done at the meeting in May, participants learned about methods of alternative dispute resolution, had the opportunity to practice dispute resolution techniques, and were able to discuss the importance of mediation in the resolution of workplace disputes. This meeting was also well received and it was apparent that stakeholders at both meetings were interested in continuing the work started in these workshops. The Chair of the OOC Board of Directors addressed attendees at both workshops and was able to spend time with both management and employee representatives discussing their various needs for future training opportunities.

In addition to these programs, we have provided briefings to members of the public, including foreign dignitaries. Foreign officials seek information on the application of the Congressional Accountability Act to elected officials, a concept that is unusual in many countries. Dignitaries from Asia, Africa, Europe and the Middle East have requested briefings by the Office of Compliance. The Office provides a presentation on the CAA and the Office's programs, including ADR and labor-management processes, as well as written materials. During fiscal year 2008, Meridian International requested that the Office of Compliance provide a briefing for foreign dignitaries seeking information of the application of the labor-management provisions to the legislative branch. In addition, officials from various provinces in China visited the office seeking information on the CAA and the Office of Compliance. Both meetings were successful in that the OOC highlighted model workplace practices for the dignitaries to utilize in their own systems and their own governments. We routinely participate in quarterly briefings for House and Senate staff from State and District offices sponsored by the Congressional Research Service (CRS). The briefings are held for new staff in the districts who may not be familiar with Hill practices, procedures, or their rights and responsibilities under the CAA. We were delighted to join the CRS panel discussions during FY 2008 and inform staff of our agency's services.

In FY 2008, the OOC convened and facilitated the establishment and operation of the Employment Dispute Resolution Council (EDR Council). The EDR Council includes agencies of the Legislative Branch, exclusive of the House and Senate, and was established pursuant to a directive of the House of Representatives



Committee on Appropriations accompanying the FY 2007 Legislative Branch Appropriations Bill. The Council serves as “a coordinating body to engage in collaborative efforts to explore and implement improvements in efficiency and effectiveness, reductions of redundancies, and sharing of functions” among the varying employment dispute resolution programs within the Legislative Branch (House Report 109-485, 109th Cong., 2nd Sess., June 1, 2006). Representatives from the Government Accountability Office, the Library of Congress, the Government Printing Office, the Congressional Budget Office, the Architect of the Capitol, the Capitol Police, and the Office of Compliance attended the first meeting where they had a productive discussion about the differences in the rights afforded by the various agencies, their EEO programs, and challenges faced by their respective agencies in resolving workplace disputes. The members of the Council agreed to meet quarterly and focus on current issues and “best practices.” Participants at the meeting expressed appreciation at being able to discuss common problems and learn from the experiences of their Legislative Branch counterparts.

E. Realize the Board of Directors’ rulemaking authority by monitoring its existing procedural rules and recommending substantive regulations for approval from Congress.

The Board of Directors was fully engaged in rulemaking activities to implement the Veterans’ Employment Opportunities Act (VEOA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA) provisions of the CAA in FY 2008.

Substantive regulations required under VEOA provisions of the CAA would define veterans’ preference and the method for administering veterans’ preference to legislative branch employment. The VEOA provisions of the CAA are not effective until the Board adopts, and Congress approves, regulations to implement the provisions. After a lengthy and comprehensive negotiated rulemaking process, the Board adopted final VEOA regulations and submitted them for congressional approval on March 21, 2008.

The USERRA provisions provide eligible employees with reemployment rights, and protection from discrimination and retaliation. Like VEOA, the CAA requires that the Board issue regulations to implement this provision. However, unlike VEOA, the CAA permits the application of the most relevant substantive executive agency regulations where required regulations have not been issued under the USERRA provisions. Therefore, the CAA’s USERRA provisions are currently effective through regulations issued by the Department of Labor. The Board issued a Notice of Proposed Rulemaking and Request for Comment on its proposed USERRA regulations on April 16, 2008, and at the close of the fiscal year, was close to adoption of final regulations. It is anticipated that those regulations will be adopted and submitted to the 111th Congress for its early approval.

The OOC actively tracks new and proposed legislation relating to terms and conditions of employment and access to public services and accommodations, and provides Congress with recommendations as to whether any of the provisions should be made applicable to the Legislative Branch under the Congressional Accountability Act. In FY 2008, the Board paid especially close attention to legislative activity related to the Americans with Disabilities Amendments Act, the Family and Medical Leave Act, the Genetic Information Nondiscrimination Act, and various proposals (not enacted) regarding paid family leave, pay parity, and pay adjustments for certain House employees who serve in the military reserves. In addition, the Board will include any action related to new and proposed legislation among its legislative recommendations to Congress in its *2008 Section 102(b) Report*.



Goal II Measures: Progress-to-date

Mediation Survey Response: Consistent with its Strategic Plan goals, the Office has increased the response rate of its mediation surveys since the 2005-2006 baseline years. In FY 2008, the Office sought to utilize a measure that was more “outcome-based,” than the “output-based” measures previously used. Thus, in FY2008 the measure used was to increase by 10% the number of participants who report the mediation to be “fair or very fair” as measured against the FY 2007 respondents.

While the overall number of responses received in 2007 exceeded the responses received in 2008, the overall rate of return was fairly constant. The Office did not increase the total number of participants who rated the mediation to be “fair or very fair” as measured against the FY2007 Survey results, but in FY 2008, the Office did have a relative increase of 6.1% of the responses rating the mediation process as “fair or very fair” over the FY 2007 responses. The Office makes many efforts to increase survey response rates – all mediator contracts contain a provision requiring mediators to distribute surveys to the parties and encourage their completion. In addition, the Office encourages participants to complete surveys in its letter invoking mediation. Survey forms are always available in the Mediation conference room, and are again distributed to parties with the Notice of End of Mediation that includes a statement requesting the parties provide feedback on their experience in mediation by completing the enclosed survey. While the survey results for fiscal year 2008 fall short of the Office’s goal of 10%, the number of responses rating the mediation process to be fair or very fair remains high. The total number of completed Mediation Surveys remains statistically insignificant, however, and the Office continues its efforts to increase responses to the Mediation Surveys.

Goal III:

Improve knowledge of rights and responsibilities under the CAA, both on Capitol Hill and in State or District offices throughout the country.

Goal III Initiatives:

- A. Complete and implement Phase I of a baseline survey to gauge the needs of stakeholders and shape future education and outreach efforts.
- B. Increase the overall visibility of the Office of Compliance.
- C. Prioritize communication and outreach to all State or District offices.

Goal III Measures:

- 1. Increase by 5% from the previous FY the number of hits to our website.
- 2. Increase by 5% from the previous FY the number of *Fast Facts* downloads from our website.



Discussion Goal III

A. Complete and implement Phase I of a baseline survey to gauge the needs of stakeholders and shape future education and outreach efforts.

