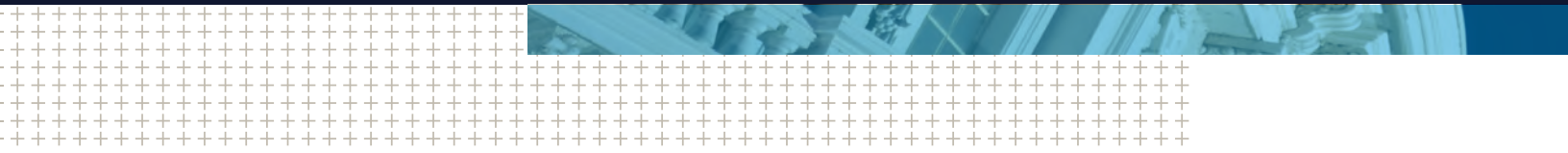




+ OFFICE OF COMPLIANCE + FY 2011 ANNUAL REPORT



STATE OF THE  
**CONGRESSIONAL**  
**WORKPLACE**

A Report on Workplace Rights, Safety, Health, and Accessibility Under  
the Congressional Accountability Act





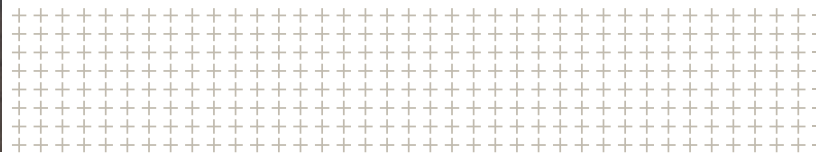
“This bill, which applies to the congressional employees the basic protections against discrimination, unsafe working conditions and unfair labor practices which are guaranteed to other American workers, is a long overdue reform. For many decades, Congress routinely exempted itself from laws which it passed to apply to the rest of America—a double standard which increased the contempt which most citizens have justifiably held for this institution. Capitol Hill was the last bastion of arbitrary bosses, long after the struggles of working men and women gained basic human and economic rights for workers in most of our Nation.”

**+ Representative Bernard “Bernie” Sanders (VT) (now a U.S. Senator), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995**



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# THE CONGRESSIONAL WORKPLACE AND THE CONGRESSIONAL ACCOUNTABILITY ACT

The Congressional Accountability Act of 1995 (CAA) applies private sector and Executive Branch workplace rights, safety, health, and public access laws to Congress and its agencies and provides the legal process of resolving alleged violations of the CAA through the Office of Compliance (OOC). The CAA protects over 30,000 employees of the Legislative Branch nationwide (including state and district offices). Under certain circumstances, job applicants and former employees are protected. The CAA also provides protections and legal rights for members of the public who have disabilities and need access to public accommodations and services in the Legislative Branch.

## CONGRESSIONAL WORKPLACES COVERED BY THE CAA

- + HOUSE OF REPRESENTATIVES
- + SENATE
- + CONGRESSIONAL BUDGET OFFICE
- + GOVERNMENT ACCOUNTABILITY OFFICE\*
- + LIBRARY OF CONGRESS\*
- + OFFICE OF THE ARCHITECT OF THE CAPITOL
- + OFFICE OF THE ATTENDING PHYSICIAN
- + OFFICE OF COMPLIANCE
- + OFFICE OF CONGRESSIONAL ACCESSIBILITY SERVICES
- + UNITED STATES CAPITOL POLICE

*\*Certain provisions of the CAA do not apply to the Government Accountability Office and Library of Congress; however, employees of those agencies may have similar legal rights under different statutory provisions and procedures.*



## + LAWS APPLIED TO THE CONGRESSIONAL WORKPLACE BY THE CAA:

Section 201 of the CAA	<b>NO HARASSMENT OR DISCRIMINATION</b>	Prohibits harassment and discrimination in personnel actions based on race, national origin, color, sex, religion, age, or disability. Laws applied: Title VII of the Civil Rights Act, Age Discrimination in Employment Act (ADEA), Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act (ADA)
Section 202 of the CAA	<b>FAMILY AND MEDICAL LEAVE</b>	Provides leave rights and protections for certain family and medical reasons. Law applied: Family and Medical Leave Act (FMLA)
Section 203 of the CAA	<b>FAIR LABOR STANDARDS</b>	Requires the payment of minimum wage and overtime compensation to nonexempt employees, restricts child labor, and prohibits sex discrimination in wages paid to men and women. Law applied: Fair Labor Standards Act (FLSA)
Section 204 of the CAA	<b>POLYGRAPH TESTING PROTECTIONS</b>	With some exceptions, prohibits requiring or requesting that lie detector tests be taken; using, accepting, or inquiring about the results of a lie detector test; or firing or discriminating against an employee based on the results of a lie detector test or refusing to take a test. Law applied: Employee Polygraph Protection Act (EPPA)
Section 205 of the CAA	<b>NOTIFICATION OF OFFICE CLOSING OR MASS LAYOFFS</b>	Under certain circumstances, requires that employees be notified of an office closing or of a mass layoff at least sixty days in advance of the event. Law applied: Worker Adjustment and Retraining Notification Act (WARN)
Section 206 of the CAA	<b>UNIFORMED SERVICES RIGHTS AND PROTECTIONS</b>	Protects employees who are performing service in the uniformed services from discrimination and provides certain benefits and reemployment rights. Law applied: Uniformed Services Employment and Reemployment Rights Act (USERRA)
Section 207 of the CAA	<b>PROHIBITION OF REPRISAL OR INTIMIDATION FOR EXERCISING WORKPLACE RIGHTS</b>	Prohibits employing offices from intimidating, retaliating, or discriminating against employees who exercise their rights, as applied by the CAA.
Section 210 of the CAA	<b>ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS</b>	Protects members of the public who are qualified individuals with disabilities from discrimination with regard to access to public services, programs, activities, or places of public accommodation in Legislative Branch agencies. Law applied: Titles II and III of the Americans with Disabilities Act (ADA)
Section 215 of the CAA	<b>HAZARD-FREE WORKPLACES</b>	Requires that all workplaces be free of recognized hazards that might cause death or serious injury. Law applied: Occupational Safety and Health Act (OSHA)
Section 220 of the CAA	<b>COLLECTIVE BARGAINING AND UNIONIZATION</b>	Protects the rights of certain Legislative Branch employees to form, join, or assist a labor organization, or to refrain from such activity. Law applied: chapter 71 of Title 5
Genetic Information Nondiscrimination Act (GINA)	<b>GENETIC INFORMATION NONDISCRIMINATION &amp; PRIVACY</b>	Prohibits the use of an employee's genetic information as a basis for discrimination in personnel actions.
Veterans' Employment Opportunities Act (VEOA)	<b>VETERANS' EMPLOYMENT OPPORTUNITIES</b>	Gives certain veterans enhanced access to job opportunities and establishes a redress system for preference eligible veterans in the event that their veterans' preference rights are violated.

# THE CHAIR OF THE BOARD OF DIRECTORS



We are pleased to share the “State of the Congressional Workplace,” our annual educational report to Congress, its agencies and employees, and the American people. We hope that the report allows you to better understand how workplace rights, safety, health, and accessibility laws have impacted Capitol Hill since the passage of the Congressional Accountability Act of 1995 (CAA). We seek to provide insight into the Office of Compliance’s (OOC) programs and related statistics, including data about the types of employment discrimination claims made by Congressional staffers and how those claims are resolved. These statistics—which the CAA requires be disclosed annually to Congress—are an indicator of whether the CAA provides an effective venue for employees to address their workplace concerns.

Our statutory mandate also includes enforcement of the Occupational Safety and Health Act (OSHAct) and the Americans with Disabilities Act (ADA). In prior reports, we have noted a rapid improvement in Congressional compliance with the OSHAct requirements, largely precipitated by the OOC’s inspections of Congressional properties. Through our OSH inspections, we are able to locate safety hazards and provide necessary information to employing offices to allow those hazards to be removed. In this Annual Report, we draw attention to some of our ADA work for the first time, including details about access barriers for people with disabilities that the OOC found during inspections of the exterior pathways of House office buildings. By providing information to Congress and the Architect of the Capitol about the nature and location of the access barriers, and how to remove them, we hope to improve the safety of exterior pathways for people with disabilities.

As the CAA also requires, we continue to report to Congress that while the Legislative Branch lives under most of the laws applied to the private sector, the CAA is an incomplete statute that is not in parity with private sector laws. For example, private sector employers are required to post notifications of employment rights for all their employees. That is not the case for employing offices in Congress, which are exempt from notice posting. With such high turnover of staffers in the House and Senate, some form of permanent posting would assist new and incumbent employees in understanding their rights. Another example of the parity gap is that both private sector employees and Executive Branch employees have whistleblower protections for reporting waste, fraud, and abuse; Congressional staffers and other Legislative Branch employees have no such protections. This report summarizes our prior recommendations that Congress close these and other gaps in coverage under the CAA.

This Board is proud of the OOC staff and their commitment to improve the Congressional workplace for all employees and employing offices. We applaud their efforts.

Sincerely,

A handwritten signature in black ink that reads "Barbara L. Camens". The signature is written in a cursive, flowing style.

Barbara L. Camens, Esq.

# STATEMENT FROM THE EXECUTIVE DIRECTOR



Having served as the Office of Compliance (OOC) Executive Director since FY 2009, I am struck by the accomplishments of the OOC despite the challenges the Agency has faced. Over the years, the OOC has developed into an agency where employees can assuredly and confidentially bring their workplace rights concerns, employing offices can

rely on the OOC's expertise in dispute resolution as well as safety and health technical assistance, and both staff and visitors can be assured of the OOC's diligence in identifying hazards for abatement. In the 16 years since its inception, the Office of Compliance has taken the mandates of the Congressional Accountability Act (CAA), and has breathed life into them, by developing viable programs, services, and assistance. The Agency has built relationships with employing offices, employees, labor organizations, public interest groups and associations, and other Government agencies. The OOC has established itself as a resource on Capitol Hill, focusing on the benefits of preventive maintenance: both in the world of enforcing anti-discrimination laws, and in the world of safety and health.

The challenges the OOC has faced along the way are typical of many new agencies: building credibility, trust, and a sound infrastructure with sufficient resources. Though our infrastructure stands firm, each year, the OOC has struggled to meet its statutory obligations with limited resources. Fiscal year 2011 was no exception. Like our sister agencies, we faced budget cuts during tight fiscal times for our Nation. As a small agency with no overlapping functions, reduced funding has meant lay-offs, limited services, and eliminating certain programs. Even with these reductions, our remaining staff doubled their efforts to ensure that the OOC continues to meet the mandates under the CAA. In particular, we continued to provide full, nationwide services for the dispute resolution program so that most cases of discrimination and harassment were resolved and settled prior to prolonged, expensive litigation. For the first time, the OOC is publishing in this report our "resolution rates"—the number of cases we have been able to settle within the CAA's confidential dispute resolution process. You will see from the statistics in this report that the vast majority of cases are resolved by the OOC through this confidential process.

Other services, however, have felt more strongly the reduction in funding and have been pared back substantially. Lack of funding has forced the OOC to eliminate effective education and training programs, that might have otherwise prevented discrimination and harassment cases from occurring. The OOC has recommended to

Congress a low-cost educational tool available to employing offices: required notice-posting of rights in the workplace. These postings are of no cost to employing offices, of little cost to the OOC, yet their effectiveness in educating employees and employing offices on workplace protections under the CAA is immeasurable.

Another initiative that has suffered the impact of budget cuts is our wall-to-wall safety and health inspections of the Capitol Campus. The OOC has focused our limited resources from wall to wall inspections to risk-based inspections of safety and health hazards that could pose the most harm to occupants of Legislative Branch facilities. The potential downside to limiting wall-to-wall inspections is that there is no longer a comprehensive system to encourage employing offices to eliminate potential hazards. In addition, we remain concerned that district and state offices have never been inspected by the OOC due to lack of OOC resources.

Despite insufficient resources available for our Americans with Disabilities Act (ADA) program, the OOC was able to conduct inspections of barriers to public access of certain areas in the Capitol Complex. Specifically, the OOC recently inspected all exterior pathways of House Office buildings for the first time. Our findings uncovered that most curb ramps were not in compliance with the ADA, and most of the identified barriers posed a safety risk for people with disabilities, such as ramps or sidewalks that could cause wheelchairs to flip backwards or fall sideways. In addition, the OOC surveyed 6 restrooms in each of the Senate and House office buildings and each one of them failed to meet ADA standards.

The OOC staff continues to provide essential services to the Legislative Branch to ensure the administration of the CAA's mandate. Our services and programs continue to assist Congress in ensuring the type of workplace envisioned by the CAA—one that is compliant with the employment and workplace safety laws that govern the private sector. In recent years, much progress has been made in terms of Congressional accountability to the workplace laws by which other employers live. This report highlights the progress made in FY 2011.

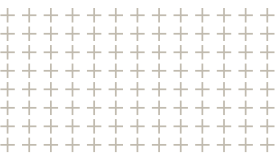
We look forward to continuing our collaboration with Congress to create the Congressional workplace envisioned by the Congressional Accountability Act.

Sincerely,

Tamara E. Chrisler

# ANNUAL REPORT

Congress passed the Congressional Accountability Act of 1995 (CAA) with overwhelming bipartisan support to bring Congress and its agencies under the ambit of workplace rights, occupational safety and health, accessibility, and fair labor standards statutes that apply to most private employers and the Federal Executive Branch. Prior to the passage of the CAA, Congress had exempted itself from the reach of these laws, affording employees no statutory remedy for their violation.



In an effort to bring accountability to Congress and its agencies, and to provide an avenue of redress for employees, the CAA established the Office of Compliance (OOC) to administer a dispute resolution program for the resolution of workplace rights claims by Congressional employees under the CAA; to carry out an education program to inform Congressional Members, employing offices, and Congressional employees about their rights and obligations under the CAA; to inspect Congressional facilities for compliance with safety and health and accessibility laws; and to operate under a Board of Directors that is responsible for, among other things, promulgating regulations and making recommendations for changes to the CAA, that would apply to Congress the same workplace laws that apply to private and public employers.

The CAA was drafted in a manner that demonstrates that Congress intended that there be an ongoing, vigilant review of the workplace laws that apply to Congress and a review of whether Congressional employees are making claims under the CAA, accessing the services of the OOC, and able to make claims against their employers in a similar manner as Federal Executive Branch and private sector employees.

What is the current state of Congressional accountability and compliance under the CAA? This Annual Report provides an analysis of the state of workplace rights, safety, health, and accessibility in Congress during FY 2011 (October 1, 2010–September 30, 2011). In some instances, the OOC provides information that became available after FY 2011, but before this Annual Report went to print.

This Annual Report provides FY 2011 statistics on the use of the OOC by Congressional employees, including statistics about the types of claims being made against Congressional employing offices. Section 301(h) of the CAA requires the OOC to publish such statistical data.

Other periodic reports that are provided to Congress, as required under the CAA, are summarized in this Annual Report. The three reports required by the CAA are described below:

- Section 215(e) of the CAA requires the OOC to inspect Legislative Branch facilities for compliance with occupational safety and health standards under the Occupational Safety and Health Act (OSHAct), at least once each Congress and report on those findings. This Annual Report summarizes the OSHAct inspections report for the 111th Congress (2009–2010), which was completed and issued by the OOC in June 2012.
- Section 210(f) of the CAA requires the OOC to conduct biennial inspections of Legislative Branch facilities for compliance with the access to public services and accommodations requirements under the Americans with Disabilities Act (ADA), at least once each Congress, and report on those findings. We summarize the ADA inspections report for the 111th Congress (2009–2010) that will be issued in 2012 and describe a comprehensive plan for ADA inspections during future Congresses.
- Section 102(b) of the CAA requires the Board of Directors to report whether and to what degree provisions of Federal law, relating to the terms and conditions of employment, and access to public services and accommodations, are applicable or inapplicable to the Legislative Branch and, if inapplicable, whether they should be made applicable. This Annual Report summarizes the 102(b) report—newly titled “Recommendations for Improvements to the Congressional Accountability Act”—issued to Congress in December 2010, which made recommendations to the 112th Congress (2011–2012) for changes to the CAA to advance Congressional workplace rights. The Board of Directors highlights sections of the 102(b) report that continue to be priorities.

All of our statutory reports are available on the OOC’s website at [www.compliance.gov](http://www.compliance.gov).