In FY 2006, we began developing and implementing the first-ever baseline survey of the legislative branch. Strategic planning for a mission driven service organization like the OOC requires up-to-date information on its customer base, and ours is approximately 30,000 strong. This survey will help us systematically measure progress in improving awareness and knowledge of the Congressional Accountability Act and the Office of Compliance. We will also be able to gauge work climate in the legislative branch and, with full implementation and analysis of results, the Office will be better able to better target its education and outreach activities and, in turn, establish quantifiable measures to track progress periodically.

With limited funds and staff, the OOC initially approached this project in phases, beginning with House and Senate personal and committee staffs. In FY 2007, we commenced work with representatives from the Congressional Management Foundation (CMF) to craft the text for the survey utilizing recognized survey methods. We also shared sample surveys with a focus group, comprised of a representative group of Capitol Hill employees. They provided us with valuable insight and a perspective that neither we nor CMF could have otherwise obtained.

During FY 2008, we endeavored to get the survey to its first intended recipients – House and Senate employees – via electronic means. Indeed, language in the House Appropriations Committee Report accompanying the proposed Fiscal Year 2008 Legislative Branch Appropriations Bill encouraged use of electronic communications as both “cost effective and environmentally friendly” and “direct[ed] the Office of Compliance to work with the appropriate oversight committees of the House and Senate to achieve workplace electronic mail accessibility” (House Report 110-198, 110th Cong., 1st Sess., June 19, 2007). Unfortunately, despite both security and confidentiality provisions built into the survey mechanism by the Congressional Management Foundation, the Office was unable to secure email addresses for any group of legislative branch employee. Consequently, during this fiscal year, considerable effort was expended to launch the survey throughout the entire covered community.

In Summer 2008, consistent with its statutory mandate, the Office mailed its annual Newsletter to the residences of more than 30,500 employees. In that publication, we announced the survey, simultaneously posted it on our own website, and encouraged participation. We also sought announcement in the “Campus Notebook” column of *Roll Call*, which was accomplished on September 11, 2008. The Congressional Management Foundation used its trainings and relationships with staff associations to promote the activity, as did the Office at its various conferences, discussed above, towards the end of the fiscal year. Notwithstanding, FY 2008 ended with but a modest, statistically insignificant, response campus-wide to the survey. We are working to enhance these results in FY 2009. We continue to believe the survey could yield valuable information as we seek continuously to improve our education and outreach to legislative branch employees.



B. Increase the overall visibility of the Office of Compliance

In FY 2008, we continued our efforts to raise Office of Compliance visibility campus-wide, by promoting our mission to our constituents via our website, publications, conferences, and participation in various training institutes; by testimony and response to Congressional inquiries; by the promulgation of our baseline survey; and by seeking to enhance relationships with our colleagues and fellow agencies.

Education: The Office of Compliance educates covered employees and employing offices in the legislative branch about their rights and responsibilities under the CAA. Education and information efforts this fiscal year included maintaining our comprehensive website and developing and distributing written materials and publications, such as handbooks, brochures, pamphlets, *Fast Facts*, and our annual Newsletter featuring substantive legal and regulatory activities. Additionally, we commenced a comprehensive upgrade to our website, scheduled for completion in FY 2009, which will feature a section dedicated to district and state office staff as well as provide enhanced user search ability and aesthetic appeal. Our Newsletter, per our statutory mandate, was mailed to more than 30,500 residences in Summer 2008 and emphasized Board-adopted regulations implementing the Veterans Employment Opportunities Act of 1998 and Board-promulgated regulations to implement the Uniform Services Employment and Reemployment Rights Act of 1994. Thus, our education activities dovetail with our Board's congressional priorities.

Our education mandate is additionally met by participating in quarterly briefings sponsored by the Congressional Research Service for legislative branch employees located on campus as well as in state and district offices; distributing informative handouts to all new Congressional employees regarding their rights and how to exercise them; and by the Annual Report to Congress, providing both statutorily-mandated statistics and narrative detailing accomplishments tracked to our Strategic Plan. We are always available on request to offer workshops and training for Washington, DC personnel and to provide referrals and information to employees and employing offices, on an individual or group basis in any location. The agency conducted our second highly successful major conference on alternative dispute resolution for managers in May, 2008 and held a similar conference in September, 2008 for union officials. We anticipate, per request, doing more of the same in FY 2009. Our education and information activities also include providing referrals and information to employees and employing offices on an individual or group basis, in Washington DC or in states and/or districts.

To enhance our education and outreach activities, we continued our efforts to obtain the House and Senate intranet and email access needed to most effectively communicate OOC's message directly to our covered community. We perceive these communications vehicles essential to mission success and hope to receive assistance permitting implementation in FY 2009. In the interim, at the close of FY 2008, we procured CongressPlus, an electronic database communications service, that will permit direct correspondence with some 7,000 employees of House and Senate Member, Committee, and Leadership Offices. Since this is but a fraction of our covered community, we will continue our efforts to achieve comprehensive email communication capability.

While increasing our visibility among those who benefit from our services is important, we also recognize the importance of establishing relationships and increasing visibility with our peers and fellow agencies. The Office continues to make major efforts to broaden and deepen our consultation



and communication with Congressional oversight bodies and other stakeholders. We continue to be a member agency of the Chief Administrative Officers' Council and its subcommittees: the Legislative Branch Procurement Group, the Internal Controls Subcommittee, and the Human Capital Shared Services Subcommittee, which our Executive Director chairs.

Testimony and expert assistance: Reflecting OOC's increasing respect and expertise in the field, representatives from our office were again called upon for public presentations. We testified before the House Appropriations Subcommittee on the Legislative Branch on safety and health issues affecting the Capitol Visitor Center and before the House Oversight Subcommittee on the Federal Workforce on diversity in executive level positions in the legislative branch. Additionally, we briefed foreign dignitaries on dispute resolution, and reacted to a number of inquiries from congressional committees and individuals.

In the workplace rights context, we have responded to queries from our oversight committees and others not limited to matters pending before them. (Examples this fiscal year include a request from the Committee on House Administration regarding certification of bargaining units and comprehensive requests from both the Senate Rules Committee and the Committee on House Administration regarding the OOC's Board-adopted VEOA regulations.) Additionally, we regularly field questions regarding CAA- applicability to pending legislation.

Outreach activities: The Executive Director and the General Counsel have systematically reached out to legislative branch instrumentalities, as well. They held regular, semi-annual meetings with the Acting Architect of the Capitol and the Chief of the United States Capitol Police, as well as with the Senate Sergeant-at-Arms, the House Sergeant-at-Arms, and the House Chief Administrative Officer.

The Office of Compliance's "*Safe Office Award*" presented to those Members whose offices had no safety or health hazards during a Congressional session, has become a popular award. This year's ceremony, held on April 24, 2008, honored 37 Members of Congress, a 500% increase over those numbers of recipients in 2007. Additionally, the OGC has continued its quarterly meetings with legislative branch stakeholders. OSH/ADA Working Group meeting topics during FY2008 included Safety Program Evaluations (January 2008); ADA Emergency Evacuation Procedures (March 2008); Pandemic Flu (June 2008) and Injury Reduction and Cost Avoidance Through Safety Programs (September 2008). Furthermore, the OGC ordinarily meets monthly with the AOC and the LOC, and has frequent, ongoing communications with all stakeholders, as needed, involving all aspects of its safety and health program activities.

The Office of Compliance has made substantial headway in garnering the regular attention of the covered community. In addition to the various education and outreach activities previously mentioned, members of the executive staff and management team regularly both chair and sit on campus-wide committees. Indeed, fulfilling a directive from the House Appropriations Committee, the Office of Compliance convened an Employment Dispute Resolution Council consisting of agencies of the legislative branch to explore ways to reduce redundancies and implement improvements to employment dispute resolution procedures within the legislative branch.

Additionally, staff of the Office's Dispute Resolution program have daily communications with stakeholders, providing advice and information to employees, employing offices, unions, and the general public.



In addition to our participation in the Financial Managers Council and its subcommittees - the Government Performance & Results Act Subcommittee, the Internal Controls Subcommittee, and the Website Subcommittee, we also participated in the legislative branch-wide Emergency Planners workgroup. The Office has both contributed and benefited from these groups. Our contributions have added unique value to several of these groups, from the safety and health and dispute resolution perspectives, clearly, but also from the “small agency” perspective. We have received benefit from these groups in several ways – from the exchange of information, from cost savings due to joining our larger sister agencies’ contract vehicles, and from our increased visibility.

C. Prioritize communication and outreach to all State or District Offices

We continue to promote our website, www.compliance.gov, as the most comprehensive and up-to-date source of information for our covered community, no matter the jurisdiction. As its redesign gains momentum in FY 2009, we are planning a new section of the website specific to state and district offices, with interactivity to respond to questions and concerns. Use of CongressPlus, as well as the website for streaming education and outreach materials, will also substantially improve communication with offices outside Washington, D.C. We also continue to educate state and district office staff via, among other tools, our *Understanding the CAA* presentation at the Congressional Research Service’s quarterly Institute.

Goal III Measures: Progress-to-date

1. Website “hits”: In FY 2007, our website received an average of 4,965,270 hits total per year.⁴ In FY 2008, our website had 5,187,004 total hits. This is an increase of 4.5% for site hits in FY 2008 versus FY 2007.
2. Fast Facts downloads: In FY 2007, our Fast Facts were downloaded an average of 123,448 times per year. In FY 2008, total downloads were 83,064 - a 33% decrease compared to the year before.

While a decrease is noted in the number of Fast Facts downloaded between FY 2007 and FY 2008, we see this as a positive, encouraging sign that the OOC has reached offices on Capitol Hill. As our office conducts inspections throughout the Capitol complex and educates our constituents on methods of ensuring safe and healthy offices, it is only natural that the need for downloading some of the printed material may decrease. Through our assistance, offices are becoming more versed in safety and health standards. The increased overall site activity indicates that offices continue to look to the OOC for additional information in general, not particular to one specific area, to ensure a safe, healthy, and accessible work environment for employees and visitors to the Capitol complex.

⁴ Please note we are missing monthly statistical data from November - December 2006 & June - September 2007.



Goal IV

Foster employee satisfaction and employee capability in order to enhance productivity.

Goal Four Initiatives:

- A. Develop and implement a clearly defined Human Capital Plan.
- B. Enhance organizational efficiency and effectiveness through the acquisition of technological equipment and tools required to enhance the Office of Compliance's competitive edge as an employer and the efficiency of its day-to-day operations.
- C. Maximize employees' capabilities through training, development, and opportunities to facilitate upward mobility.
- D. Enhance the working environment of the Office of Compliance to maximize organizational efficiency and effectiveness and employee satisfaction.
- E. Develop and implement the use of telework and alternative work schedule arrangements

Discussion Goal IV

A. Develop and implement a clearly defined Human Capital Plan.

During FY 2006, we recognized the need for an analysis of the skill set of our workforce and the performance needs of the agency, to ensure an alignment between the two. After consultation with the Government Accountability Office to ascertain best practices to begin such an analysis, we secured the services of GRA, Inc. GRA conducted a review of staff knowledge, skills, and abilities, and prepared a comprehensive evaluation of the agency's human capital.

During FY 2007 and FY 2008, the agency's managers utilized the information provided by GRA in an effort to develop a plan for the use of its human capital, to ensure that its staff were well-equipped for the positions they held; to ensure that the workforce was properly fashioned to meet the mission requirements of the agency; and to address performance and pay issues. That plan, the Human Capital Plan, is in its final stages of development and will be implemented during FY 2009. The Plan considers the goals under the agency's current strategic plan, and it contemplates future initiatives and endeavors by the agency. The Human Capital Plan is a product of long-term planning, and recognizes the need to re-examine the agency strategic plan and make appropriate adjustments periodically.

B. Enhance organizational efficiency and effectiveness through the acquisition of technological equipment and tools required to enhance the Office of Compliance's competitive edge as an employer and the efficiency of its day-to-day operations.



Software: The plan to transition from Word Perfect Office Suite to Microsoft Office Suite became a success in fiscal year 2008 by providing in-depth training to all Office of Compliance employees and contractors and by procuring Microsoft Office 2007. Office 2007 was secured for every desktop and laptop in the agency for all staff to use. By converting to Microsoft, our agency has increased our ability to communicate with other agencies in the legislative branch and increased the ability of our staff to telework. The Office also procured Adobe InDesign CS3 to increase our creative ability on documents such as Fast Facts and our annual Newsletter. As this procurement allowed us to design many of our publications in-house, the agency realized a significant cost-savings.

Hardware: In fiscal year 2008, the Office was able to acquire flash drives with encryption to provide increased security of confidential electronic documents which, from time to time, need to be removed from the Office. With the conversion of analog to digital for all television programming, the Office found it necessary to purchase electronic equipment to be able to continue monitoring legislation on Capitol Hill. With the acquisition of additional electronic equipment, the agency is also better suited to make more formal, professional presentations during the various conferences and meetings held at our location. In addition, the Office was able to increase communication of off-site employees through the procurement and configuration of Blackberries and Panasonic Toughbooks. The Blackberries were assigned to appointed staff for communication during emergencies and other instances when staff is off-site. The Toughbooks were distributed to the inspection team for more efficient documentation of findings and violations.