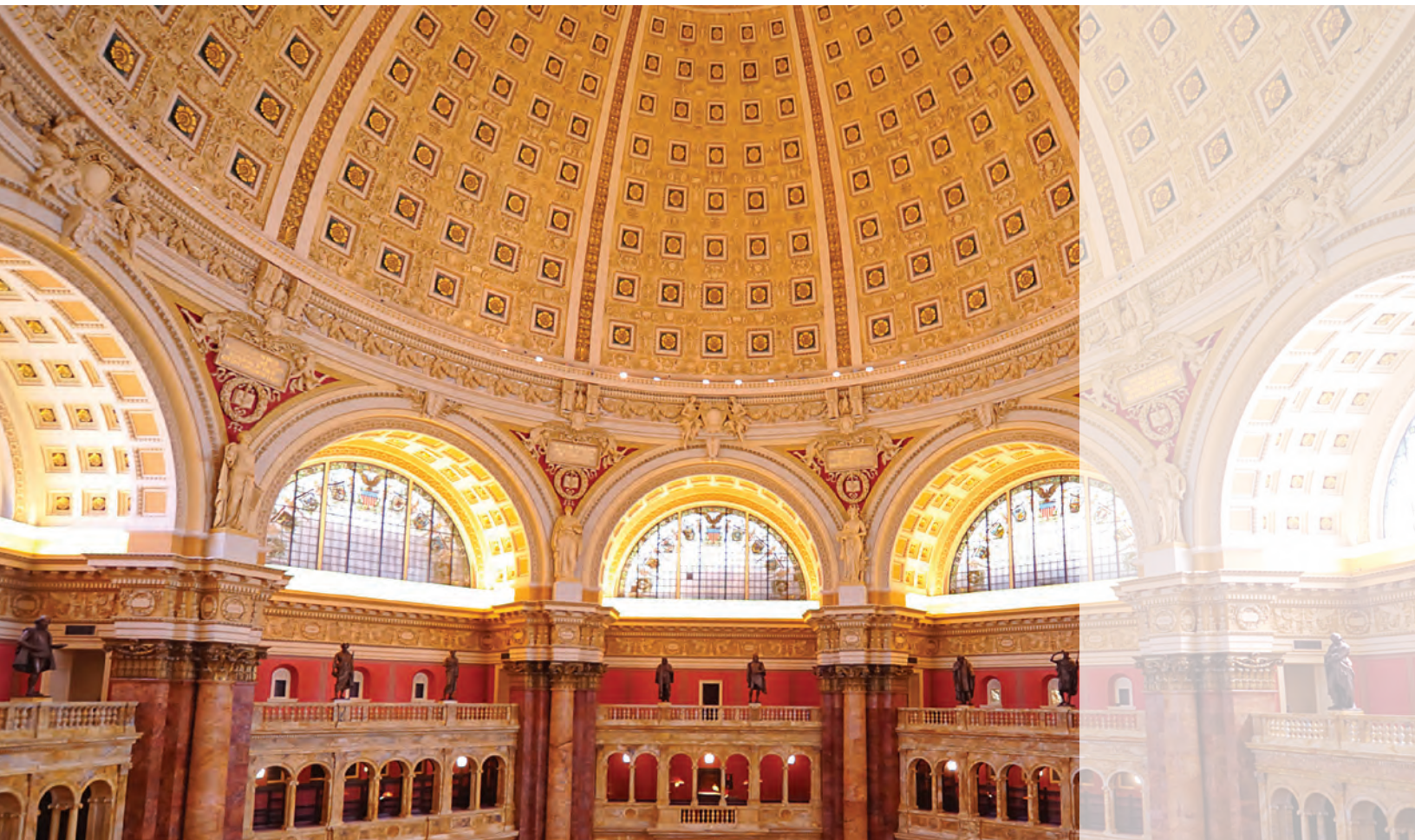


## ANNUAL REPORT STRUCTURE

This Annual Report includes the State of Workplace Rights, the State of Safety & Health, and the State of Access to Public Services & Accommodations. For each section, this report describes:

- + **WHAT THE LAW REQUIRES:** A general, background explanation of legal obligations under key provisions of the CAA.
- + **ACHIEVEMENTS & COMPLIANCE ASSESSMENT:** An assessment of Congressional compliance with the CAA, including achievements, areas for improvement, and non-compliance with the law.

- + **PARITY GAP ANALYSIS (State of Workplace Rights and State of Safety and Health Only):** An analysis of the difference between the workplace rights afforded to Congressional employees under the CAA and the workplace rights afforded to employees in the private sector and the Federal Executive Branch. This analysis also contains recommendations from the Board of Directors of the OOC (pursuant to Section 102b of the CAA) to amend the CAA to advance workplace rights for Congressional employees so that they have similar protections as employees in the private sector and the Federal Executive Branch.





# WHY WE ARE HERE, WHAT WE DO

“The Members who worked on this provision have developed a thoughtful and independent mechanism—specifically the Office of Compliance—to promulgate regulations and respond to employee complaints. The Office of Compliance will be free from partisan politics and any influence from the executive branch.” + **Representative Jill L. Long (IN), August 10, 1994, from the legislative history of the Congressional Accountability Act of 1995.**

## SERVICES WE PROVIDE TO CONGRESS, CONGRESSIONAL EMPLOYEES, AND THE PUBLIC

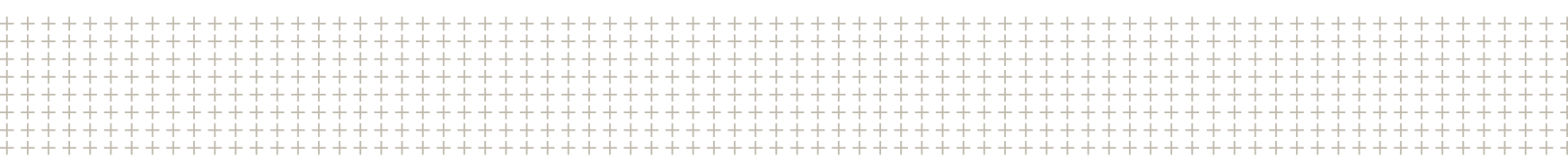
In 1995, Congress passed the Congressional Accountability Act (CAA). The purpose of the CAA was to require Congress and its agencies to follow many of the same employment, labor, accessibility, safety, and health laws that Congress enacted to apply to private business and the Federal Executive Branch, and to provide an avenue of legal recourse for those employees who allege violations of workplace rights. Under the CAA, an employee may seek a number of legal remedies for violations of the law including monetary damages, such as back pay awards, and the reimbursement of attorney’s fees if the employee successfully wins his or her case.

Until the CAA’s passage, Congress had exempted itself from most of these laws, but a collective voice of bipartisan Congressional Members expressed dissatisfaction with such exemptions. Members wanted Congress to be held

accountable to the same employment, accessibility, and safety laws that Congress enacted to apply to other employers. The CAA was passed to make that happen.

Many of those Congressional Members also felt that the employment enforcement procedures and dispute resolution system that had been in place prior to the passage of the CAA were not effective in protecting and advancing the rights of Congressional employees. Under the CAA, Congress established the Office of Compliance (OOC) to implement an effective dispute resolution system, enforce certain provisions of the CAA, and educate Congress, its employing offices, and Congressional employees of their obligations and rights under the CAA.

The OOC is an independent, non-partisan agency that is subject to oversight by the Senate Committee on Rules and Administration, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on House Administration.



## WE RESOLVE DISCRIMINATION, HARASSMENT, AND OTHER WORKPLACE RIGHTS DISPUTES IN THE LEGISLATIVE BRANCH

The CAA provides for mandatory alternative dispute resolution (ADR), which includes confidential counseling and mediation for the settling of disputes under most workplace rights laws as described on page 5 of this Annual Report.

In most instances, the CAA imposes a strict 180 day time limit for an employee, applicant, or former employee to file a violation of workplace rights claim by submitting a formal request for counseling with the OOC. After completing confidential counseling, the employee may decide to further pursue his or her claim through confidential mediation with his or her employer.

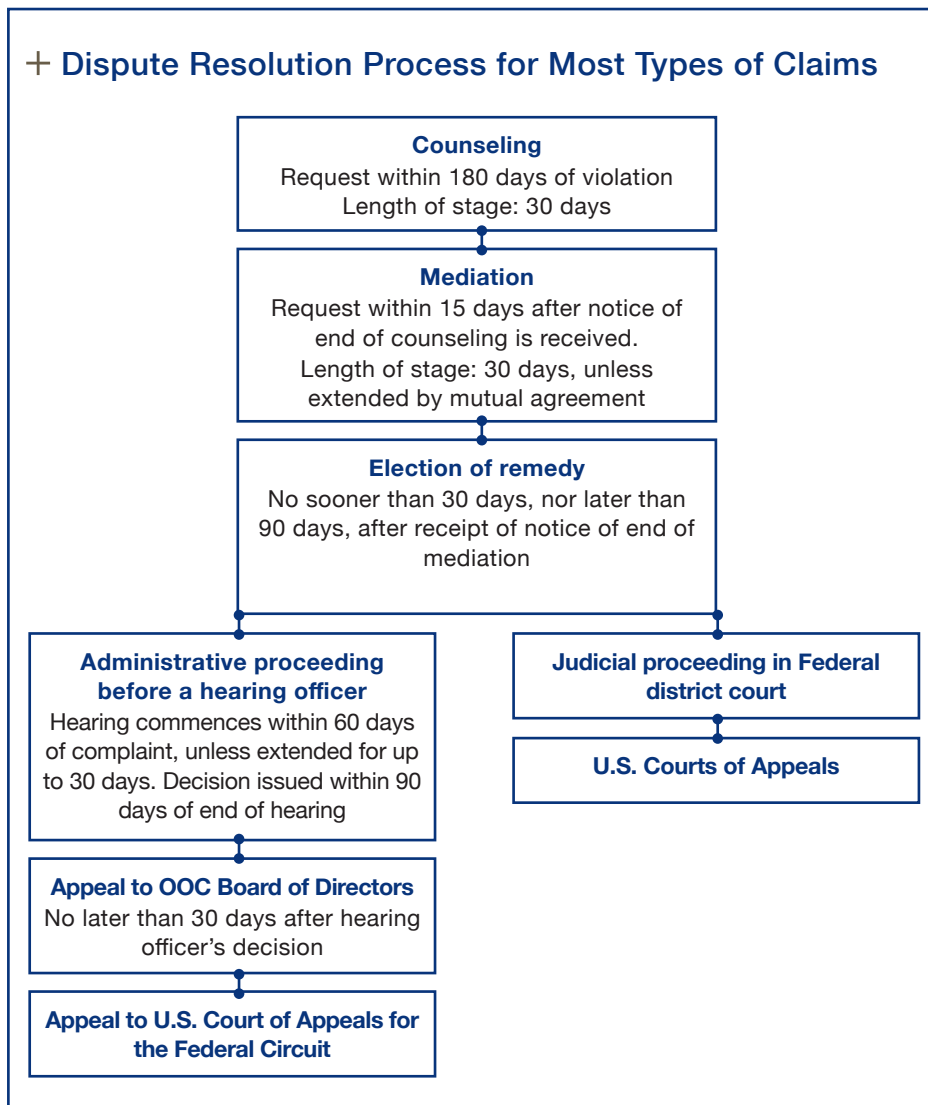
If the parties involved are not able to resolve their dispute through mediation, an employee may either pursue an administrative

hearing with the OOC, or file a civil suit in Federal district court. After an administrative hearing, if either the employee or the employer is dissatisfied with the final decision of the hearing officer, a request may be made to have the hearing officer’s decision reviewed by the Board of Directors of the OOC. If the employee or the employer is dissatisfied with the Board of Directors’ ruling, the decision may be appealed to the U.S. Court of Appeals for the Federal Circuit for further review. If, instead, the case proceeds to a civil suit, appeals of Federal district court decisions will proceed under the rules that normally apply to appeals in Federal court, usually an appeal to the appropriate U.S. Court of Appeals.

Depending on the law and facts in a case, a hearing officer, the OOC Board of Directors, or Federal court may order monetary awards and other appropriate remedies for the prevailing party in the case, such as reinstatement, promotion, or back pay. Attorney’s fees, expert witness fees, and certain other costs may also be awarded. No civil penalties or punitive damages may be awarded for any claim under the CAA.

The CAA and its ADR process apply to employees of the Legislative Branch, including employees of the House of Representatives and the Senate; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; the Office of Congressional Accessibility Services; and the United States Capitol Police. In certain instances, applicants and former employees may also be protected. Depending on the circumstances, the OOC will provide services locally to process claims brought by district or state office staff, or the OOC will service the needs of the employee through its Washington, D.C. office.

At any time during the ADR Process, an employee may designate (at the option and expense of the employee) a representative, such as an attorney, to represent him or her in the matter.

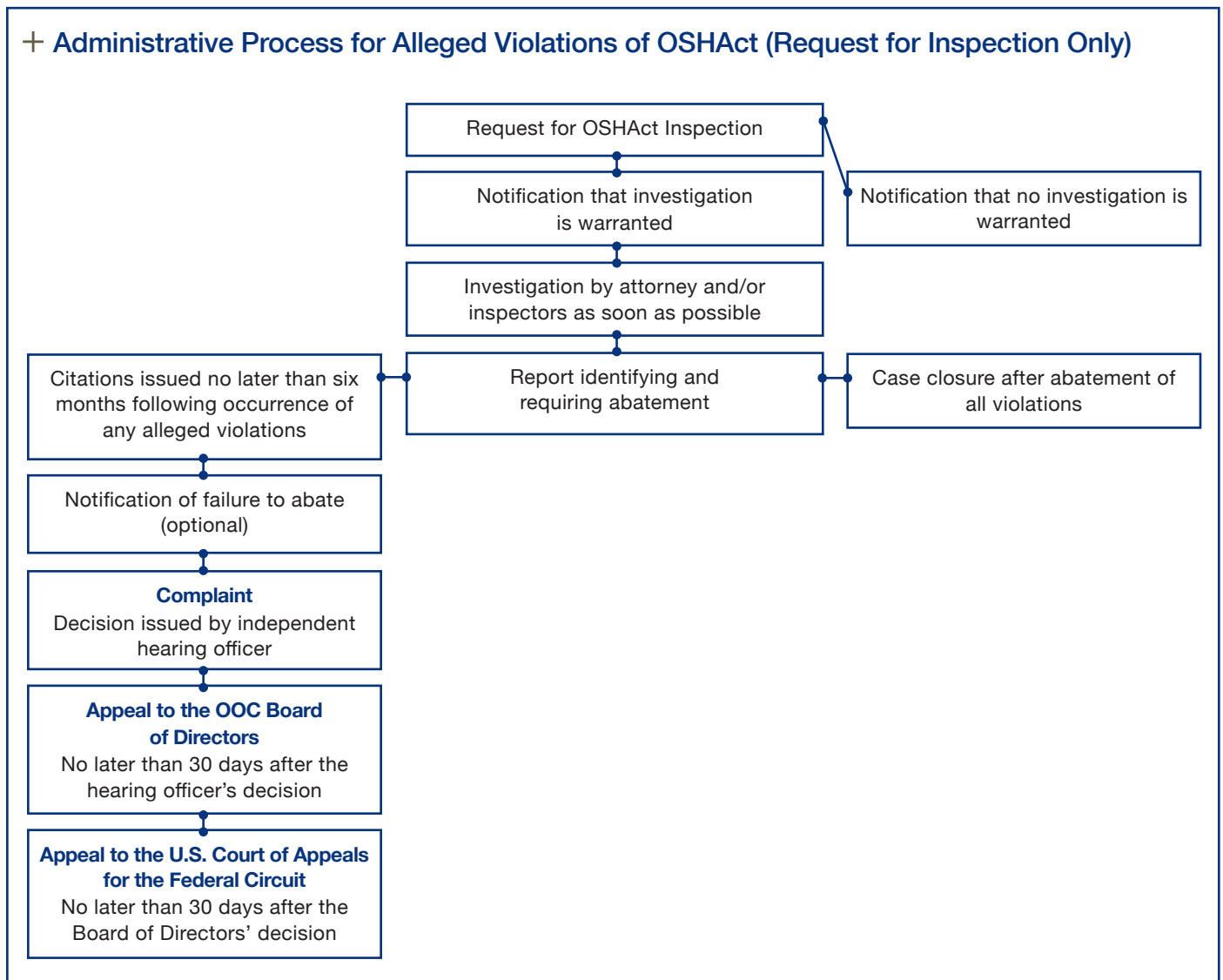


## WE ENSURE A SAFE & HEALTHLY CONGRESSIONAL WORKPLACE

Under the CAA, the Legislative Branch must comply with the OSHAct and its standards requiring that the workplace be free from recognized hazards that are likely to cause death or serious injury. The General Counsel of the OOC inspects Congressional properties biennially for such violations and reports them to the Speaker of the House and President Pro Tempore of the Senate. The OOC also provides information and technical assistance to employing offices that are responsible for abating workplace hazards.

The CAA also provides that a Congressional employee or employing office may file a Request for Inspection to

determine if a dangerous working condition exists. Once the request is filed, the General Counsel is responsible for investigating the suspected unsafe working condition. When an investigation reveals a hazardous working condition, the General Counsel may issue a notice or citation to the employing office that has exposed employees to the hazard and/or to the office responsible for correcting the violation. The office or offices are then responsible for remedying the hazard. If a hazardous condition is not corrected despite the issuance of a citation, the General Counsel can file an administrative complaint with the OOC, and seek an order mandating the correction of the violation.