C. Maximize employees' capabilities through training, development, and opportunities to facilitate upward mobility.

Legislative Change: One of the agency's greatest accomplishments, with respect to this goal, was to acquire the ability for internal promotion. Prior to December 2007, the Congressional Accountability Act prevented any current legislative branch employee, or any former such employee in the four preceding years, from being appointed to any of the four executive positions within the agency: Executive Director, General Counsel, or either Deputy Executive Director. This language limited the agency's Board of Directors from appointing any OOC employees to one of its executive staff positions. As noted by the Government Accountability Office (then the General Accounting Office) in its 2004 review of the agency's efficiencies in operations, this restriction limited the agency's ability to engage effectively in succession planning, and it prevented the agency from maintaining institutional knowledge and continuity.

In an effort to alleviate these restrictions, the Board of Directors sought legislative change to the Congressional Accountability Act to allow current Office of Compliance staff to be considered for appointed positions within the OOC. Through these efforts, an amendment to the statute was passed by Congress late in December 2007. As a result, the then Acting Executive Director was eligible for appointment by the Chair of the Board of Directors, and the appointment to Executive Director was made in January 2008. With this legislative change, our agency has realized the potential for upward mobility and continuity of service by retaining both historical perspective and institutional expertise.



Orientation and Training: One of the internal initiatives of the agency involved ensuring that our staff are cross-trained and remain well-versed in their field of expertise. Because our agency is a small agency, there are many positions wherein the required duties span many subject matter areas. During FY 2008, the agency ensured that incoming staff received a comprehensive orientation to their specific duties, as well as to the operations of the agency. We ensured that all staff received the training necessary to perform the functions of their position.

In addition, all OGC employees attended at least one training session, and inspectors were encouraged to obtain or retain professional certification during FY2008.

D. Enhance the working environment of the Office of Compliance to maximize organizational efficiency and effectiveness and employee satisfaction.

Service Agreements: The development and distribution of Office of Compliance contracts went under review during fiscal year 2008, and as a result, the Office created new methods to create and distribute contracts. A protocol was created to document review and retention of each contract by the appropriate staff. The organization and efficiency of completed contracts increased through the creation of a checklist to ensure that each contract was separated by program and that each contract was accounted for.

Procedural Implementations: Office emergency plans were reviewed for accuracy during fiscal year 2008. Due to employee separations and other changes in the Office, it was deemed necessary to do so. The entire staff met to provide comprehensive input, and plans are set to be finalized during fiscal year 2009. Orientation of employees improved through the creation of on-site training instruction. The instruction contains basic computer skills any employee needs to perform their duties at the Office. Standard operating procedures were updated and documents were created for accountability of all staff involved in the procurement process which will enable the Office to track purchase orders. With new procedures and documents, the agency is better situated to track and correct errors if they are made.

The Office was able to acquire certain furniture to replace broken furniture on which staff previously had to conduct their daily duties. We also made it a priority to purchase ergonomic furniture to ensure the health and safety of our staff. For security purposes and to meet the confidentiality mandate of our statute, the agency also obtained lockable file cabinets.

E. Develop and implement the use of telework and alternative work schedule arrangements.

The agency is pleased to report that we have developed and implemented both a telework schedule and an alternative work schedule for our entire workforce. We understand that the current culture of the federal work force is to be a model employer in this area, and the agency rises to the occasion. A number of factors were considered in developing these plans: attracting and retaining a diverse and talented work force, reducing operational costs, encouraging affordable traffic mitigation, improving productivity among employees, better addressing work and family demands, remaining consistent with Continuation of Operation Planning, and furthering the goals of Federal laws, such as the Clean Air Act.



With input from our entire staff, the agency developed both the telework and alternative work schedule policies. Although separate and distinct policies, they both help to achieve efficiency in operations, high staff morale, and a contribution toward the “greening” of the Capitol complex. Eligible staff are afforded the opportunity to either work from home 1-2 days per week, or work a compressed work schedule which would allow for one day off every other week. Not every staff member is eligible to participate in these programs, but as our technological capabilities continue to improve, we expect for additional staff to be able to benefit from either of these initiatives.



Statistics on the Use of the Office of Compliance in FY 2008

These statistics are provided pursuant to Section 301(h) of the Congressional Accountability Act, which requires that the Office of Compliance compile and publish statistics on the use of the office by covered employees.

Summary of Office Contacts

Employees and employing offices covered under the CAA may contact the Office of Compliance in person or by telephone to receive informal advice and information on the procedures of the office and learn about the rights, protections, and responsibilities afforded them under the CAA. The Office of Compliance's website is the most complete resource for information on the CAA for employees and employing offices. An automated telephone information line with recorded information about the CAA and the Office of Compliance is also available for those who do not have ready access to the Internet. During FY 2007, the Office of Compliance received 330 contacts by covered employees, employing offices, unions, and the public requesting information. Contacts were made both in person and by phone and internet as illustrated below:

Table 1: Summary of Contacts to the Office of Compliance by Group, FY 2008

| Contacts by Group | Number of Contacts |
|--------------------------|---------------------------|
| Employees | 149 |
| Employing offices | 26 |
| Public | 23 |
| Unions | 6 |
| Total | 204 |

Table 2: Summary of Automated Contacts to the Office of Compliance, FY 2008

| Automated Contacts | Number of Contacts |
|--|---------------------------|
| Website "hits" (6 months/average per month) | 2,482,635 |
| Website downloads (6 months/average per month) | 4,1532 |



Contacts by Section of the Law

Employees contacted the Office of Compliance for a variety of reasons in FY 2007, from questions concerning the application of particular provisions of the law, to matters that may constitute a violation of the CAA. Each individual contact may involve several distinct portions of the law, which is why the total number of contacts in this section is higher than the total number of contacts in the “Contacts by Group” section. In FY 2007, the covered employees who contacted the Office of Compliance discussed sections of the law as illustrated below:

Table 3: Summary of Contacts to the Office of Compliance by Section of Law, FY 2008

| Section | Description | Number of Contacts |
|----------------|---|---------------------------|
| 201 | Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and Title I of the Americans With Disabilities Act of 1990 | 92 |
| 202 | Family Medical Leave Act | 21 |
| 203 | Fair Labor Standards Act | 12 |
| 206 | Rights and protections under the Uniformed Service Employment and Reemployment Rights Act | 0 |
| 207 | Prohibition of intimidation or reprisal | 16 |
| 210 | Public access and accommodations under the Americans With Disabilities Act of 1990 | 0 |
| 215 | Occupational Safety and Health Act of 1970 | 2 |
| 220 | Unfair labor practices under chapter 71 of Title 5, U.S. Code | 3 |
| --- | CAA General | 39 |
| --- | Questions not directly related to the CAA | 80 |
| Total | | 265 |



Contacts by Issue

Employees typically contact the Office of Compliance with questions ranging from the application of the CAA to specific work issues. Employee contacts in FY 2007 raised issues as illustrated below:

Table 4: Summary of Contacts to the Office of Compliance by Issue, FY 2008

| Issue | Number of Contacts |
|------------------------------------|---------------------------|
| Assignments | 16 |
| Benefits | 1 |
| Compensation | 5 |
| Demotion | 3 |
| Discipline | 21 |
| Harassment | 46 |
| Hiring | 6 |
| Leave | 7 |
| Overtime Pay | 17 |
| Promotion | 5 |
| Reasonable Accommodation | 2 |
| Selection | 2 |
| Termination | 24 |
| Terms and Conditions of Employment | 43 |
| Other | 13 |

Results of Proceedings

The CAA mandates a dispute resolution process of counseling and mediation for the settling of disputes. If the parties involved are not able to resolve their dispute through counseling and mediation, an employee may either pursue a non-judicial administrative hearing process before an independent Hearing Officer with the Office of Compliance or file suit in Federal court. Final decisions of Hearing Officers may be appealed to the Board of Directors of the Office of Compliance for review. Upon review, the Board issues a written decision along with its reasons. A party dissatisfied with the decision of the Board may file a petition for review of the Board's decision with the U.S. Court of Appeals for the Federal Circuit.



Counseling

A total of 56 cases were in counseling during FY 2007. This figure includes 52 new requests for counseling and 4 cases pending in counseling from the previous year as illustrated below:

Table 5: Office of Compliance Counseling Cases, FY 2008

| Case | Number of Cases |
|-------------------------------------|------------------------|
| Pending in Counseling as of 10/1/07 | 6 |
| Counseling requests received | 82 |
| Total | 88 |

Table 6: Office of Compliance Counseling Results, FY 2008

| Result | Number of Cases |
|--|------------------------|
| Closed during or after counseling, but before mediation | 41 |
| <i>Settled</i> | 1 |
| <i>No further action</i> | 40 |
| Mediation requests received | 44 |
| Pending in counseling and will continue into the next reporting period | 3 |



Mediation

A total of 69 cases reached mediation during FY 2007. This figure includes 50 new requests for mediation, 11 cases pending at the beginning of the reporting period, and 8 cases that had completed mediation but were still within the time period for filing a complaint on September 30, 2007, as illustrated below:

Table 7: Office of Compliance Mediation Cases, FY 2008

| Case | Number of Cases |
|---------------------------------|------------------------|
| Pending in mediation on 10/1/07 | 7 |
| Mediation requests received | 42 |
| Total | 49 |

Table 8: Office of Compliance Mediation Results, FY 2008

| Result | Number of Cases |
|--|------------------------|
| Closed during or after mediation | 18 |
| <i>Settled</i> | 7 |
| <i>No further action</i> | 11 |
| <i>District court suit</i> | 0 |
| Administrative complaints filed after mediation ended | 13 |
| Pending in mediation on 9/30/08 | 11 |
| Mediation completed, but still within the open period to file a complaint on 9/30/08 | 7 |
| Total | 49 |



Complaints

The 7 administrative complaints active during FY 2007 (with no complaints pending from FY 2006) had outcomes as illustrated below:

Table 9: Office of Compliance Complaints, FY 2008

| Complaints | Number of Cases |
|---|-----------------|
| Complaints | |
| <i>Pending on 10/1/07</i> | 2 |
| <i>Filed during FY 2008</i> | 13 |
| Hearings | |
| <i>Hearing Officer decision issued</i> | 5 |
| <i>Resolutions without Hearing Officer decision</i> | 3 |
| <i>Complaints pending on 9/30/08</i> | 7 |
| Board Action | |
| <i>Cases with appeals pending on 10/1/07</i> | 2 |
| <i>Cases with appeals filed</i> | 3 |
| <i>Cases with Board decisions issued</i> | 4 |
| <i>Resolution without decision</i> | 0 |
| <i>Pending on appeal</i> | 1 |
| Judicial Review | |
| <i>Petitions for review pending on 10/1/07</i> | 4 |
| <i>Petitions for review filed during FY 2008</i> | 1 |
| <i>Resolution without court decision</i> | 0 |
| <i>Court decision issued</i> | 3 |
| <i>Petitions for review pending on 10/1/07</i> | 2 |



Additional Statistics on Cases Handled by the Office of Compliance in FY 2008 Requests for Counseling with the Office of Compliance by Office and Organization, FY 2008

Table 10: Requests for Counseling to the Office of Compliance by Office and Organization, FY 2008

| Office/Organization | Number of Cases |
|--|-----------------|
| Office of the Architect of the Capitol | 25 |
| Capitol Police | 46 |
| House (Non-Member or committee office) | 6 |
| House (Member office) | 3 |
| Office of Compliance | 0 |
| Senate (Non Senator or committee office) | 1 |
| Senate (Senator office) | 0 |
| Congressional Budget Office | 1 |

Table 11: Total Requests for Counseling Alleging Violations Under the Sections of the CAA, FY 2008

| Section | Description | Number of Requests |
|---------|---|--------------------|
| 201 | Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act of 1990 | 65 |
| 202 | Family Medical Leave Act | 5 |
| 203 | Fair Labor Standards Act | 9 |
| 207 | Prohibition of intimidation or reprisal | 34 |
| 206 | Vets | 1 |



Table 12: Workplace Issues Raised to the Office of Compliance by Employees Requesting Counseling, FY 2008

| Issue | Number of Requests |
|------------------------------------|--------------------|
| Assignments | 1 |
| Benefits | 1 |
| Compensation | 5 |
| Demotion | 1 |
| Discipline | 13 |
| Disparate Treatment | 3 |
| Equal Pay | 1 |
| Harassment | 11 |
| Hiring | 5 |
| Hostile Work Environment | 12 |
| Leave | 4 |
| Overtime Pay | 6 |
| Promotion | 6 |
| Reasonable Accommodation | 2 |
| Termination | 9 |
| Terms and Conditions of Employment | 39 |



Figure 6: Bases of Administrative Complaints to the Office of Compliance, FY 2008

There were a total of 13 administrative complaints in process during FY 2008. The bases of these complaints are illustrated below:

| Alleged |
|---|
| <ul style="list-style-type: none">• Unfair discipline and termination because of reprisal• Hostile work environment, denied FMLA leave, unfairly disciplined, and terminated because of disability and retaliation• Denial of a promotion, hostile work environment, and unfair terms and conditions of employment because of reprisal• Not hired because of disability• Denial of FMLA rights, placed on AWOL, and disciplined for invoking his FMLA rights and because of retaliation• Unfair discipline and a hostile work environment because of race• Hostile work environment, unfair terms and conditions of employment, lay-off, and non-selection for reinstatement, because of race• Denied compensation in violation of the Fair Labor Standards Act provisions• Violation of his family and medical leave rights, harassment, and unfair discipline because of reprisal• Not hired because of race and service in the Uniform Services• Not hired because of his age• Hostile work environment and unfair terms and conditions of employment because of race and reprisal• Hostile work environment, discipline, and termination because of sex and retaliation |



Labor Management Relations

Figure 7: Office of Compliance Board of Directors Action Under Section 220, FY 2008

Labor Management Relations

In FY 2008, two labor organizations filed representation petitions seeking to be the exclusive representative of two distinct units of employees. In June, a representation election was conducted to determine whether a labor organization would be the exclusive representative of the unit of employees. The labor organization received the majority of the votes cast, and was certified by the Office of Compliance as the exclusive representative. The remaining representation petition was in process at the end of the reporting period.