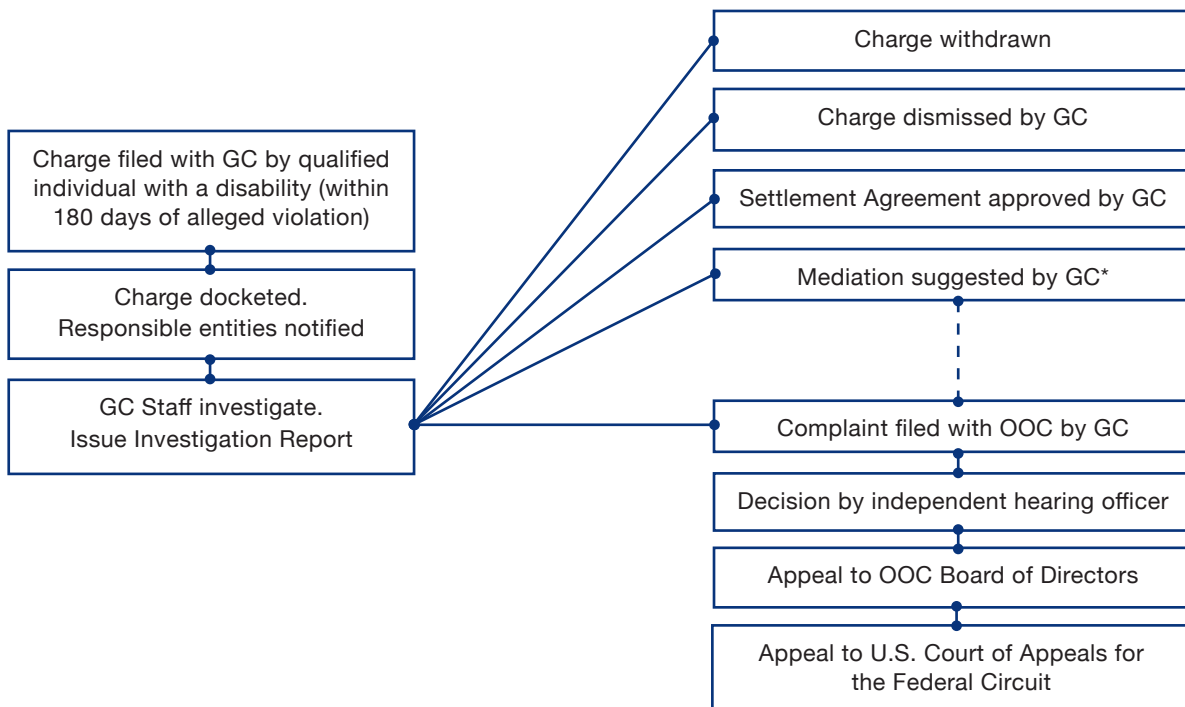


## WE ENSURE ACCESS TO CONGRESSIONAL SERVICES AND ACCOMMODATIONS FOR MEMBERS OF THE PUBLIC WHO HAVE DISABILITIES

Section 210(f)(2) of the CAA requires that the General Counsel of the OOC inspect employing office facilities in the Legislative Branch for compliance with the rights and protections against discrimination in the provision of public services and accommodations for people with disabilities, established by Titles II and III of the ADA.

The CAA also provides that members of the public may file charges of discrimination alleging public access violations under the ADA. If an investigation reveals that a violation occurred, the General Counsel may request mediation to resolve the dispute or may file an administrative complaint with the OOC against the entity responsible for correcting the alleged violation.

### + Dispute Resolution Process for Alleged Violations of ADA Accessibility Laws



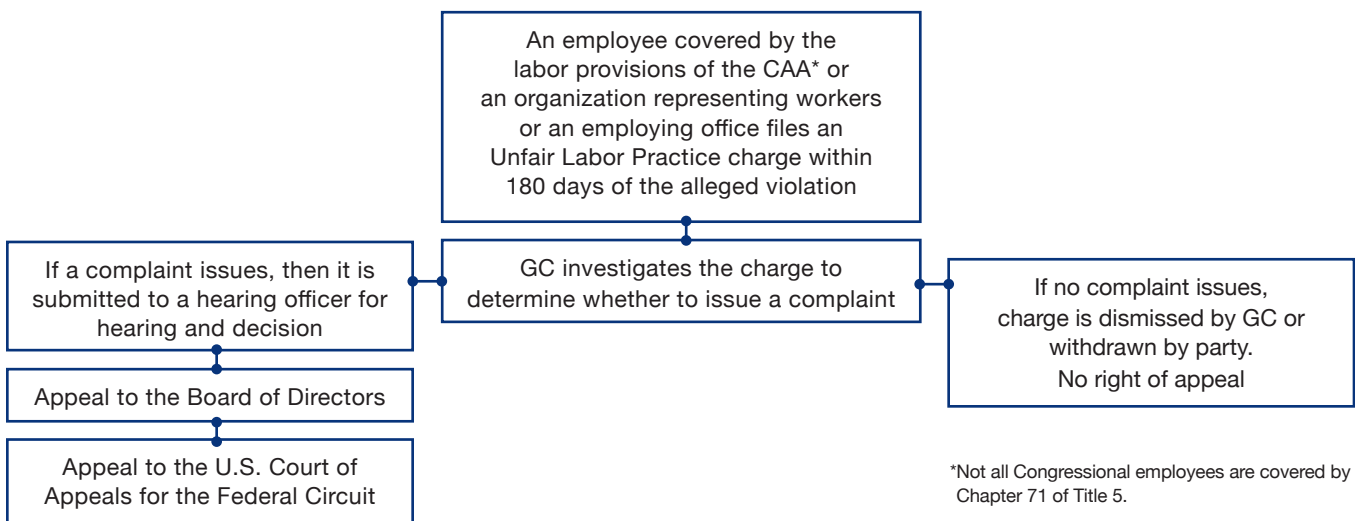
\*Mediation is not mandatory

## WE OVERSEE FAIR REPRESENTATION ELECTIONS AND RESOLVE UNFAIR LABOR PRACTICE DISPUTES

The CAA grants certain Legislative Branch employees the right to join a labor organization for the purpose of collective bargaining under Chapter 71 of Title 5. The CAA protects these employees' rights to form, join, or assist a labor organization without fear of penalty or reprisal. The rights of employees who choose not to join or participate in a labor organization are also protected. Certain procedures must be followed to be represented by a labor organization. The OOC oversees representation petitions and elections.

The Board of Directors of the OOC has the authority to issue final decisions on union representation and elections issues, questions of arbitrability, and exceptions to arbitrator awards. The General Counsel is responsible for investigating allegations of unfair labor practices and prosecuting complaints of unfair labor practices before an independent hearing officer and the Board.

### + Administrative Process for Alleged Violations of Federal Labor Laws



## WE EDUCATE TO PREVENT VIOLATIONS OF THE CAA AND TO PROVIDE INFORMATION ABOUT THE STATE OF THE CONGRESSIONAL WORKPLACE

Many legal and human resource experts agree that educating employers about their obligations and employees about their rights is one of the best strategies for preventing violations of employment, labor, accessibility, and safety and health laws. Why? Because employers who do not understand their legal obligations are more likely to run afoul of them. Furthermore, ignoring workplace problems or allowing them to fester without addressing them creates unnecessary workplace conflict that can later lead to liability, expensive litigation, and undesirable publicity for all parties involved.

Congress recognized this when it passed the CAA. Section 301(h)(1) of the CAA mandates that the OOC “carry out a program of education for Members of Congress and other employing authorities of the legislative branch. . . respecting the laws made applicable to them and a program to inform individuals of their rights under laws applicable to the legislative branch...” See also Section 301(h)(2).

To this end, the OOC created a comprehensive education program that includes:

- developing and distributing written materials and publications;
- maintaining a website with information about the law and its enforcement;
- conducting briefings, workshops, and conferences about the law and the services the OOC offers to our stakeholders and their employees;
- answering questions from Congressional Members, agencies of the Legislative Branch, and Congressional employees;

- providing training to Congressional Members, agencies of the Legislative Branch, and Congressional employees in a large group setting or, upon request, in a smaller setting tailored toward a particular office; and
- engaging in face-to-face meetings with Congressional Members, agencies, and Congressional employees to offer our employment and occupational safety and health law expertise.

Another educational tool the OOC provides is statistical data about the workplace rights claims made by Congressional employees. Under Section 301(h) of the CAA, Congress requires the OOC to track and report statistical information about the use of the OOC by employees and employing offices of the Legislative Branch. The OOC publishes these statistics annually in this “State of the Congressional Workplace”; statistics for FY 2011 can be found in this annual report.

The OOC also reports to Congress about recommended changes to improve the CAA. Under Section 102(b) of the CAA, the OOC’s Board of Directors is required to report to Congress (on a biennial basis) about any Federal employment, labor, access, and safety and health laws not already made applicable through the CAA and recommend the law be applied to Congress, or not.

All of OOC’s reports are available at [www.compliance.gov](http://www.compliance.gov).



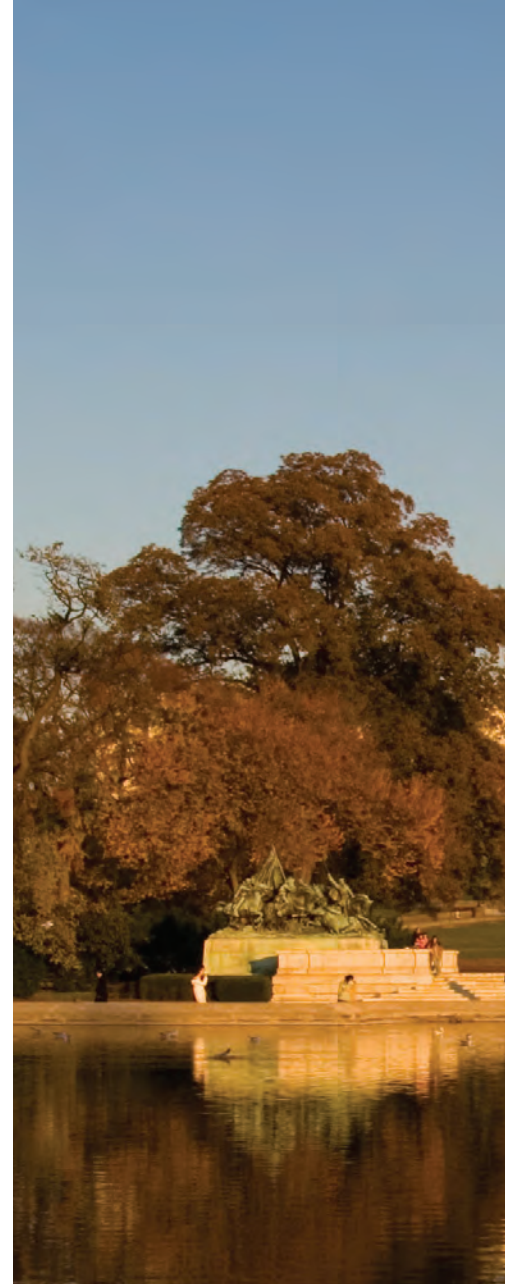




# STATE OF WORKPLACE RIGHTS

Congress and its agencies employ 30,000 employees nationwide, many of whom live in Maryland, Virginia, and the District of Columbia. Congressional employees who have claims of discrimination, harassment, and other violations of workplace rights laws must assert such claims through the Office of Compliance’s (OOC) dispute resolution process. The OOC provides dispute resolution services nationwide regardless of an employee’s geographic location.

“State of Workplace Rights” provides statistical data to Congress on the use of the OOC by Congressional employees. Section 301(h) of the Congressional Accountability Act (CAA) requires that such statistics be published annually.



## SECTION HIGHLIGHTS

- + Claims alleging violations of workplace rights have increased compared to 5 years ago
- + Most claims filed with the OOC allege discrimination and/ or harassment based on race, sex, age, and disability
- + Vast majority of cases are resolved confidentially under the CAA’s dispute resolution process



- + Congress is not covered by certain workplace rights laws required for American businesses and the Executive Branch, such as mandatory notice-posting of workplace rights, mandatory anti-discrimination training, and whistleblower protections for employees who report waste, fraud, and abuse

## **I. WHAT THE LAW REQUIRES: STATISTICS ON THE USE OF THE OOC BY CONGRESSIONAL EMPLOYEES**

A core requirement under the CAA is for the OOC to provide statistical data to Congress about the number of employees asserting their rights under the OOC's alternative dispute resolution (ADR) program, and the reasons for their claims. Congress wants to know whether Congressional employees are seeking legal recourse for alleged discrimination and harassment claims, as well as other types of claims under the CAA such as family and medical leave and/or retaliation. To this end, the CAA requires that the OOC compile and publish statistics on the use of the OOC 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... and the result 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." See Section 301(h)(3). A full discussion of the FY 2011 statistics is provided on the pages that follow.

## **II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: STATISTICAL INFORMATION ON THE USE OF THE OOC BY CONGRESSIONAL EMPLOYEES**

During the hearings that led to the passage of the CAA, some Congressional Members voiced concern that while the passage of workplace rights laws to protect Congressional employees is important, the CAA means little if employees do not use the available resources to assert their rights or if they do not

feel comfortable asking about their rights. As a result, Section 301(h) of the CAA requires the OOC to compile and publish statistics on the use of the OOC by Congressional employees so that Congress can assess whether Congressional employees are indeed exercising their rights and getting the information they need. In this section, the OOC provides information about the use of the OOC by Congressional employees to enforce their workplace rights under the CAA.

Most of the statistics in this section relate to claims brought by Congressional employees under the OOC's dispute resolution process (see page 12 for more information and a diagram of how the process works). Covered employees under the CAA include current and former employees, as well as applicants.

The CAA mandates a dispute resolution process of confidential counseling and mediation for the prompt resolution of disputes. If the dispute is not resolved during counseling and mediation, the employee may either pursue his or her claims in a confidential administrative hearing before an independent hearing officer with the OOC, or file suit in Federal district court, which is a public forum.

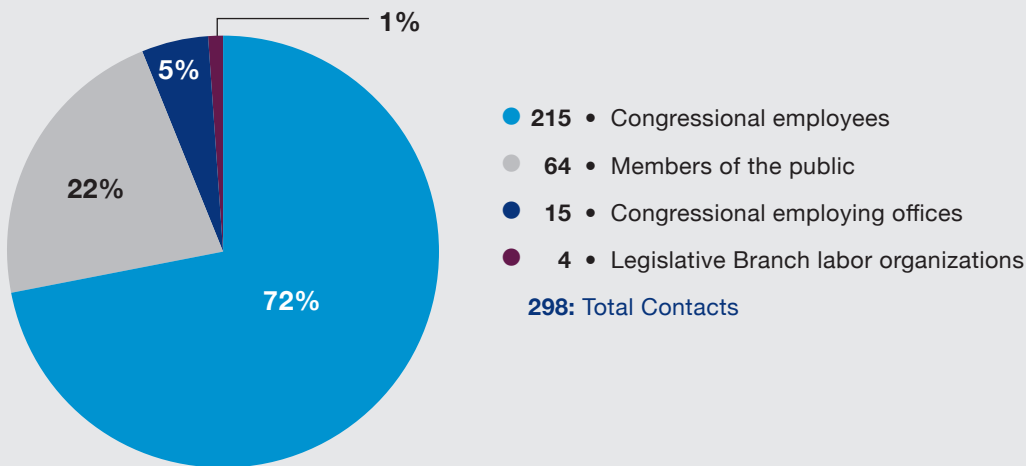
Final decisions of hearing officers may be appealed to the Board of Directors of the OOC. Upon review, the Board issues a written decision of its analysis and evaluation of the facts and issues. A party dissatisfied with the decision of the Board may file a petition for review of the Board's decision with the U.S. Court of Appeals for the Federal Circuit. If an employee filed suit in Federal district court instead of filing an administrative complaint with the OOC, appeals of those decisions follow federal appellate procedures and rules.

## GENERAL INFORMATION REQUESTS IN FY 2011

Congressional employees, employing offices, and the public may contact the OOC in person or by telephone to request information on the procedures of the OOC and to learn about the rights, protections, and responsibilities granted by the CAA. Although general inquiries do not initiate the formal dispute process, they are nonetheless kept confidential by the OOC.

Providing information to a covered employee is often the first opportunity the OOC has to directly address a particular issue. An OOC counselor assists individuals in understanding how the CAA may apply to the facts of their dispute, and suggests ways their claims may be addressed and resolved either through the dispute resolution process or by addressing their concerns directly with their employer without ever having to file a claim with the OOC.

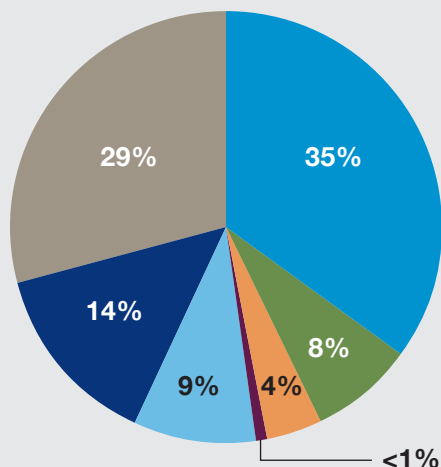
### + Summary of General Information Requests by Group



During FY 2011, OOC counselors received 298 general inquiries for information mostly from covered employees, but also from members of the public, employing offices, and labor organizations.