Also in FY2008, the Office received a petition for review of negotiability; the petition was resolved by the parties pursuant to a mediated process conducted by the Office of Compliance. The Office also resolved a question that arose regarding the certification of a labor organization.

Two exceptions to arbitrator awards were filed with the Office in FY2008; one was resolved by a decision of the Board of Directors, and the other matter was still in process at the end of FY2008.”

A question as to the certification of a labor organization was raised, and resolved in FY 2008. Two labor organizations filed representation petitions seeking to be the exclusive representative of a unit of employees. In June, a representation election was conducted to determine whether a labor organization would be the exclusive representative of the unit of employees. The labor organization received the majority of the votes cast, and was certified as the exclusive representative. The remaining petition is in process. One petition for review of negotiability was resolved by the parties pursuant to a mediated process conducted by the Office of Compliance.



OSHA, ADA, and Unfair Labor Practice Proceedings

The Office of the General Counsel of the Office of Compliance is responsible for matters arising under three sections of the CAA: Section 210 (Public Services and Accommodations Under the Americans with Disabilities Act of 1990), Section 215 (Occupational Safety and Health Act of 1970), and Section 220 (Unfair Labor Practices Under Chapter 71 of Title 5, United States Code).

Table 13: Total Requests to the General Counsel for Information and Assistance by Section of the CAA, FY 2008

| Section | Description | Number of Requests |
|----------------|---|---------------------------|
| 201 | Public access and accommodation under the Americans with Disabilities Act of 1990 | 57 |
| 215 | Occupational Safety and Health Act of 1970 | 473 |
| 220 | Unfair Labor Practices under Chapter 71 of Title 5, U.S. Code | 20 |

Access to Public Services and Accommodations

Section 210 of the CAA protects qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or places of public accommodation in covered locations and offices. All offices of the Senate and the House of Representatives, all Congressional committees, the Capitol Guide Service, the Congressional Budget Office, the Office of the Attending Physician, the Office of Compliance and the United States Capitol Police must comply with Section 210's requirements in their dealings with the public.

Individuals who feel their rights under this provision have been violated may file a charge with the General Counsel of the Office of Compliance. This charge must be filed within 180 days of the alleged violation. After a charge is filed, the General Counsel will conduct an investigation. If the investigation reveals that a violation may have occurred, the General Counsel may request mediation to resolve the dispute or file a complaint before an independent Hearing Officer with the Office of Compliance.



Table 14: Action Under Section 210 of the CAA, FY 2008

| Request for Inspection | Number of Cases |
|-------------------------------|------------------------|
| Cases Pending as of 9/30/07 | 1 |
| Charges Filed | 1 |
| Cases Closed | 2 |
| Cases Pending as of 9/30/08 | 1 |

No charges were filed during FY 2008.

Occupational Safety and Health

Section 215 of the CAA requires that covered legislative branch workplaces be free of safety and health hazards likely to cause death or serious injury. Employing offices must comply with all applicable occupational safety and health standards. An employing office may be responsible for correcting a violation even if it does not have an employment relationship with the employees who are exposed to the hazard.

When a Request for a Safety and Health Inspection is received, the General Counsel of the Office of Compliance initiates an on-site investigation and sends a detailed report to the employing office, explaining any steps that may be needed to remedy the problem. If the General Counsel finds a violation, a notification or citation may be issued to the responsible office. If the violation is not corrected once a citation has been issued, the General Counsel may file a complaint before an independent Hearing Officer with the Office of Compliance. The actions taken under this section in FY 2008 are discussed in the Biennial Report on Occupational Safety and Health Inspections for the 110th Congress.

Unfair Labor Practices

Section 220 of the Congressional Accountability Act (CAA) prohibits unfair labor practices by both employing offices and labor organizations. The General Counsel of the Office of Compliance is responsible for processing charges that allege an unfair labor practice. If a person believes that an unfair labor practice has been committed, he or she must file a charge with the General Counsel who will then conduct a thorough investigation of the charge. If the General Counsel believes that an unfair labor practice has occurred, a compliant will be filed and prosecuted before an independent Hearing Officer with the Office of Compliance.

During FY 2008, the Office of Compliance received and docketed 10 unfair labor practices. Of those 10 unfair labor practices, 70% (7 cases) have been resolved. The unfair labor practice charges involve allegations such as refusal to bargain in good faith, refusal to process information requests, and a breach of the duty of representation. Consistent with our statutory mandate, the OGC encouraged the parties to confer and, in most cases, the parties were successful in resolving their disputes subsequent to the .OGC facilitated communication. The action taken under this section in FY 2008 is illustrated below:



Table 15: Action Under Section 220 of the CAA, FY 2008

| ULP Cases | Number of Cases |
|-------------------------------------|------------------------|
| Cases pending as of 10/1/07 | 6 |
| Unfair Labor Practice charges filed | 10 |
| Complaints issued | 0 |
| Board decisions issued | 0 |
| Cases closed | 10 |
| Cases pending as of 9/30/08 | 6 |

Requests for Inspection

Requests for Inspections can be broken down into four main categories: health hazards, fire safety, physical hazards, and emergency response. Each inspection is a multi-part effort involving opening and closing conferences with the affected employing offices; conducting research on the hazards found; taking environmental samples and having them analyzed; explaining to employing offices the requirements of regulations and codes; preparing comprehensive reports of the results of the inspections, the violations found, and the steps required for abatement; and following up with the employing offices to ensure that the violations have been abated. The actions taken under this section in FY 2008 are illustrated below:

Table 16: Inspections by Category, FY 2008

| Inspections | Number of Contacts |
|--------------------|---------------------------|
| Health Hazards | 7 |
| Fire Safety | 2 |
| Physical Hazards | 5 |
| Emergency Response | 2 |



Board of Directors of the Office of Compliance

Susan S. Robfogel, Esq.
Chair, Board of Directors

Susan S. Robfogel is a partner in the New York City and Rochester, NY offices of Nixon Peabody LLP. Since 1984, Ms. Robfogel has been a Member of the New York State Data Protection Review Board, for which she has also served as the Chair and Vice Chair. She is also a fellow of the College of Labor and Employment Lawyers and served three terms as a member of the Federal Service Impasses Panel.

Ms. Robfogel has been a member of the New York State Bar Association House of Delegates and is Past Chair of the New York State Bar Health Law Committee. She is a fellow of the American Bar Foundation and a member of the Labor Law Section of the New York State and American Bar Associations.

Ms. Robfogel is a graduate of Smith College and holds a J.D. from Cornell Law School. She is Chair of the Board of the George Eastman House International Museum of Photography.

Ms. Robfogel was first appointed to the Board of Directors of the Office of Compliance in 1999 and was reappointed Chair for a second five-year term in 2004.

Barbara L. Camens, Esq.
Member, Board of Directors

Barbara L. Camens is the proprietor of the Washington, DC law firm of Barr & Camens. Ms. Camens has extensive litigation experience in Federal court, before federal administrative agencies and in arbitration. Ms. Camens is a member of the District of Columbia Bar (Labor and Employment Section), and is a frequent speaker on the topics of labor and employment law.

Ms. Camens is a graduate of Ohio State University and received her law degree from the University of Pennsylvania Law School.

Ms. Camens was appointed to the Board of Directors of the Office of Compliance in 2000. She was reappointed to a second five-year term in 2005.

Alan V. Friedman, Esq.
Member, Board of Directors

Alan V. Friedman is a partner in the Los Angeles firm of Munger, Tolles & Olson LLP. Mr. Friedman is a member of the American Bar Association (Labor and Employment Law Section), the California Bar Association, the Los Angeles County Bar Association (Labor and Employment Law Section), and is also a past President of the Labor Law Section of the Los Angeles County Bar Association.

Mr. Friedman served in the office of the Solicitor of the U.S. Department of Labor and has chaired the Civil Service Commission of Los Angeles. He was also Labor Relations Counsel to the 1984 Los Angeles Olympic Organizing Committee.



A graduate of the University of Pennsylvania, Mr. Friedman received a J.D. from Case Western Reserve University Law School, and an L.L.M. from the Georgetown University Law Center.

Mr. Friedman was first appointed to the Board of Directors of the Office of Compliance in 1999 and was reappointed to a second five-year term in 2004.

Roberta L. Holzwarth, Esq.
Member, Board of Directors

Roberta L. Holzwarth is a partner in the Rockford, Illinois law firm of Holmstrom & Kennedy, P.C. She is also a Certified Mediator for the Circuit Court in Winnebago County, Illinois, and the United States District Court for the Northern District of Illinois, Western Division.

Ms. Holzwarth served as the Secretary of the Board of Fire and Police Commissioners of the City of Rockford, Illinois from 1990 until 2004. Ms. Holzwarth is a member of the Winnebago County Bar Association, where she served as its President from 1999 to 2000. She is a member of the American Bar Association and its Labor and Employment Law Section, as well as the Illinois Bar Association.

Ms. Holzwarth graduated from Stanford University with a Bachelors of Arts degree and received her J.D. from the University of Illinois College of Law.

Ms. Holzwarth was appointed to the Board of Directors of the Office of Compliance in 2000. She was reappointed to a second five-year term in 2005.

Barbara Childs Wallace, Esq.
Member, Board of Directors

Barbara Childs Wallace is a shareholder in the Jackson, Mississippi law firm of Wise, Carter, Child & Caraway, where she chairs the firm's labor and employment section.

Prior to joining Wise, Carter, Child & Caraway, Ms. Wallace served as a law clerk to the Honorable Roger Robb and George E. MacKinnon of the United States Court of Appeals for the District of Columbia Circuit. Ms. Wallace also served for many years as Chair of the Civil Rights Reviewing Authority for the United States Department of Education. Ms. Wallace is a member of the District of Columbia Bar, the Mississippi Bar Association, and the Hinds County Bar Association. She is the past Chairman of the Labor and Employment Section of the Mississippi Bar Association.

Ms. Wallace graduated from Purdue University (B.A.), Loyola University of Chicago School of Law (J.D.), and the National Law Center of George Washington University (L.L.M.).

Ms. Wallace was first appointed to the Board of Directors of the Office of Compliance in 1999 and was reappointed for a second five-year term in 2004.



Executive Staff of the Office of Compliance as of September 30, 2008

Four statutory employees appointed by the Board of Directors carry out day-to-day management functions of the Office of Compliance. These employees include an Executive Director, two Deputy Executive Directors, and a General Counsel. All four executive positions were filled in January 2008.

Tamara E. Chrisler, Esq. ***Executive Director***

In January 2008, the Board of Directors of the Office of Compliance appointed Tamara E. Chrisler to a five-year term as Executive Director. Ms. Chrisler had served as Acting Executive Director since April 2006.

Prior to her tenure as Acting Executive Director, Ms. Chrisler served as Deputy Executive Director for the Senate beginning in June 2005. Previously, Ms. Chrisler served as a labor and employment attorney for the Federal Bureau of Prisons. In addition, from 1993-1997, Ms. Chrisler served as an Assistant State's Attorney in the Cook County State's Attorney Office in Chicago, Illinois.

Ms. Chrisler completed her professional education at the University of Illinois in Urbana, Illinois, earning a Bachelor of Arts in French Literature in 1990 and a Juris Doctor in 1993.

Peter Ames Eveleth, Esq. ***General Counsel***

Peter Ames Eveleth was appointed by the Board of Directors of the Office of Compliance to the position of General Counsel for a five-year term commencing June 2003; he was reappointed to a second five-year term in June 2008.

Prior to his appointment, Mr. Eveleth served in a variety of positions at the National Labor Relations Board (NLRB), including Senior Special Counsel to the General Counsel and Assistant General Counsel of the Contempt Litigation Branch. Mr. Eveleth was Of Counsel to the Washington Office of Akin, Gump, Strauss, Hauer and Feld where he represented management clients in a broad range of labor and employment matters. Mr. Eveleth has also served as an Adjunct Professor at Georgetown University Law Center, teaching equal employment opportunity law.

Mr. Eveleth is a graduate of Cornell University's School of Industrial and Labor Relations and the University of Pennsylvania Law School. He is admitted to practice in New York and the District of Columbia, and resides in Washington, D.C.

Barbara J. Sapin, Esq. ***Deputy Executive Director for the Senate***

Barbara J. Sapin was appointed by the Board of Directors of the Office of Compliance to a five-year term as Deputy Executive Director for the Senate commencing March 2008.



Prior to joining the Office of Compliance, Ms. Sapin concluded her term as a Member of the Merit Systems Protection Board, where she adjudicated appeals of personnel actions affecting the federal workforce. Before joining the Merit Systems Protection Board, Ms. Sapin served in many labor and employment law related positions, including General Counsel and Labor Counsel to the American Nurses Association. In addition, Ms. Sapin held several positions at the National Labor Relations Board. Ms. Sapin's government service has also included positions with the Occupational Safety and Health Review Commission and the U.S. Environmental Protection Agency.