GENERAL INFORMATION REQUESTS IN FY 2011 (CONTINUED)

+ General Information Requests by Section of Workplace Rights Laws under the CAA



- 122 • Section 201—Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Rehabilitation Act, Americans with Disabilities Act
- 28 • Section 202—Family and Medical Leave Act
- 15 • Section 203—Fair Labor Standards Act
- 2 • Section 206—Uniformed Services Employment and Reemployment Rights Act
- 33 • Section 207—Prohibition of Intimidation or Reprisal (Retaliation)
- 51 • CAA Generally
- 101 • Not Directly Related to the CAA

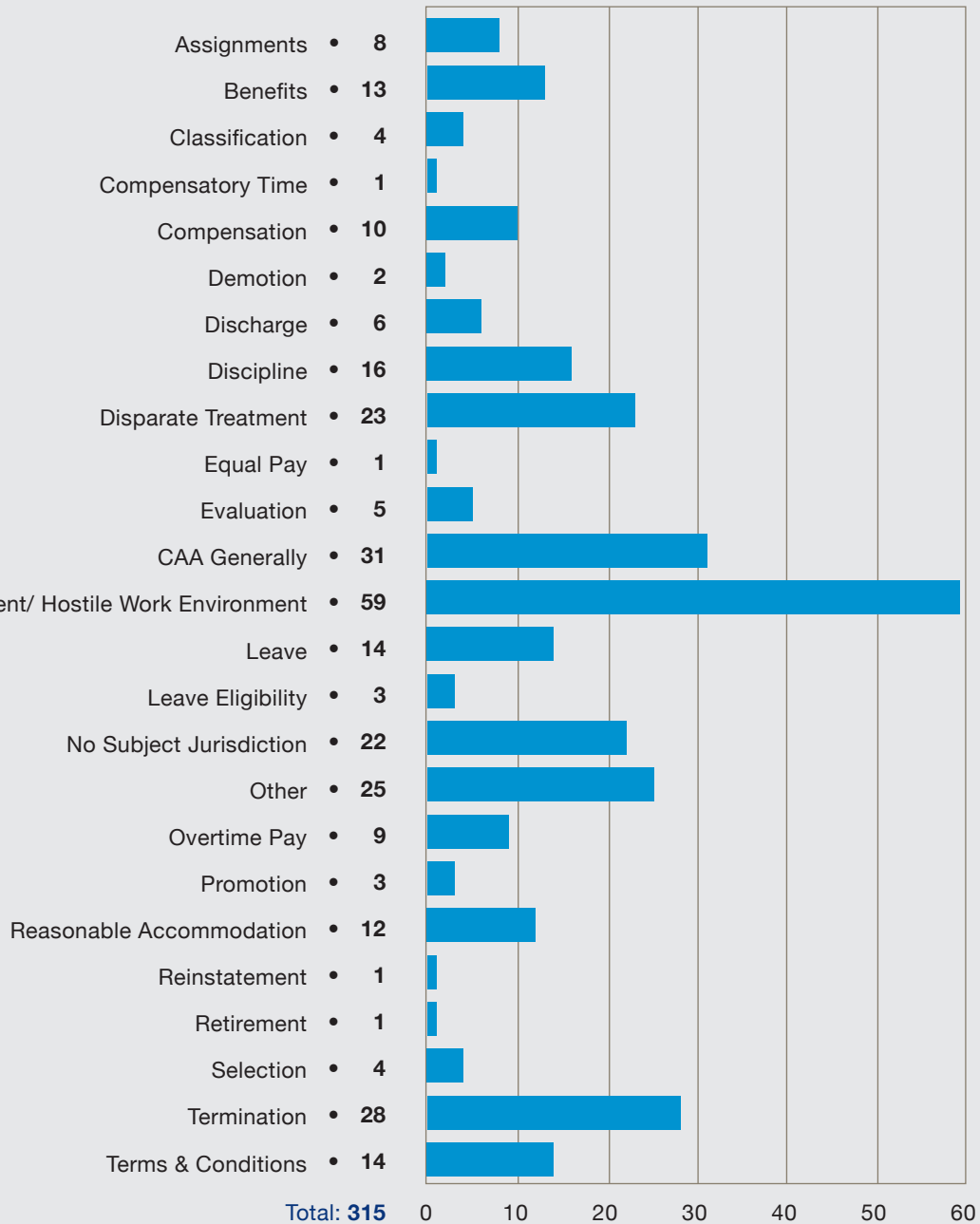
352: Total Contact by Section of Law

(An individual contacting the OOC may inquire about more than one section of the law)

The OOC was contacted for a variety of reasons in FY 2011, on questions ranging from the application of particular provisions of the law, to whether particular conduct could constitute a violation of the CAA. The most common general inquiries relate to discrimination and/or harassment under Section 201 of the CAA. Each single contact may involve several distinct provisions of the law.

## + General Information Requests by Issue

(An individual contacting the OOC may inquire into more than one workplace issue)



As in prior years, the most common general inquiries related to questions about harassment and/or hostile work environment based on a protected trait, such as race, national origin, sex, religion, age, and/or disability.

## REQUESTS FOR CONFIDENTIAL COUNSELING: INITIATING A FORMAL PROCEEDING

Confidential counseling is the first step in the formal dispute resolution process. During counseling, the OOC's counselors help the employee to better understand his/her claim based on the facts of the situation and the requirements under the law. The employing office is not notified by the OOC that the employee has filed a request for counseling because counseling between the employee and the OOC is strictly confidential.

To formally assert and preserve his/her claim, a Congressional employee (or applicant or former employee) must file a formal request for counseling within 180 days of the alleged violation. By filing a request for counseling, an employee can preserve the claim while deciding whether to pursue the case. An employee is not required to have representation during the dispute resolution process. However, if an employee retains the services of an attorney, the employee is responsible for his or her attorney fees.

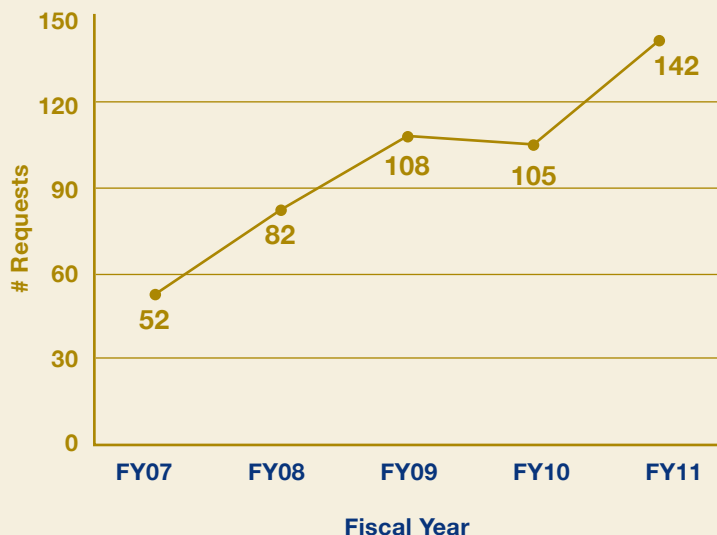
Counseling Proceedings	
New requests for counseling filed in FY 2011	142
Cases resolved during counseling in FY 2011 (includes proceedings carried-over from prior reporting periods)	28
Cases pending in counseling as of September 30, 2011	7



Employees filed 142 new counseling requests in FY 2011. Many cases are resolved or withdrawn during confidential counseling. Of those claims processed in FY 2011, 28 were resolved during counseling.

During counseling, cases are often resolved because employees are provided with additional information that enables them to thoroughly assess their claim and explore various avenues for resolution. For example, after being advised during counseling of the eligibility requirements and process for requesting FMLA leave, an employee can work directly with the employing office to arrange for his or her leave request.

## + 5 YEAR SNAPSHOT: Formal Requests for Counseling Filed by Congressional Employees

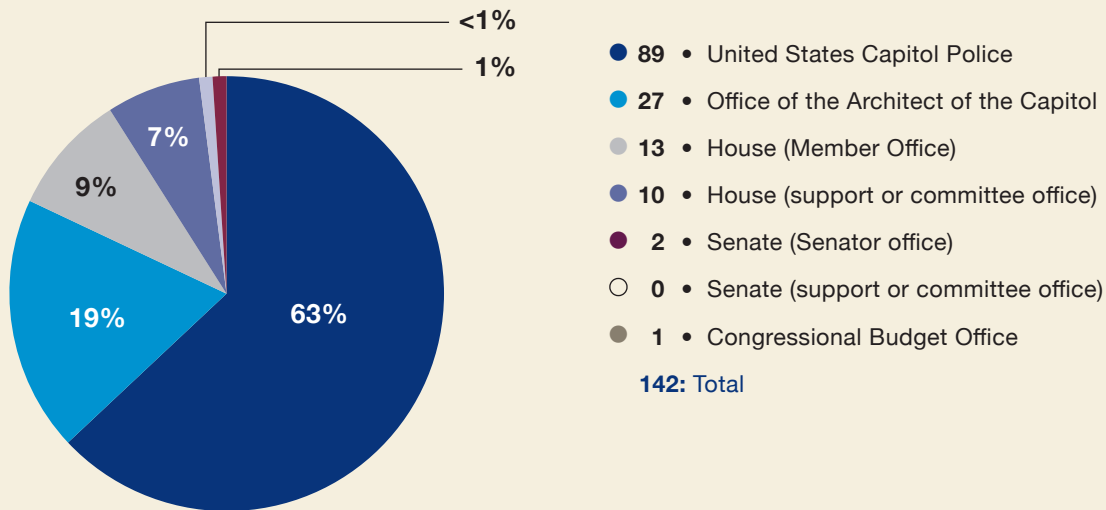


The number of Formal Requests for Counseling has increased over the course of 5 years.

In FY 2011, the significant increase in Formal Requests for Counseling compared to FY 2010 was due largely to similarly related, class-like claims filed by multiple claimants. Each claimant must bring his/her claim separately under the CAA's counseling and mediation requirements.



## + Requests for Counseling Filed with Allegations Against Employing Office



Most requests for counseling came from employees, former employees, or applicants of the U.S. Capitol Police (63%), the Office of the Architect of the Capitol (19%), and the House of Representatives (16%).

## + 5 YEAR SNAPSHOT: Claims Filed with Allegations Against House and Senate

	FY 07	FY 08	FY 09	FY 10	FY 11	Total
House Member Offices	6	3	8	12	13	42
Senator Offices	1	0	1	3	2	7
House Support or Committees	1	6	14	8	10	39
Senate Support or Committees	1	1	6	1	0	9

Over a 5 year period, on average approximately 8 of the 435 House Member Offices (2%) had claims filed against them; in FY 2011, 13 House Member Offices (3%) had claims.

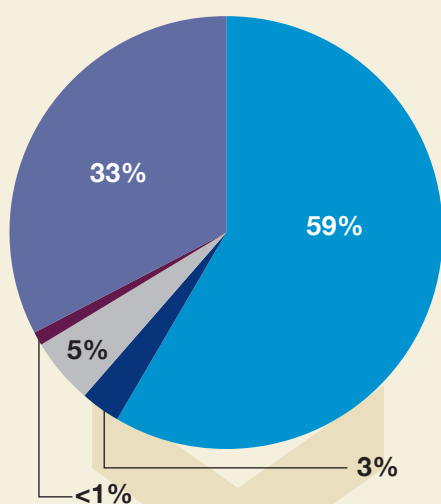
Over a 5 year period, on average approximately 1.4 of the 100 Senator offices (1.4%) had claims filed against them; in FY 2011, 2 Senator offices (2%) had claims.

REQUESTS FOR CONFIDENTIAL COUNSELING: INITIATING A FORMAL PROCEEDING (CONTINUED)

+ Summary of Requests for Counseling by CAA Section of Workplace Rights Laws  
(A single request for counseling may allege a violation of more than one section of the CAA)

As in prior years, the most common alleged violations of the CAA related to discrimination and harassment based on a protected trait such as sex, race, age, and/or disability under Section 201 of the CAA.

Approximately 59% of the allegations raised during counseling related to Section 201. Retaliation was the second most alleged violation of the CAA (Section 207).



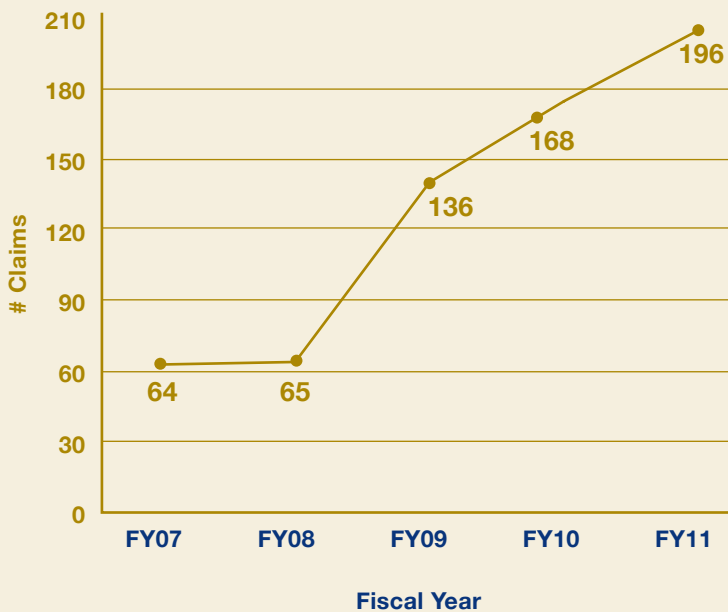
- 196 • Section 201—(Claims of discrimination and/or harassment) Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Rehabilitation Act, Americans with Disabilities Act/Rehabilitation Act
  - 9 • Section 202—Family Medical Leave Act
  - 18 • Section 203—Fair Labor Standards Act
  - 1 • Section 206—Uniformed Services Employment and Reemployment Rights Act
  - 108 • Section 207—Prohibition of intimidation, reprisal, retaliation
- 332: Total\*

Section 201 Claims of Discrimination and/or Harassment Listed by Protected Categories (A covered employee may allege more than one claim of discrimination and/or harassment by protected category)	
Race/Color	101
Sex/Gender/Pregnancy	43
Disability (physical/mental)	23
Age	21
National Origin	5
Religion	3
<b>Total</b>	<b>196</b>

The most common claims of discrimination and/or harassment were based on race, followed by sex, disability, and age under Section 201 of the CAA.

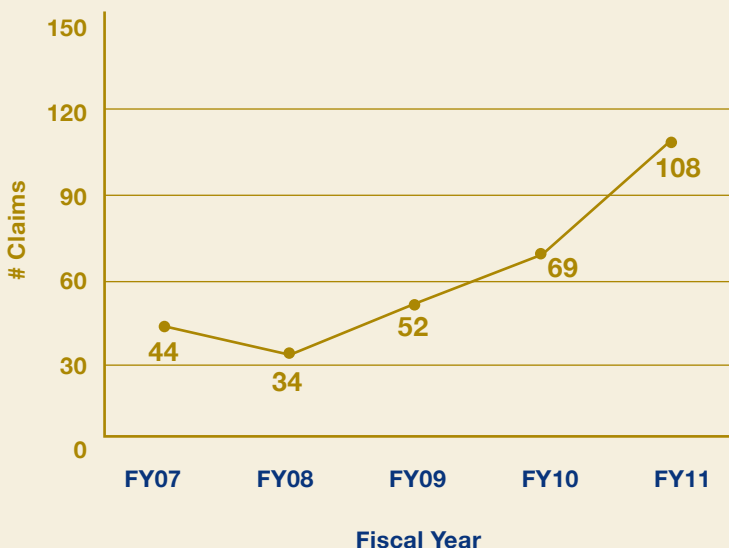
\*No claims were filed under the General Information Nondiscrimination Act, Veterans' Employment Opportunities Act, Employee Polygraph Protection Act, or Worker Adjustment and Retraining Notification Act.

**+ 5 YEAR SNAPSHOT: Employee Claims Made During Counseling that Allege Discrimination and Harassment (Race, Sex, Age, Disability, National Origin, and Religion) Under Section 201 of the CAA**



Claims of discrimination and/or harassment have increased compared to five years ago. Employees who file requests for counseling often allege multiple types of discrimination and/or harassment under Section 201. For example, an employee may claim that she was discriminated against by not receiving a promotion because of her sex and age.

**+ 5 YEAR SNAPSHOT: Employee Claims Made During Counseling that Allege Retaliation, Intimidation, or Reprisal Under Section 207 of the CAA**

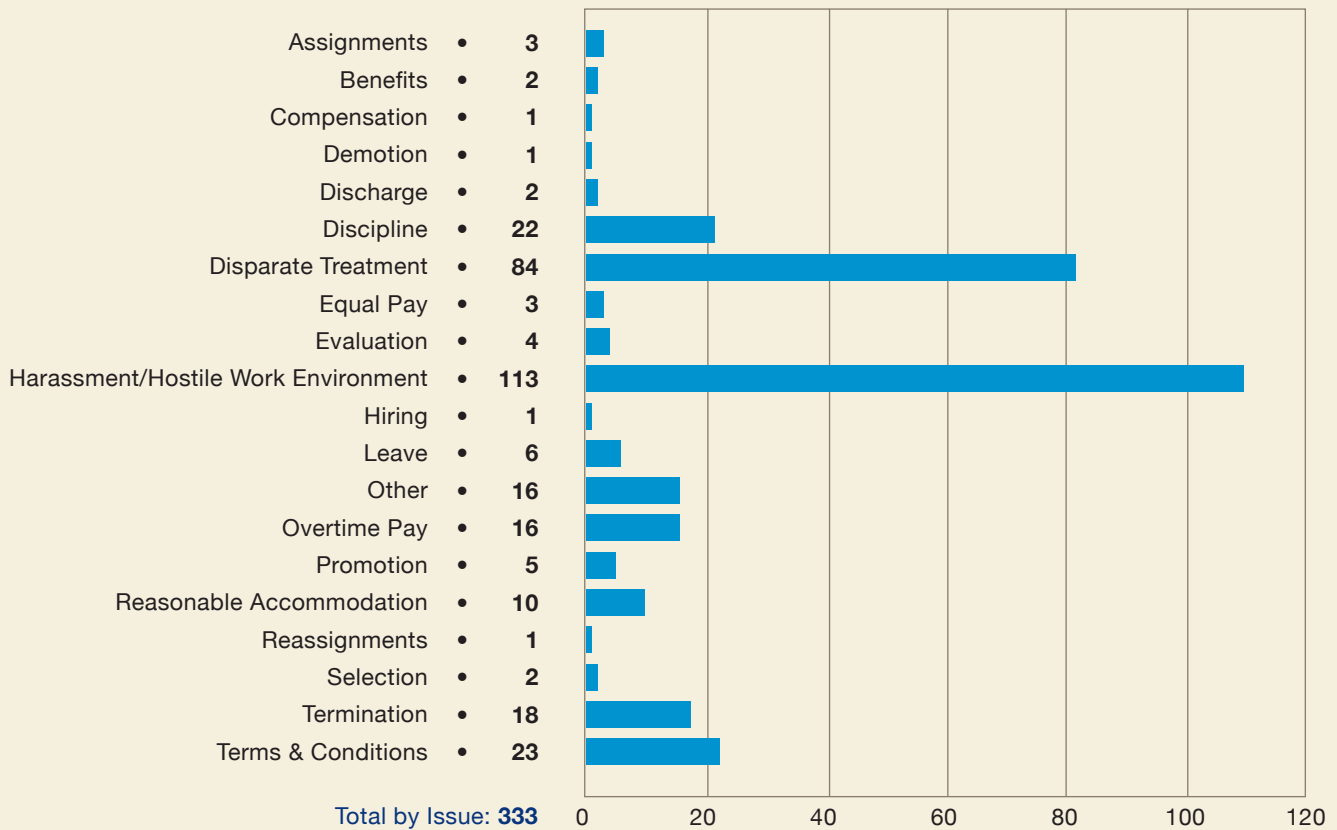


Retaliation claims have increased over the course of 5 years. These allegations of intimidation and reprisal are often made along with other claims, such as discrimination and harassment.

REQUESTS FOR CONFIDENTIAL COUNSELING: INITIATING A FORMAL PROCEEDING (CONTINUED)

+ Workplace Issues Raised with the OOC by Employees in Counseling

(A single request for counseling may involve more than one section of the law)



Employees typically contact the OOC with questions on specific work issues. The most common issue in FY 2011 continued to be harassment/hostile work environment, including sexual harassment and harassment based on other protected traits. Of the 333 contacts by issue, 34% (or 1 in 3) of the issues raised were related to harassment/ hostile work environment.

Other frequent allegations against employers included discrimination in discipline, terms and conditions of employment, terminations, and reasonable accommodations (for employees with disabilities).

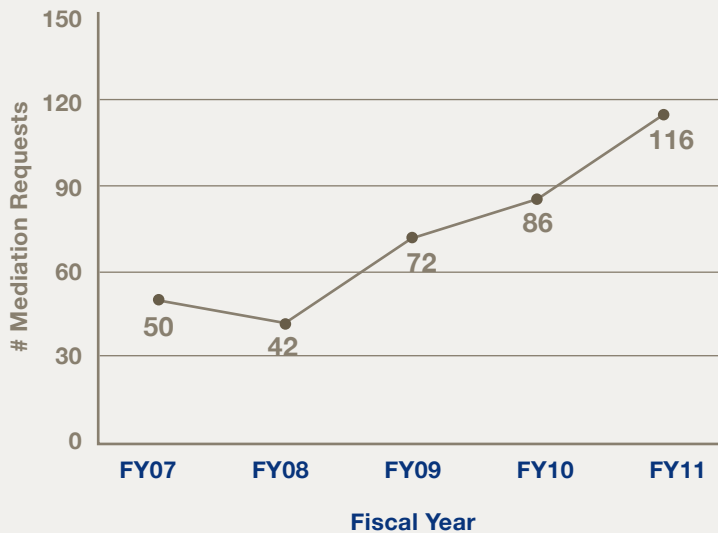
## REQUESTS FOR MEDIATION: EFFORTS TO RESOLVE WORKPLACE DISPUTES RATHER THAN LITIGATE

Confidential mediation is the second step in the dispute resolution process. An employee may proceed to mediation only after completing the first step of confidential counseling. Once the case proceeds to mediation, the employing office is notified about the claim and the parties attempt to settle the matter with the assistance of a neutral mediator appointed by the OOC. Even if mediation initially fails to settle the matter, it is not uncommon for the parties to renew mediation efforts during litigation. Resolving cases during mediation can save the parties from burdensome litigation, which can be very expensive, time consuming, and a drain on resources and productivity.

Mediation Proceedings	
New Requests for Mediation filed in FY 2011	116
Cases resolved at the mediation stage by formal settlements, withdrawal, or no further action in FY 2011 (includes proceedings carried-over from prior reporting periods)	45
Cases pending in mediation as of September 30, 2011	85

Employees filed 116 new requests for mediation in FY 2011. Although a significant number of cases are resolved during counseling prior to mediation, many employees who file requests for counseling proceed to mediation.

### + 5 YEAR SNAPSHOT: Requests for Mediation Filed by Congressional Employees



As employee claims of workplace rights violations have increased, so have the number of mediations.

ADJUDICATION OF CLAIMS: CONFIDENTIAL HEARINGS OR FEDERAL COURT

**Adjudicating Claims: Request for Confidential Administrative Hearing at the OOC or Filing a Public Lawsuit in Federal Court**

An administrative hearing is the third step in the dispute resolution process. If the parties fail to resolve their dispute in mediation, the employee may then file an administrative complaint with the OOC and the employee’s case will be decided by a hearing officer in a confidential setting, or the employee can file a lawsuit in Federal district court, where his/her case would be a matter of public record.

Administrative Complaint Proceedings	
New Complaints filed in FY 2011	12
Complaints formally settled in FY 2011	2
Hearing officer decisions issued in FY 2011 (some cases carried over from FY 2010)	13
Pending in hearing as of September 30, 2011	4

There were a total of 12 administrative complaints filed in FY 2011. Complaints included allegations of violations of the Family and Medical Leave Act, Americans with Disabilities Act, Title VII of the Civil Rights Act, Fair Labor Standards Act, and protection against retaliation under the CAA.

The OOC does not formally track lawsuits filed in Federal district court.



## APPEALS AND OTHER PROCEEDINGS

### Appeals to the OOC Board of Directors

The Board of Directors, the OOC's appellate body, issues decisions resolving matters on review from hearing officer decisions, and on exceptions to arbitrator's awards filed pursuant to the Labor-Management provisions of the CAA. Decisions by the Board of Directors set legal precedent for the interpretation and application of workplace rights in the Legislative Branch.

In fiscal year 2011, the Board of Directors issued 8 decisions; 2 of which were joined at the appeal stage, and none of which were exceptions to arbitrator's awards.

Petitions for Board Review of Hearing Officers' Decisions	
New petitions filed in FY 2011	4
Petitions withdrawn in FY 2011	1
Board decisions issued in FY 2011 (including petitions carried over from previous years)	8
Pending Board review as of September 30, 2011*	3

Final decisions by the Board of Directors can be appealed to the Federal Circuit. The General Counsel of the OOC represents the OOC in matters appealed to the United States Court of Appeals for the Federal Circuit. Once an appeal is filed in court, the appellate record is made public.

Judicial Review of Final Decisions Issued by the Board	
New petitions for judicial review filed in FY 2011	1
Petitions withdrawn in FY 2011	0
Decisions issued by the Court in FY 2011	0
Pending judicial review as of September 30, 2011	1

### Office of Compliance Action Under Section 220, FY 2011 (Labor Management Relations)

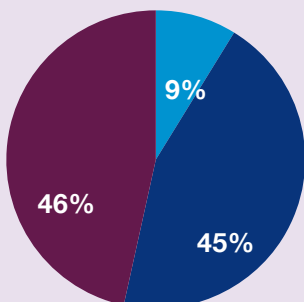
In FY 2011, a representation petition was filed on behalf of employees of the Gift Shop Division of the Capitol Visitor Center, Office of the Architect of the Capitol, seeking to be represented by a labor organization for purposes of collective bargaining. The OOC conducted a secret ballot election, and a majority of the valid ballots cast were in favor of representation by the labor organization. As a result of the petition, the Office of Compliance certified that the employees are included in a consolidated unit of employees of the Capitol Visitor Center represented by the American Federation of State, County and Municipal Employees (AFSCME), Council 26.

### OSHAct, ADA, and Unfair Labor Practice Proceedings

The General Counsel of the OOC 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). Employees and employing offices frequently request information, advice, and technical assistance from the General Counsel. For example, the General Counsel has been asked to do pre-inspections of offices, address use of Segways by persons with mobility impairments, provide assistance in developing safety procedures for operating electric carts in hallways, and offer guidance in fixing mold problems in office buildings.

In FY 2011, the General Counsel received requests for information and assistance under OSHAct, ADA, public access, and Federal labor laws as follows.

## + Total Requests to the General Counsel for Information and Assistance by Section of the CAA FY 2011



- 37 • Section 201—Public access and accommodation under the Americans with Disabilities Act
  - 188 • Section 215—Occupational Safety & Health Act
  - 196 • Section 220—Unfair Labor Practices under Chapter 71 of Title 5, U.S. Code
- 421: Total Requests**

\*The Board's disposition of a case may involve more than one decision. For example, the Board may decide to remand a matter before it issues a final decision.

SETTLEMENTS AND AWARDS

**Monetary Resolution of Employee Claims**

Section 415 of the CAA establishes “an account of the Office in the Treasury of the United States for the payment of awards and settlements . . . under [the CAA],” and further authorizes to be appropriated “such sums as may be necessary to pay such awards and settlements.” Section 415 requires that awards and settlements under the CAA be paid from that account. This Treasury account is separate from the operating expenses account of the OOC established under section 305 of the CAA. While the Executive Director approves all settlements at any stage in the proceedings, it is the parties who decide the settlement amounts and terms. An award or judgment may be ordered by a hearing officer, the Board of Directors, or a court of competent jurisdiction.

Monetary settlements can often resolve multiple claims. While many of these settlements and awards resolved harassment, discrimination, and retaliation claims, there are other settlements and awards in the accompanying chart that resolved claims arising out of contract and/or pay disputes.

The Legislative Branch appropriations bills, since 1996, have appropriated funds for awards and settlements under the CAA.

Fiscal Year	Total Number of Settlements/Awards	Total Aggregate Amount of Settlements/Awards
1997	6	\$39,429
1998	16	\$103,180
1999	6	\$72,350
2000	15	\$45,638
2001	7	\$121,400
2002	10	\$3,974,077
2003	11	\$720,071
2004	15	\$388,209
2005	14	\$909,872
2006	18	\$849,529
2007	25	\$4,053,274
2008	10	\$875,317
2009	13	\$831,360
2010	9	\$246,271
2011	23	\$461,366





## CASE RESOLUTION ANALYSIS FOR CASES REPORTED IN LAST YEAR'S ANNUAL REPORT (FY 2010)

All workplace violations claims by Congressional employees must go through confidential counseling and mediation in the dispute resolution process mandated by the CAA (see page 12 of this Annual Report for more information) before a case can proceed to adjudication, either through a confidential administrative hearing before an independent OOC hearing officer or by civil suit filed in Federal district court, a public forum. Historically, the majority of cases are resolved confidentially during counseling and mediation.

Last year, the OOC reported that 105 formal requests for counseling were filed by congressional employees in FY 2010. By filing a formal request for counseling, a Congressional employee initiates a "case" alleging a violation (or violations) of the CAA by an employing office in the Legislative Branch. Most claims relate to discrimination, harassment, retaliation, and leave rights.

This is the first time the OOC is publishing statistics about the point in the process at which cases are resolved. To ensure confidentiality (as required by law), the parties to cases are not identified.

Cases can be resolved at any juncture during the process, including during litigation and appeals. There are various reasons that cases are resolved including, but not limited to:

(1) a settlement between the employee and employer, which could include a monetary award, an apology, an employment action (e.g., promotion, rehire, transfer, raise, modified performance appraisal, etc.); (2) a decision by the employee to no longer pursue the claim (e.g., due to the facts of his/her case, an informal resolution with the employer, a failure to timely assert a claim, expenses associated with retaining an attorney or litigating a matter, etc.); and (3) an adjudication of the case by a court or hearing officer who determines claims (or the entire case) in favor of a party.

The charts below show that in fiscal year 2010, 73% of the 105 cases that were filed were resolved confidentially. Of those 105 cases, 25 were filed against employing offices of the House and Senate, and 92% of those 25 cases were resolved confidentially.

Resolution Analysis of 105 Cases from FY 2010 (including AOC, USCP, CBO, House, Senate)	# of cases resolved	% of cases resolved
Resolved at Confidential Counseling stage	17	16%
Resolved at Confidential Mediation stage	44	42%
Resolved at Confidential Hearing stage (Administrative Complaint)	12	11%
Appealed to Board of Directors	3	3%
Appealed Board of Directors to Federal Circuit Court of Appeals	1	<1%
Filed Complaint in Federal District Court	28*	27%
Total Resolution During or After Confidential Administrative Proceedings Before the OOC <sup>1</sup>	77	73%

Focus: Resolution Analysis of 25 Cases** from FY 2010 Against Employing Offices in the House And Senate (including committees)	# of cases resolved	% of 25 cases resolved
Resolved at Confidential Counseling stage	4	16%
Resolved at Confidential Mediation stage	13	52%
Resolved at Confidential Hearing stage (Administrative Complaint)	5	20%
Appealed to Board of Directors	1	4%
Appealed to Federal Circuit Court	0	0%
Filed complaint in Federal District Court	2	8%
Total Resolution During or After Confidential Administrative Proceeding with the OOC <sup>2</sup>	23	92%

\* 9 of the 28 cases were filed in the same complaint.

\*\* These cases are included in the 105 total cases filed with the OOC in FY 2010.

<sup>1</sup> Includes resolution during or after counseling, mediation, an administrative hearing, or appeal to the Board of Directors.

<sup>2</sup> Includes resolution during or after counseling, mediation, an administrative hearing, or appeal to the Board of Directors.

### III. PARITY GAP ANALYSIS: AMEND THE CAA TO REQUIRE POSTINGS OF WORKPLACE RIGHTS IN ALL EMPLOYING OFFICES, RECORD-KEEPING OF EMPLOYMENT RECORDS, ANTI-DISCRIMINATION TRAINING FOR ALL EMPLOYEES, AND WHISTLEBLOWER PROTECTIONS FOR CONGRESSIONAL STAFFERS

When Congress passed the CAA to apply workplace rights laws to the Legislative Branch, it did not include significant provisions of some of those laws and exempted itself entirely from others, such as the Whistleblower Protection Act of 1989 and the No FEAR Act of 2002. In this regard, two core purposes of the CAA are not fully realized—to ensure Congress follows the same laws as do American businesses and the Executive Branch, and to provide an effective means for Congressional employees to assert their rights. The Board of Directors has made the recommendations discussed below in previous biennial reports submitted to Congress pursuant to Section 102(b) of the CAA. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov). The latest 102(b) report is titled “Recommendations for Improvements to the Congressional Accountability Act.”

#### Recommendation #1: Require Notice-Posting of Congressional Workplace Rights in All Employing Offices

##### CONGRESS AND ITS AGENCIES ARE EXEMPT FROM NOTICE-POSTING PROVISIONS



- 42 U.S.C. § 2000e-10(a)(Title VII)
- 29 U.S.C. § 2003 (EPPA)
- 29 U.S.C. § 627 (ADEA)
- 38 U.S.C. § 4334(a) (USERRA)
- 42 U.S.C. § 12115 (ADA)
- 29 U.S.C. § 657(c) (OSHA Act)
- 29 U.S.C. § 211 (FLSA/EPA)
- 5 U.S.C. § 2301 note (notice-posting provision of No FEAR Act)
- 29 U.S.C. § 2619(a) (FMLA)

To ensure that workplace rights are upheld, most Federal anti-discrimination, anti-harassment, safety and health, and other workplace rights laws require that employers prominently post notices of those rights and information pertinent to asserting claims for alleged violations of those rights. Notice-posting informs employees about basic workplace rights, remedies,

and how to seek redress for alleged violations of the law, and it reminds employers of their workplace obligations and consequences for failure to follow those laws.

Although the CAA requires the OOC to distribute informational material “in a manner suitable for posting,” it does not mandate the actual posting of the notice. Applying notice-posting requirements to Congress would provide an additional source of information for employees about their rights.

The Board recommends that Congress and its agencies follow workplace rights notice-posting requirements that currently apply to the private sector and the Federal Executive Branch.

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

#### Recommendation #2: Require Retention by All Employing Offices of Records that are Necessary and Appropriate for the Administration of Laws

##### CONGRESS AND ITS AGENCIES ARE EXEMPT FROM RECORDKEEPING PROVISIONS



- 42 U.S.C. § 2000e-8(c)(Title VII)
- 29 U.S.C. § 626(a) (ADEA)
- 42 U.S.C. § 12117 (ADA)
- 29 U.S.C. § 211(c) (FLSA/EPA)
- 29 U.S.C. § 2616(b) (FMLA)

Under most Federal workplace rights laws, Congress has imposed on private and public employers requirements to retain records that are necessary for enforcement of various workplace rights laws. These requirements do not apply to Congress.

Both employers and employees benefit from the retention of documented personnel actions. Records can greatly assist in the speedy resolution of claims. If the law has not been violated, employers more readily can demonstrate compliance when adequate records have been made and preserved. Effective recordkeeping may also be necessary for effective vindication of employee rights. The types of records that must be retained, the method by which they must be retained, and the time periods for which they must be retained differ substantially based upon the statute involved.

The Board recommends that Congress adopt all recordkeeping requirements under Federal workplace rights laws.

The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).

### **Recommendation #3: Mandatory Anti-Discrimination and Anti-Retaliation Training for All Congressional Employees and Managers**

#### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM TRAINING PROVISIONS**



##### **5 U.S.C. § 2301 note (No FEAR Act of 2002) (Training Provision)**

Section 202(c) of the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act) requires that each Federal agency in the Executive Branch provide employees training regarding their rights and remedies under anti-discrimination and anti-retaliation laws. By regulation, all current Executive Branch employees and managers must be trained by a date certain, and training thereafter must be conducted no less than every two years. New employees receive training as part of a new hire orientation program. If there is no new hire orientation program, new employees must receive the applicable training within 90 days of their appointment.

It has long been recognized that anti-discrimination and anti-retaliation training for employees provides many benefits in the workplace. By informing employees about their rights, they learn to differentiate between what the law prohibits, such as unlawful harassment, and what the law does not prohibit, such as everyday non-discriminatory personnel decisions. Employees also learn how to seek redress for violations of their rights and the remedies available to them under the law.

Training also informs managers of their obligations as supervisors. Often, supervisors run afoul of the law because they were not properly informed of their responsibilities or about best practices for handling discrimination and retaliation issues.

Mandatory training has the effect of reducing discrimination and retaliation claims, improving the workplace environment, and lowering administrative and legal costs.

The Board believes that mandatory training would benefit the Legislative Branch in the same manner.

The Board has previously made this recommendation in the 102(b) report submitted to the 112th Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).

### **Recommendation #4: Whistleblower Protections for Disclosing Violations of Laws, Rules or Regulations, Gross Mismanagement, Gross Waste of Funds, Abuses of Authority, or Substantial and Specific Dangers to Public Health**

#### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM WHISTLEBLOWER PROTECTIONS**



##### **WHISTLEBLOWER PROTECTION ACT OF 1989**

Congress passed the Whistleblower Protection Act of 1989 (WPA) to protect Federal workers in the Executive Branch from retaliation for reporting violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Since that time, Congress has also passed other whistleblower protection laws, such as the Sarbanes-Oxley Act, to protect employees in the private sector from reporting similar violations. While the Legislative Branch may experience abuses and gross mismanagement similar to those in the private sector and Executive Branch, Congressional employees do not have whistleblower protections if they decide to report such matters.

As Congress has recognized, employees are often in the best position to know about and report violations of law, waste, mismanagement, and abuse in government and they need protections against retaliation when they disclose these violations. Violations of law, waste, mismanagement, abuse of power, or substantial and specific danger to the public's health and safety are often not discovered by other sources. Furthermore, whistleblowers save taxpayer dollars by exposing waste, fraud and abuse. Whistleblower protection laws increase taxpayers' faith in government by protecting those individuals who act as "watchdogs" and who protect the public's health and safety.

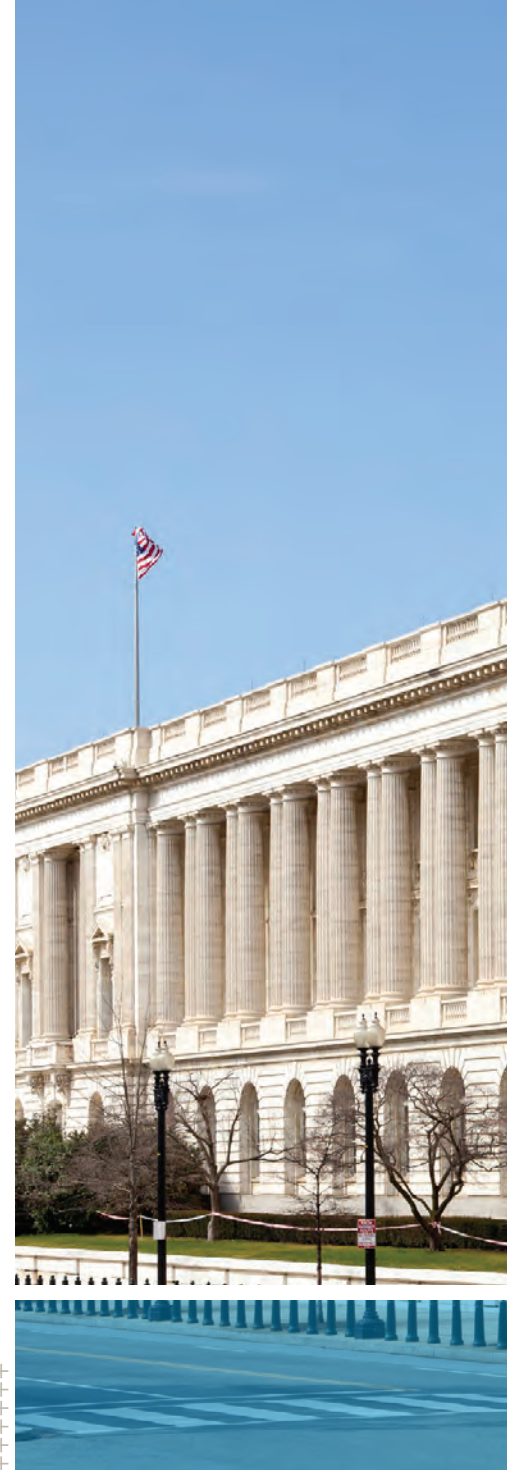
The Board of Directors recommends that Congress apply to the Legislative Branch appropriate provisions of the WPA and provide Congressional employees with protections from retaliation when they disclose violations of laws, rules or regulations, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety in the Legislative Branch.

The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).

# STATE OF SAFETY & HEALTH

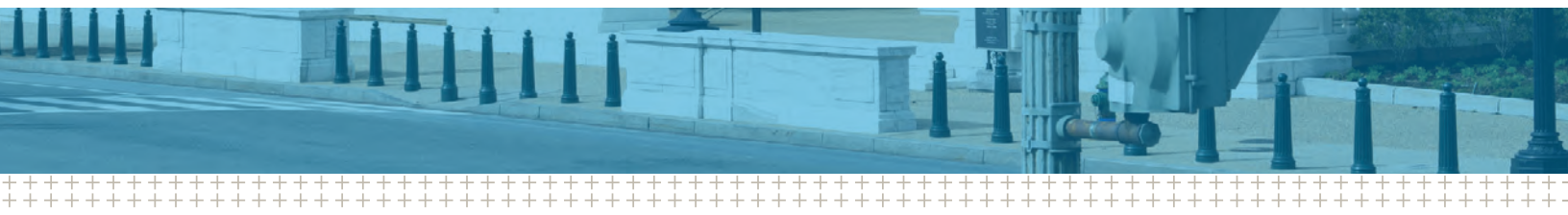
This section of the Annual Report summarizes a more extensive and technical report released by the Office of Compliance (OOC) titled *111<sup>th</sup> Congress Biennial Report on Occupational Safety and Health Inspections* (May 2012) at [www.compliance.gov](http://www.compliance.gov)

The OOC is responsible for enforcing the Occupational Safety and Health Act (OSHAct) in the Legislative Branch. In the Washington DC Metropolitan Area alone, Legislative Branch properties cover over 18 million square feet. Over 30,000 employees occupy Legislative Branch facilities across the country and millions of people visit the Capitol Complex each year.



## SECTION HIGHLIGHTS

- + Substantial progress has been made on abatement of serious fire safety hazards in House buildings, including full abatement in Longworth
- + Serious concerns remain about abatement of fire safety hazards in Russell Office building
- + OOC revamps inspection priorities in light of current budget resources



## I. WHAT THE LAW REQUIRES: CONGRESSIONAL COMPLIANCE WITH OSHA AND HOW THE OOC ENFORCES SAFETY AND HEALTH REQUIREMENTS

### Congressional Accountability Under OSHA

The Occupational Safety and Health Act (OSHA) was enacted to prevent workplace injuries and to safeguard employee health. Other than purely humanitarian reasons for such laws, there are economic reasons for preventing workplace injuries. Injury prevention can save money for employers in several ways, such as reducing downtime to recuperate from injury, avoiding lost production if an employee is injured, obviating the need to train replacement workers, and keeping health care premiums constant.

Section 215(e)(1) of the Congressional Accountability Act (CAA) requires the General Counsel of the Office of Compliance (OOC) to inspect Legislative Branch facilities for compliance with occupational safety and health standards under the OSHA at least once each Congress. Thereafter, the General Counsel is required to report the results to the Speaker of the House of Representatives, President pro tempore of the Senate, and offices responsible for correcting violations, including the Congressional Budget Office, Government Accountability Office, Library of Congress, Office of the Architect of the Capitol (AOC), Office of the Attending Physician, OOC, Office of Congressional Accessibility Services, and Capitol Police Board.

### OOC's Safety & Health Program: How the OSHA is Enforced with Current Resources

This is a time of transition and challenge for both the OOC and employing offices. Once each Congress since the 109<sup>th</sup> Congress, the OOC has conducted comprehensive inspections of Legislative Branch facilities throughout the Washington, DC metropolitan area. These inspections, mandated by the CAA, are the principal means by which the OOC identifies and seeks to prevent the occurrence of serious health and safety hazards and ascertains whether such hazards are abated by the employing offices in a satisfactory and timely manner.

Focusing mostly on hazardous structural conditions in each facility, these "wall-to-wall" biennial inspections have permitted the OOC to compile a comprehensive inventory of serious threats to the safety and health of employees and visitors on Capitol Hill. These include electrical, fire and life safety, boilers, heaters, machine guarding and fall protection hazards. Following each building inspection, the OOC's hazard findings are transmitted to the employing offices responsible for abating these

hazards; in most cases the AOC has statutory responsibility for the care and maintenance of Legislative Branch facilities.

As summarized in last year's annual report (FY 2010), and as discussed at length in the *111<sup>th</sup> Congress Biennial Report on Occupational Safety and Health Inspections* (May 2012); see [www.compliance.gov](http://www.compliance.gov), the number of hazards the OOC identified during our biennial inspections decreased from 13,140 in the 109<sup>th</sup> Congress to 5,400 in the 111<sup>th</sup> Congress even as the total space inspected increased from about 16 million to nearly 18 million square feet. Employing offices reported that most of the hazards found in prior inspections were abated, though many new hazards were also identified. While the number of hazards remains unacceptable, the downward trend in safety and health violations represents significant progress. The efforts of the AOC's Superintendents and safety personnel as well as employing offices have increased safety and health within legislative workplaces.

Beginning in FY 2011 and continuing into FY 2012, the OOC has operated with considerably reduced resources. For example, the OOC's safety and health inspector hours in FY2012 have been reduced by 47% when compared to FY 2010. Consequently, the OOC has scaled down or eliminated services provided to Legislative Branch offices in prior years. During the 112<sup>th</sup> Congress, the OOC substantially reduced comprehensive wall-to-wall inspections, and parts of some facilities will probably not be inspected at all, including lower-risk areas such as administrative spaces and Member Offices. In addition, the agency was forced to discontinue the joint OOC/National Safety Council Safe Office Awards program, which recognized Member offices where no hazards to employees and visitors were found during inspections.

The OOC also suspended a proposed pilot program to assist staff in Members' State and District offices to perform OSH self-inspections; the OOC has never had the resources to inspect remote offices. Increased responsibility for preventing, identifying and abating hazards in such areas necessarily must rest with employing offices to assure that employees and visitors are provided hazard-free facilities. Accordingly, the OOC has recommended to the AOC and other employing offices that they conduct periodic self-inspections; some offices have agreed to undertake or have already accomplished such inspections.

Budget cuts during FY2011 required further reductions in the OOC's educational programs. The OOC discontinued quarterly OSH/ADA Working Group meetings and monthly publication of OOC web-based OSH *Fast Facts* highlighting how to recognize and prevent common workplace hazards. And

the OOC no longer is able to provide technical assistance to employing offices on a wide array of safety and health matters, including the development and implementation of safety programs and procedures.

During the 112<sup>th</sup> Congress, the OOC began implementing a new risk-based OSH program that focused on inspecting and assuring abatement of higher-risk hazards in some of the facilities and operations that pose the greatest threat of fatalities and injuries to workers and building occupants, including fire and life safety and recurring Risk Assessment Code (RAC) I and RAC II hazards. The OOC also began inspecting safety programs and procedures mandated by OSHA standards, such as personal protective equipment and hazard communication for employees exposed to hazardous materials, which are designed to protect workers engaged in both routine work and some higher-hazard operations. Some OSHA standards require the employer's written program to include specific engineering, administrative or personal protective equipment controls for the hazards identified. Other standards outline performance requirements that the employer's written program must meet with respect to the hazards identified, detail the training employees must receive, and describe how to implement the controls the employer has developed.

During inspections, OOC inspectors review the programs, interview employees to ascertain their knowledge of how program procedures are applied to their operations, and observe whether operations are conducted in accordance with program requirements. Program findings are then prepared and presented to employing offices to implement any needed changes. Because of the complex nature of some higher-risk operations, greater time and expertise are required to conduct the inspections and assure that deficiencies are properly identified, recorded, and corrected. Accordingly, with the current level of resources, it will take multiple cycles of biennial inspections to complete an initial review of these safety programs.

The challenge for the OOC and other Legislative Branch agencies is not to undermine the improvements in safety and health conditions that have been achieved to date. The OOC is deeply concerned that, by continuing to operate with reduced resources, the OOC will be unable to adequately address the many safety and health challenges that presently exist in the Legislative Branch.

To summarize, the OOC's risk-based approach to the safety and health program during the 112<sup>th</sup> Congress includes and will in future Congresses continue to include, the following elements:

- Rather than inspecting for the presence of physical hazards in offices and administrative spaces where the number and

severity of hazards has been reduced considerably over the years, the OOC will focus on higher-risk operations and workplaces that pose greater risks of injury and illnesses (workshops and higher-risk operations such as the Capitol Grounds landscaping division, etc.), areas of special interest (child care centers and page dorms and schools), and locations where higher-risk hazards were found during previous biennial inspections.

- The OOC will accelerate efforts to assure abatement of longstanding fire and life safety hazards throughout the Capitol Hill Campus, especially those that are the subject of citations issued by the General Counsel in 2000 and 2001. (See Section II below).
- To protect employees engaged in higher risk operations, the OOC will seek to assure that employing offices continue to develop and implement written hazard prevention procedures and programs.

## **II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: PROGRESS ON FIRE AND LIFE SAFETY CITATIONS AND AREAS FOR IMPROVEMENT**

### **Background on Emergency Evacuation And Fire Safety Citations**

Some of the most serious and longstanding hazards in the Legislative Branch consist of fire safety and emergency evacuation violations that the OOC first identified in 1996. In 2000 and 2001, the OOC's General Counsel issued a series of citations requiring abatement of interior egress routes that do not protect building occupants against fire, smoke, and airborne toxins while occupants are evacuating during a fire or other emergency ("unprotected exit routes"); exits that were insufficient in number and inadequate in size to allow all occupants to evacuate the building quickly ("insufficient egress capacity"); excessive travel distances to reach protected exit pathways in an evacuation ("excessive exit access travel distances"); lack of properly rated fire doors ("insufficient level or duration of protection"); and other life safety issues in the Capitol, the Adams and Jefferson Buildings of the Library of Congress, three House Office Buildings and the Russell Senate Office Building. The OOC has reported these hazards in General Counsel biennial OSH reports since the first such report was issued in 1996.

### **Progress On Most Fire Safety Citations**

Substantial progress has been made in addressing many of these hazards by making fire protection/life safety improvements in Congressional buildings across campus.

### **U.S. Capitol**

Citation 16 for the Capitol was issued in 2000 because, at the time, the Capitol lacked any exit stairwells that were protected against fire, smoke, or airborne toxins. The building also has an egress capacity deficiency and has excessive travel distances to protected areas. The deficiencies in this building are being addressed through a series of short-term initiatives as well as longer-term projects that will be implemented as part of the U.S. Capitol Master Plan. The short-term initiatives that have been completed include adding an egress door at the West Brumidi Corridor, implementing a fourth floor egress corridor, adding two additional egress doors on the West Terrace, and replacing fire doors on the S9 and H9 stairwells. Although other key measures have yet to receive full Congressional authorization, the OOC has been advised that the AOC continues to make significant progress towards a building-wide fire protection strategy as part of the longer-term U.S. Capitol Master Plan that the OOC believes would result in a reasonable egress system within the building and the resolution of Citation 16.

The primary issue is the AOC's proposal to divide the Capitol into three fire zones by installing self-closing fire doors on each level of the building. To date, the AOC has been granted the authority to install such doors only in three of five floors. This proposed action would create additional (horizontal) exits, substantially reduce exit travel distances on certain floors of the House and Senate chambers, and serve a vital smoke control function that would lessen the impact of the unenclosed stairways.

The AOC has also advised that the barriers needed to create the fire zones, which would remain open unless the building's fire alarms were activated, can be designed and installed without adversely affecting historic features of the Capitol. The design for the smoke control system at the Grand Stairwells was funded in FY 2009 and has been completed. The designs for the egress improvements at the Old Senate and Old Supreme Court Chambers have also been completed. The design for the West Grand Stairwell enclosure has been completed and construction has been funded pending approval by oversight committees. The AOC anticipates that the addressable fire alarm system will be constructed during FY 2014.

### **Library of Congress Buildings**

In March 2001, the OOC issued six citations for hazards in the primary Library of Congress buildings: the John Adams Building, the Thomas Jefferson Building, and the James Madison Memorial Building. These hazards included, among

others: inadequate fire and smoke resistance in the exit enclosures for all three buildings due to a failure to fully repair penetrations made into the fire-rated enclosure materials; fire doors in all three buildings that were rendered ineffective because they were being blocked open; improperly maintained and operating Halon extinguishing systems in all three buildings; lack of energy isolating devices in the book conveyor system affecting all three buildings; unprotected vertical openings and penetrations between tiers of books in both the Jefferson and Adams Buildings; unenclosed exit stairwells in the Adams and Jefferson Buildings that were not effectively protected against fire, smoke or airborne toxins; and fire doors in the Jefferson Building that were ineffective because they could not close properly.

The AOC has abated some of these hazards: penetrations into fire-resistant materials have been filled; fire doors that were blocked open were placed on magnetic hold-open devices tied into the fire alarm so that they close when the alarm is activated; the Halon extinguishing systems have been removed and replaced with FM-200 systems; electrical equipment was added to the book conveyor system to provide the necessary isolation; and vertical openings and penetrations between the tiers of book stacks have been sealed. With respect to the open citations, the AOC has initiated projects in all three buildings.

Ongoing and pending projects that will improve egress conditions in the Adams Building include among others: installing new exits; extending a stairway to the cellar to provide a second exit; upgrading an egress exit by installing cross-corridor doors and adjusting the existing doors so that they swing in the direction of exit travel; upgrading the ground floor egress components by widening the stair discharge doors and replacing the revolving doors with swinging doors; pinning the brass doors and installing ornamental glass doors in certain lobbies; providing a second means of egress from the shops and storage areas on the cellar floor; and pressurizing the exit stairwells and connecting certain stairways with exits.

Ongoing and pending projects that will improve egress conditions in the Jefferson Building include: adding exit stairways; adding second, remote exits to spaces with only one exit; adding smoke control to the Main Reading Room and Great Hall; and replacing all fire doors that do not close properly.

Congress has provided some funding for these projects in the FY 2012 Legislative Branch Appropriations bill. The OOC will be working with stakeholders to develop reasonable additional measures to reduce fire-related risks until the completion of the proposed abatement actions.



### **House Office Buildings**

The OOC is very pleased by the progress achieved in the House Office Buildings toward final abatement of three citations issued in 2000. The citation in Rayburn (Citation 20-1) for lack of proper fire doors, panic hardware and closing mechanisms was abated in 2009. In January 2012, the AOC formally notified the General Counsel that the citation for the Longworth House Office Building for unenclosed exit stairways (Citation 17) had been abated. The General Counsel found that installing fire doors in the corridors that would remain open except in case of fire not only abated Citation 17 in its entirety but fully preserved the historic features of the building. Citation 17 is now closed.

With respect to the Cannon House Office Building (Citation 18), the AOC plans to divide the building into fire zones and design barriers between each zone capable of serving as horizontal exits.<sup>1</sup> When completed in late 2013 or early 2014, this project will protect occupants against fire, smoke, and airborne toxins during the time necessary to escape in case of fire or other emergency. Congress approved funding in FY 2012 for the AOC's request.

### **Serious Concerns Remain About Fire Safety In Russell Senate Office Building**

#### **History of Citation 19**

In March 2000, the OOC General Counsel issued Citation 19 because of emergency evacuation hazards in the Russell Senate Office Building. The egress capacity of the Russell Building is inadequate and the travel distances to protected areas outside of the building are excessive. These violations increase the chance that in case of emergency, building occupants may be injured or killed by smoke or airborne toxins before they can escape from the building. From the outset, the citation recognized that enclosing stairwells was not necessarily the right solution for the Russell Building. Instead, the citation directed the AOC "to evaluate alternatives to reduce the danger posed by the lack of any protected exit stairwells and develop a plan to reduce [this] danger taking into account costs, benefits, and preservation of historic features."

#### **AOC Proposed Acceptable Abatement Plan**

In 2008, the AOC proposed a plan to abate the hazards in the Russell Building. The plan called for installing fire doors that would lie flush against the corridor walls except if an evacuation alarm sounded, at which point the doors would close automatically. Because the doors were to be located in the

corridors, they would not encroach on office space and could be installed without relocating or disturbing Senate offices. When closed, the doors would create separate zones within the building. If a fire started in one zone, building occupants could escape quickly into an adjacent zone. The fire doors would keep the fire from spreading and prevent smoke and airborne toxins from infiltrating the adjacent zone. The AOC's historian found that this approach could be implemented without enclosing the historically significant stairwells or compromising the building's historical integrity. The OOC General Counsel approved this plan in March 2008.

Although the plan was not implemented in the Russell Building, the approach was successfully used in the Longworth House Office Building to remedy the hazards posed by unenclosed stairwells. As noted above, the General Counsel approved this plan and the Longworth Citation was closed early in 2012.

#### **Expert Panel Findings**

In April 2009, the Senate Committee on Rules and Administration directed the AOC to convene a panel of fire protection and historic preservation experts to assess Citation 19.

In its August 2010 Final Report, the Panel concluded that, even assuming that Russell had full sprinkler coverage—which it does not—the building failed to comply with OSHA and Life Safety Code standards. The Panel found it unlikely that all building occupants would be able to evacuate the building fast enough to avoid injury or death from exposure to the smoke and toxins produced by fire. The Panel offered several recommendations to abate the citation, which are discussed at length in *Safety & Health in the Congressional Workplace—Report on the 111<sup>th</sup> Congress Biennial Occupational Safety & Health Inspections* (May 2012) at [www.compliance.gov](http://www.compliance.gov).

On September 15, 2011, the Senate Appropriations Committee denied the AOC's request for \$5 million for the first phase of a project to abate Citation 19. S.Rep. No. 112-80, 112<sup>th</sup> Cong. (Sep. 15, 2011). The Committee explained that extending sprinkler and smoke detection systems throughout Russell, in combination with the "implementation of the [Panel's] short-term and immediate recommendations, eliminates all high risk fire scenarios in the RSOB while minimizing impact to its historic integrity, most effectively utilizing limited resources."

Extending sprinkler and smoke detection systems throughout the building, along with complete implementation of the Panel's

<sup>1</sup> A "horizontal exit" protects building occupants during a fire by erecting fireproof barriers between so-called "fire zones" inside the building. In case of fire, occupants of the zone where the fire is burning retreat for protection to a fire and smoke free zone within the facility. A "vertical exit," by contrast, consists of a safe area such as a protected stairway that occupants can use to evacuate a burning building and reach the outdoors.

immediate and short-term recommendations, will certainly improve some of the life safety deficiencies in the Russell Building. The short-term recommendations are particularly noteworthy, as they call for using a smoke control system to protect evacuation pathways through the rotunda atrium. The OOC General Counsel will therefore continue to work with the AOC to ensure that all of these recommendations are fully implemented as soon as possible.

However, even after the recommendations are fully implemented, the basic problem remains: conditions in Russell fail to comply with existing safety requirements.

### ***Sprinkler Systems Do Not Substitute For Effective Evacuation and Containment of Smoke and Toxins***

Some Legislative Branch stakeholders have questioned whether emergency evacuation improvements are necessary, given that the Russell Building is made principally of marble and protected by sprinklers. But as the Panel recognized, fires can occur even in a fully-sprinklered marble structure; between 1985 and 2009, at least 51 fires were recorded in Capitol Complex buildings. See *111<sup>th</sup> Congress Biennial Report on Occupational Safety and Health Inspections* (May 2012) at 22, [www.compliance.gov](http://www.compliance.gov). Office buildings like Russell typically contain many flammable materials including furniture, carpeting, paper, and plastics. Burning these materials creates smoke and airborne toxins such as carbon monoxide, hydrogen cyanide and phosgene, among others.

During a fire, smoke can become concentrated remarkably quickly, which both impedes visibility and impairs breathing. One study found that, only two minutes after a fire's ignition, the smoke was dense enough to prevent a test subject from identifying a stairway less than two feet away. Smoke and airborne toxins from a fire could quickly inundate Russell and its stairways. These factors are critical given that fully two-thirds of fire deaths are caused by the inhalation of smoke and airborne toxins. See *111<sup>th</sup> Congress Biennial Report on Occupational Safety and Health Inspections* (May 2012) at 13, 22, [www.compliance.gov](http://www.compliance.gov).

The OOC applauds the Architect and the Congress for their efforts to achieve comprehensive sprinkler, smoke detection, and enhanced alarm systems coverage. Completing the installation of these systems in all Legislative Branch buildings will improve suppression of fire and mitigate life safety perils considerably.

But these measures are no substitute for emergency escape routes that both (a) are protected from smoke and airborne toxins and (b) ensure that building occupants can evacuate in a timely and orderly fashion. As the National Fire Protection Association

(NFPA) has recognized, “under no condition can manual or automatic fire suppression be accepted as a substitute for the provision and maintenance of a proper means of egress.” NFPA, *Fire Protection Handbook* at 4-65 (2003).

### ***Terrorism Poses a Continuing Threat on Capitol Hill***

The risk of fire and other emergencies is especially acute for the Legislative Branch in a post-9/11 world. As the 9/11 Commission found, buildings on Capitol Hill are prime targets for terrorism. National Commission on Terrorist Attacks on the United States, *The 9/11 Commission Report* (New York: W.W. Norton, 2004). “The U.S. Capitol is still faced with numerous threats, including a vehicle-borne explosive attack, terrorist-controlled aircraft attack, armed attacks on the Capitol Complex, suicide bombers or positioned explosive attacks, chemical, biological and/or radiological attacks, and attacks on Members and staff as well as ordinary crime.” Stmt. of Phillip D. Morse, Sr., Chief of Police, U.S. Capitol Police, before the U.S. House of Representatives Subcommittee on Legislative Branch Appropriations (March 8, 2007 at 197).

Terrorism is not a theoretical threat to the Capitol Campus. The anthrax attack of October 2001 and the ricin incident discovered in February 2004 were directed at Senators and their staff in Senate Office Buildings. As recently as September 2011, an American citizen was arrested and charged with plotting to blow up the Capitol and the Pentagon using remote-controlled aircraft filled with plastic explosives. Abby Goodnough, *Man Is Held in a Plan to Bomb Washington*, N.Y. Times, September 29, 2011, at A12.

An act of terrorism could readily include intentionally-set multiple fires. Fires started in locations with ample fuel or in locations blocked from sprinkler coverage could overwhelm sprinklers and rapidly spread fire, smoke and other toxins. Occupants in a building with protected zones could seek shelter in a protected zone inside the building if so ordered by the Capitol Police, rather than having to evacuate to the outside with its attendant security concerns. Again, such measures could provide substantial protection in a variety of emergencies, be they accidental or intentional.

Terrorist attacks are deliberately designed to inflict maximum structural damage and personal injury. Both of these possibilities must be considered when assessing the risk of fire and other potential threats to life safety in Capitol Hill buildings. Improving emergency evacuation methods takes on particular urgency in this context.

### III. PARITY GAP ANALYSIS: CONGRESSIONAL EMPLOYEES SHOULD HAVE THE SAME OSHACT PROTECTIONS AS PRIVATE SECTOR EMPLOYEES

When enacting the occupational safety and health provisions of the CAA, Congress did not include all provisions of the OSHAct that apply to the private sector. Section 102(b) of the CAA requires the Board of Directors of the OOC to recommend changes to the CAA to advance workplace rights. In past Section 102(b) reports, and in the recommendations for the 111th Congress, the Board recommended and continues to recommend that the following provisions be made applicable to the Legislative Branch under the CAA.

#### Recommendation #1: Subpoena Authority to Obtain Information Needed for Safety and Health Investigations

CONGRESS AND ITS AGENCIES ARE EXEMPT FROM



OSHAct § 8(b), 29 U.S.C. § 657(b)

Employers in the private sector that do not cooperate with the U.S. Department of Labor (DOL) in an OSHAct investigation may be subpoenaed by the DOL to compel the production of information under OSHAct § 8(b), 29 U.S.C. § 657(b). Congress did not provide the OOC with the same authority to issue subpoenas to employing offices in the Legislative Branch.

As Congress recognized in applying this statutory provision to the private sector, subpoena authority for an investigatory agency saves time and money by encouraging voluntary and timely cooperation by an employer with that agency; allows an investigating agency access to essential health and safety information; encourages effective preservation of witness recollection and other evidence; and reduces employee exposure to hazardous conditions by providing an investigatory mechanism to compel in a timely way the production of information necessary to assess a hazard.

The Board of Directors recommends that Legislative Branch employing offices be subject to the investigatory subpoena provisions contained in OSHAct § 8(b) so that the protections under the OSHAct can be enforced as efficiently and effectively as possible.

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

#### Recommendation #2: Require Recordkeeping of Congressional Employee Injuries

CONGRESS AND ITS AGENCIES ARE EXEMPT FROM



OSHAct § 8(c), 29 U.S.C. § 657(c)

Employers in the private sector are required to keep records of workplace injuries and illnesses under OSHAct § 8(c), 29 U.S.C. § 657(c). In enacting the OSHAct for the private sector, Congress recognized that “[f]ull and accurate information is a fundamental precondition for meaningful administration of an occupational safety and health program.” Congress observed that a recordkeeping requirement should be included in the OSHAct because “the Federal government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries, illnesses, and deaths.” With respect to Legislative Branch workplaces, however, the absence of a comprehensive record-keeping requirement means the OOC lacks what would be a useful tool to administer the CAA.

Maintaining such records would save time and money by providing information to the OOC and the employing office that could then be used to develop and assess the effectiveness of measures taken to protect safety and health. Such records would also assist in the enforcement of, and compliance with, health and safety standards by providing information about patterns and repeated injuries so that hazardous conditions can be identified and abated, and thus reduce injuries and associated costs.

The Board of Directors recommends that covered Legislative Branch employing offices be required to keep safety and health records and provide them to the General Counsel of the OOC consistent with the requirements of the OSHAct § 8(c), 29 U.S.C. § 657(c), which requires private employers to keep and provide similar records to DOL. Like other employers, Congress and its employing offices should be required to maintain records of occupational injuries and illnesses serious enough to require more than first aid treatment. Without the benefit of Section 8(c) authority, the General Counsel cannot access records needed to develop information regarding the causes and prevention of occupational injuries and illnesses. See §8(c)(1). As the Department of Labor recognized, “analysis of the data is a widely recognized method for discovering workplace safety and health problems and tracking progress in solving these problems.” See, “Frequently Asked Questions for OSHA’s Injury and Illness Record-keeping Rule for Federal Agencies,” [www.osha.gov/dep/fap/recordkeeping\\_faqs.html](http://www.osha.gov/dep/fap/recordkeeping_faqs.html).

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

### **Recommendation #3: Allow the OOC to Protect Employees from Retaliation for Reporting OSHAct Violations**

#### **CONGRESS AND ITS AGENCIES ARE EXEMPT FROM**



#### **OSHAct § 11(c), 29 U.S.C. § 660(c)(2)**

Under OSHAct § 11(c), 29 U.S.C. § 660(c), the Secretary of Labor can protect employees in the private sector who report OSHAct violations by investigating and litigating retaliation claims on their behalf. Legislative Branch employees do not receive such protection from the OOC General Counsel.

Such a provision would strengthen the OOC's ability to protect those who participate in its investigations and proceedings; allow employees to cooperate with investigators by reporting OSHAct violations and discussing workplace conditions with less fear of reprisal because the enforcement agency will investigate and prosecute claims of retaliation; discourage employing offices from

retaliating against employees who report OSHAct violations or otherwise cooperate with investigators; and vest enforcement discretion with the agency having knowledge of the protected conduct and the underlying policy considerations.

The Board of Directors recommends amending the CAA to permit the OOC to enforce anti-retaliation rights for covered employees of employing offices under OSHAct § 11(c), 29 U.S.C. § 660(c), who report health and safety hazards or who otherwise participate or cooperate in occupational safety and health investigations.

*The Board has previously made this recommendation in 102(b) reports submitted biennially to Congress. All 102(b) reports are available on the OOC website at [www.compliance.gov](http://www.compliance.gov).*

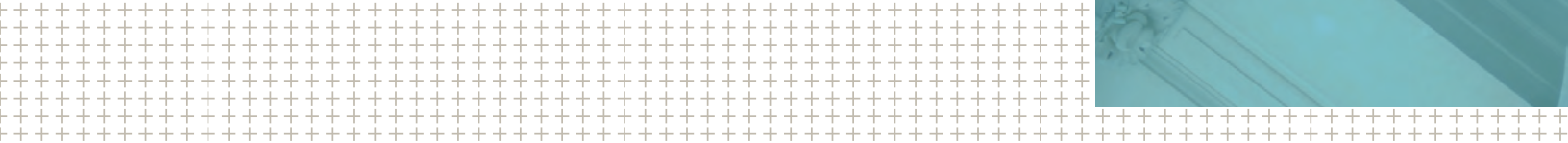




# STATE OF ACCESS TO CONGRESSIONAL PUBLIC SERVICES & ACCOMMODATIONS

This section of the Annual Report is a summary of a more extensive and technical report released concurrently by the Office of Compliance (OOC) titled *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations Conducted During the 111th Congress (August 2012)* at [www.compliance.gov](http://www.compliance.gov).

The OOC enforces the Americans with Disabilities Act (ADA) to ensure that barriers to access to Congressional public services and accommodations are removed for people with disabilities.



## SECTION HIGHLIGHTS

- + During the 111th Congress, the OOC completed inspections of sidewalks and curb ramps surrounding the Cannon, Longworth and Rayburn House Office Buildings, finding 154 barriers to access under the Americans with Disabilities Act (ADA)—84 barriers pose safety risks to people with disabilities; 26 barriers block access; and 44 barriers are major inconveniences
- + Approximately 93% of the curb ramps (28 out of 30) on the sidewalks surrounding the House Office Buildings are not in compliance with ADA Accessibility standards and 71% of these (20 out of 28) raise safety concerns
- + A random inspection of 6 restrooms in Senate and House Buildings found that none of the restrooms met ADA standards



- + Current budget realities for the OOC will significantly delay or limit future ADA inspections of entrances, doors and interior building pathways on the Capitol Campus
- + Significant cost savings can be achieved through barrier severity assessments, creating transition plans for removing ADA barriers, reviewing building plans for compliance with ADA standards and pre-inspections at early stages of construction

## WHAT THE LAW REQUIRES: ACCESS TO CONGRESSIONAL PUBLIC SERVICES AND ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

### The Importance of Public Access by Individuals with Disabilities to Legislative Branch Offices

Persons with disabilities are guaranteed access to public services and accommodations under the Congressional Accountability Act (CAA), which applies Titles II and III of the ADA to the Legislative Branch. Failure to provide access within the meaning of the ADA constitutes discrimination under the law. The Office of the General Counsel (OGC) of the OOC is responsible for conducting inspections of Legislative Branch facilities and programs and enforcing the ADA to ensure that barriers to access for people with disabilities, such as constituents and visitors, are eliminated. See *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations conducted during the 111th Congress* at [www.compliance.gov](http://www.compliance.gov).

Why should Congress consider access by individuals with disabilities to Legislative Branch buildings to be a matter of great significance? In addition to being statutorily required, removing barriers to access to Legislative Branch facilities allows employees and Members with disabilities to perform their duties and responsibilities and permits constituents visiting Congress to exercise their constitutional rights to petition their representatives, to attend and testify at public hearings, and to receive equal access to the tax-supported public services offered by Legislative Branch offices. Millions of people, many of whom have disabilities, visit Congress every year to tour the U.S. Capitol, the Jefferson Library and other iconic buildings on Capitol Hill, some of the most important historical buildings in the United States. Every American should have access to them.

Barrier removal does more than benefit people who have a disability within the meaning of the ADA—it allows a wide variety of people of diverse ages and abilities to safely access facilities and the programs, activities and services provided within those facilities. Much of physical barrier removal is about lessening the amount of physical exertion required to access facilities and operate controls and about providing firm, level, and unobstructed pathways. These are design features that can be a benefit to almost all users of the facilities.

### Which Legislative Branch Offices Must Provide Public Access to Individuals with Disabilities?

The CAA requires that nearly every Legislative Branch office provide access to its public programs, activities and services,

which means providing access to their hosting facilities. The offices covered by the ADA public access provisions of the CAA include: each Congressional Committee and Joint Committee; each office of the House and Senate, including District and State offices; the Congressional Budget Office, the Office of the Architect of the Capitol; the Office of the Attending Physician, the Office of Compliance, the Office of Congressional Accessibility Services, and the United States Capitol Police.

Legislative Branch offices not covered under the CAA's ADA public access provisions are the Library of Congress, the Government Accountability Office, and the Government Printing Office. However, by an amendment to the ADA that became effective on December 31, 1997, these three offices are required to comply with the ADA public access provisions under 42 U.S.C. § 12209. Thus, all Legislative Branch offices must comply with ADA public access standards.

### Which Areas of Legislative Branch Facilities Covered by the CAA Must be ADA Accessible?

The CAA guarantees access to Legislative Branch facilities by requiring compliance with Titles II and III of the ADA. Title II guarantees access by providing that no person with a disability can be excluded from participation in, or denied the benefits of, the services, programs or activities of a public entity. Under this Title, Legislative Branch offices must provide access to their services, programs and activities; consequently, they must modify their facilities as necessary to provide such access.

Under Title III, Legislative Branch offices must also provide access to places of public accommodation. Guidance for interpreting the phrase "places of public accommodation" can be found in the regulations promulgated by the Department of Justice that are the basis for the regulations and interpretations issued under the CAA. See CAA §§ 210(e)(2) & 411; 2 U.S.C. §§ 1331(e)(2) & 1411; 28 C.F.R. § 36.104. For a full discussion of the scope of ADA public access and accommodation requirements relevant to covered Legislative Branch agencies, see *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations during the 110th Congress* at pp. 3–10 at [www.compliance.gov](http://www.compliance.gov).

The ADA was enacted in 1990 in part to ensure that buildings built after its passage were accessible to people with disabilities to the greatest extent possible. The ADA did not exempt buildings built prior to its passage from accessibility requirements. It did, however, recognize that, if following the standards would threaten or destroy the historic significance of a building feature,



alternatives can be considered and implemented to provide at least a minimum level of access.

### **OOCS Approach to Conducting ADA Inspections** **Putting the OOC's Inspection Priorities in Context:** **Resource Challenges Limit Inspections and** **Barrier Remediation**

Although the OOC developed a comprehensive plan, discussed below, to conduct ADA inspections in a cost-effective way that will actually save taxpayers money, it was essential that the scope of inspection be congruent with the OOC's resources. During the 111th Congress, the OOC limited inspections to the exterior pathways and sidewalks to the Cannon, Rayburn and Longworth House Office Buildings, as well as surveys in one restroom in each of the primary Senate and House Office Buildings and the Madison Library of Congress Building. The OOC also conducted a requestor-initiated inspection in 12 newly renovated restrooms in the Adams Library of Congress Building.<sup>1</sup>

Given current funding, it is unlikely that much of the OOC survey plan discussed below can be fully implemented in fiscal year 2012. Inspections are performed by the same staff that conduct Occupational Safety and Health (OSH) inspections which, due to ongoing high-risk safety and health concerns, are given a higher priority. Because resource constraints have resulted in the OOC reducing the number of OSH inspectors, little time is available for the ADA compliance program. Specifically, the amount of inspector time available for ADA inspections is the equivalent of .25 of one full-time equivalent employee (FTE).

A further strain on the OOC's limited resources occurs when employing offices fail to comply with the ADA's requirements during new construction and alterations. Such errors can cost taxpayers hundreds of thousands, if not millions of dollars to correct. It also necessitates OOC re-inspections that unnecessarily consume OOC and AOC resources that could be used otherwise. Unless designers, construction contractors, and contract administrators are fully knowledgeable of what the ADA and the construction contract requires, they cannot design, construct and monitor ADA compliance in accordance with the ADA Standards for Accessible Design.

The first step to an effective ADA barrier removal program is to stop creating new barriers in new construction and alterations. Meeting this first step continues to be a challenge in the Legislative Branch. For example, when the OOC

conducted an inspection of the newly remodeled restrooms in the Adams Library of Congress Building during late FY 2009 and early FY 2010, it found that many of the newly installed fixtures did not comply with the ADA Standards for Accessible Design. The OOC was able to discover the errors after only 25% of the restrooms had been remodeled and the AOC was able to respond by making appropriate changes prior to the actual construction of the remaining restrooms. The OOC has seen similar errors when conducting surveys of recently constructed ramps, curb ramps, and sidewalks. For the most part, these errors are occurring due to lack of knowledge regarding the specific requirements of the ADA Standards. Similar instances of non-compliance with ADA requirements in newly constructed facilities were encountered by the OOC in its earlier inspections of the Capitol Visitor Center. See *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations conducted during the 111th Congress* at [www.compliance.gov](http://www.compliance.gov).

The OOC continues to work with the AOC and the other employing offices to provide technical advice prior to construction, as the OOC ADA inspection surveys are still performing a very important and fundamental educational function. The cost of these surveys is miniscule when compared to the potential cost savings associated with avoiding future design and construction errors and the potential benefits to providing better accessibility.

### **How the OOC Identifies Barriers, Assesses Severity,** **Applies Standards, and Provides Cost-effective** **Solutions for Barrier Removal**

In fiscal year 2009, the OOC conducted a comprehensive review of its ADA inspection program. Based on this review, the OOC determined that the program would benefit by implementing the approach to ADA compliance used by most public and private organizations covered by the ADA. This approach involves surveying all facilities to: (1) identify the barriers to access; (2) assess the severity of each barrier to quantify the need for removal; and (3) evaluate potential solutions to the barriers based upon cost and need. In fiscal year 2010, the OOC entered into a public-private partnership with Evan Terry Associates, P.C. (ETA) to implement such a barrier-removal survey approach to the Capitol Hill campus. From this partnership, the OOC was able to obtain licensing rights to use the ETA software at little cost.

<sup>1</sup> *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations conducted during the 111th Congress* at [www.compliance.gov](http://www.compliance.gov). The investigation found multiple instances of non-compliance respecting floor space in the accessible toilet stalls; absence of protected sink pipes, non-compliant signs, doors requiring excessive force to open; and other deficiencies. The AOC made corrections to most features that were not in compliance with ADA standards.



By acquiring, installing, and implementing the ADA survey software developed by ETA, the OOC is now able to provide enhanced reports regarding the barriers to access on the Capitol campus. These reports identify barriers to access based upon how existing elements deviate from the ADA Standards for Accessible Design, assess the severity of each barrier, propose solutions to barriers, estimate the costs of solutions, track photos depicting each barrier, and track the status of steps taken to implement solutions to the barrier.

During October 2009, the OOC hosted a meeting with Capitol Hill employing offices to introduce the ETA software. ETA provided a live demonstration of the software and used it to conduct an inspection of several areas on the campus. The OOC understands that, subsequent to this presentation, the AOC also conducted its own review of ADA barrier removal reporting systems and concluded that the ETA survey process and software was the best system available.

### **Prioritizing with Limited Resources: Identification and Removal of Structural Barriers**

To assure that individuals with disabilities have access to public areas of buildings and programs in the Legislative

Branch, barriers interfering with that access must be removed. Physical access to an accommodation or a service will often require removal of structural barriers. Many structural barriers exist on Capitol Hill. These include manually-operated doors that require too much force to open; doorways too narrow to enable wheelchair access; deficiencies in pathways to buildings, including sidewalks without ADA compliant curb ramps, and other obstacles to physical access. See *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations* conducted during the 111th Congress at [www.compliance.gov](http://www.compliance.gov). The OOC has long placed high priority on rectifying non-compliant curb cuts. See *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations during the 109th Congress* at p. 6 at [www.compliance.gov](http://www.compliance.gov).

Accordingly, the OOC established as its first inspection objective of the ADA biennial inspections for the 111th Congress the identification and removal of barriers in a cost-efficient and effective manner and on a priority basis to enable individuals with disabilities to physically traverse to and enter buildings on their own. In addition, because complaints concerning ADA deficiencies in restrooms had been brought to the OOC's attention, the OOC decided to conduct a limited number of inspections in Legislative Branch restrooms that had been designated by employing offices as being ADA-compliant. Notably, exterior pathways and restrooms would be of most concern to members of the public.

To address these areas of concern—exterior pathways and restrooms—the OOC developed an inspection plan with four components:

#### *Evaluating Accessible Paths and Entrances to Buildings.*

When evaluating accessibility, the initial inquiry is whether persons with disabilities can get to and into the facilities where programs, services and activities are being provided. This involves evaluating accessible pathways between public transportation drop-off points and building entrances, as well as the entrances themselves. The OOC's regularly scheduled ADA inspections conducted during the 111th Congress principally focused on this aspect of accessibility. The findings from each of these inspections are provided to covered offices in a detailed report, with photos, describing each barrier. Each barrier is assessed by severity and potential solutions to the barrier are evaluated. Findings from these surveys will be included in our biennial reports to Congress together with any responses the OOC has received from the employing offices.

*Evaluating new construction and alterations affecting accessibility.* A key feature of improving access is the requirement that, when feasible, new construction and alterations must comply with the ADA accessibility standards. The goal of improving accessibility in existing facilities becomes seriously compromised when new construction and alterations merely create new barriers because of either design or construction deficiencies. The OOC has sought to work with the AOC to improve compliance with the ADA standards when alterations and new construction are being designed and built. Both the House and Senate Appropriations Subcommittees on the Legislative Branch have suggested at different times that the OOC engage in pre-inspection of facilities in advance of and during construction to identify potential problems and provide technical guidance regarding what the ADA accessibility standards require.<sup>2</sup> Individuals with disabilities should also be involved in transition planning. To save both time and OOC-AOC resources, as well as eliminate the need to re-do construction that does not measure up to ADA requirements as has occurred in previous renovation/construction projects,<sup>3</sup> it is in everyone's best interest to address potential problems in new projects before they are literally set in concrete. Given the importance placed upon new construction and alterations in the ADA, during the 111th Congress, the OOC began inspecting new construction and alterations affecting accessibility.

*Evaluating areas identified in requests for inspection.*

A sensible inspection process must focus on areas where people are encountering access problems. To focus attention in these areas, during the 111th Congress, the OOC began processing requests for inspection regarding accessibility problems in a manner similar to that in which it approaches requests for OSH inspections. Individuals encountering accessibility problems on the campus or in an off-campus facility can file a request for an ADA inspection with the OOC. The request can be made anonymously and can be filed electronically through the OOC's website. If the request is filed by a person with a disability, the OOC treats the request as a charge of discrimination under Section 210 of the CAA. The request is served upon the relevant employing office(s) in the same manner that OSH requests are served. The OOC conducts an opening conference to describe the inspection and investigation process. After the inspection and investigation are completed, the OOC issues a detailed report with proposed

findings and recommendations. Those requests that are charges of discrimination are also subject to the mediation, complaint, and hearing proceedings set forth in Section 210(d) of the CAA.

*Evaluating potential barriers observed by OSH inspectors during biennial OSH inspections.* The final component of the OOC ADA inspection process concerns barriers discovered by OOC OSH inspectors during biennial and requestor-initiated OSH inspections. All OSH inspectors have had sufficient ADA training regarding accessibility guidelines to note any obvious ADA problems they observed while conducting an OSH inspection. These barriers typically involve such problems as inoperable ADA features (malfunctioning door openers and similar problems), blockage of or inadequate signage, lack of accessible pathways, protruding objects, lack of strobe lights or other easily observable barriers. Depending upon the severity and type of barrier identified, the barrier will either be brought to the attention of the employing office representative accompanying the inspector at the time of the inspection (and mentioned in the closing conference report) or lead to a more comprehensive ADA inspection to be separately scheduled with the AOC or the employing office responsible for creating or removing the barrier.

**About ADA Severity Codes Assigned to Each Barrier**

When conducting an ADA survey, the OOC classifies each barrier to access that is discovered using a "severity code" that is determined by how severely the barrier deviates from the ADA Standards and the effect of this deviation.

ADA Barrier Codes	
<b>Severity Code A</b>	Safety Consideration
<b>Severity Code B</b>	Blocks Access
<b>Severity Code C</b>	Major Inconvenience

Consistent with how ADA surveys are usually conducted for private corporations and public units of government, the OOC does not record "D" severities (minor inconvenience) because the deviation from the ADA standards has little impact upon accessibility and therefore the cost to correct the deviation usually far exceeds any benefit that would be achieved from its correction.

<sup>2</sup> See *Hearings Before the House Committee on Appropriations, Subcommittee on Legislative Branch: FY 2008 Legislative Branch Appropriations Request, Part 3*, pp. 302, 390, 395, 397-398, 410 (GPO, 2007); *Hearings Before the House Committee on Appropriations, Subcommittee on Legislative Branch: FY 2009 Legislative Branch Appropriations Request, Part 2*, p. 381 (GPO, 2008); *Hearings on FY 13 Legislative Branch Budgets, Senate Committee on Appropriations, Subcommittee on Legislative Branch*, Webcast March 1, 2012, available at <http://www.appropriations.senate.gov/webcasts.cfm?method=webcasts.view&id=c2d32f41-95fc-4ca3-90b1-ce7d5474d3f9>

<sup>3</sup> See discussion of noncompliance of new curb cuts and sidewalks throughout Capitol Hill campus and restrooms in Adams LOC Building contained in General Counsel's June 2012 *Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations* conducted during the 111th