Ms. Sapin received her bachelor's degree from Boston University and her law degree from the Columbus School of Law, Catholic University of America.

Sana F. Shtasel, Esq.
Deputy Executive Director for the House

Sana F. Shtasel was appointed by the Board of Directors of the Office of Compliance to a five-year term as Deputy Executive Director for the U.S. House of Representatives commencing February 2008.

Ms. Shtasel came to the Office of Compliance with thirty years' experience as an attorney and executive in the private, public and nonprofit sectors. Ms. Shtasel held an array of senior-level positions in nonprofit organizations and federal and state governments, including President and Chief Executive Officer of Planned Parenthood of Maryland; Director of Federal Affairs for the American Association of Retired Persons; Chief-of-Staff to former U.S. Senator Bob Packwood; Special Assistant to the Associate Attorney General; and General Counsel and Assistant Secretary for Federal Relations for the Massachusetts' Transportation Department. Additionally, she litigated the constitutional predicate to the Congressional Accountability Act (*Davis v. Passman*, 442 U.S. 228 (1979)).

Ms. Shtasel holds a bachelor's degree from Cornell University, a law degree from New York University, and a master's degree in public administration from Harvard University. She is admitted to practice in the District of Columbia and Massachusetts.



Staff of the Office of Compliance as of September 30, 2008

Sharita Daniels-Obiora - Staff Assistant –Case Tracking

Susan Green – Deputy General Counsel

Luis Guzman – Safety & Occupational Health Specialist

Allan Holland – Budget and Administrative Officer

Teresa James – Director of Education and Counseling

Marie Joseph – Assistant Systems Administrator

Barbara Jaffee – Attorney

Annie Leftwood - Staff Assistant to Executive Director

Nikieva Perry – Accounting Technician

Kathy Schluter – Administrative Assistant to the General Counsel

Mary-Margaret Smith – Legislative Affairs Specialist/Writer

Kate Tapely – Senior Attorney

Charles Tetreault - Attorney

David Young – Management Analyst

Contact Information

Office of Compliance

Room LA 200, John Adams Building

110 Second Street, SE

Washington, DC 20540-1999

Recorded Information Line: 202-724-9260

Telephone: 202-724-9250

FAX: 202-426-1913

TDD: 202-426-1912



Index to Figures, Tables, and Charts

Figure 1: Office of Compliance Dispute Resolution Process,
page 6

Figures 2 and 3: Office of the General Counsel Process of Request for
OSHA or ADA Inspection, page 7, 8

Figure 4: Library of Congress: Injury Reduction and Cost Avoidance, 2001-2007, page 14

Figure 5: Average Time Between Inspection and Issurance of the Hazards finding Reports, page 19

Figure 6: Bases of Administrative Complaints to the Office of Compliance, FY 2007, page 40

Figure 7: Office of Compliance Board of Directors Action Under Section 220, FY 2007, page 41

Chart 1: Occupational Safety and Health - Number of OSH Cases, page 18

Chart 2: Occupational Safety and Health - Number of OSH Citations, page 18

Chart 3: Occupational Safety and Health - Number of LMR Cases, page 19

Table 1: Summary of Contacts to the Office of Compliance by Group, FY 2008, page 34

Table 2: Summary of Automated Contacts to the Office of Compliance, FY 2008, page 34

Table 3: Summary of Contacts to the Office of Compliance by Section of Law, FY 2008, page 35

Table 4: Summary of Contacts to the Office of Compliance by Issue, FY 2008, page 36

Table 5: Office of Compliance Counseling Cases, FY 2008, page 37

Table 6: Office of Compliance Counseling Results, FY 2008, page 37

Table 7: Office of Compliance Mediation Cases, FY 2008, page 38

Table 8: Office of Compliance Mediation Results, FY 2008, page 38

Table 9: Office of Compliance Complaints, FY 2008, page 39

Table 10: Requests for Counseling to the Office of Compliance by Office and Organization, FY 2008, page 40

Table 11: Total Requests for Counseling, Alleging Violations Under Sections of the CAA, FY 2008, page 40



Table 12: Workplace issues Raised to the Office of Compliance by Employees Requesting Counseling, FY 2008, page 41

Table 13: Total Requests to the General Counsel of the Office of Information and Assistance by Section of the CAA, FY 2008, page 42

Table 14: Action Under Section 210 of the CAA, FY 2008, page 43

Table 15: Action Under Section 220 of the CAA, FY 2008, page 44

Table 16: Inspection by Category, FY 2008, page 44



Appendices

Appendix A: Opinions of the Board of Directors

Pursuant to its statutory mandate, the Office of Compliance Board of Directors reviewed and decided four cases in FY 2008:

Emma Gibson v. Office of the Architect of the Capitol (Case No. 06-AC-44(CV)) (September 11, 2008)

The Board of Directors affirmed the Hearing Officer's dismissal of the complaint which alleged a hostile work environment and violation of The Equal Pay Act.

Blair P. Gormley v. Office of the United States Capitol Police Board (Case No. 07-CP-35 (DA)) (August 7, 2008)

The Board of Directors reversed the Hearing Officer's dismissal of the complaint for failure to state a claim and found that the allegations in the complaint were pled sufficiently so as to survive a motion to dismiss under federal notice pleading and OOC Procedural Rules requirements.

Fraternal Order of Police, U.S. Capitol Police Labor Committee v. U.S. Capitol Police Board, (Case No. 08-ARB-2) (July 29, 2008)

The Board of Directors found that the Arbitrator's decision was "interlocutory" and in view of the fact that there were no exceptional circumstances involved, was not reviewable until the final award disposing of all the issues before the arbitrator had been issued.

Edward E. Eastham v. U.S. Capitol Police Board, (Case No. 06-CP-41 (RP)) (February 25, 2008)

The Board of Directors affirmed the Hearing Officer's granting of summary judgment finding that there was no prima facie case of retaliation.

Additionally, the Federal Circuit Court of Appeals affirmed the Office of Compliance decisions in two proceedings this year:

- *Robert Solomon v. Office of Compliance and Office of the Architect of the Capitol*, Nos. 2007-6002, 6003 (Fed. Cir., September 9, 2008), affirming the Board's decisions in *Robert Solomon v. Office of the Architect of the Capitol*, No. 02-AC-62(RP)(January 19, 2007) and *Robert Solomon v. Office of the Architect of the Capitol*, No. 04-AC-13 (RP)(March 8, 2007).
- *Richard Duncan v. Office of Compliance and Office of the Architect of the Capitol*, 541 F.3d 1377 (Fed. Cir., September 16, 2008), affirming the Board's decision in *Richard Duncan v. Office of the Architect of the Capitol*, No. 02-AC-59 (RP)(September 19, 2006).



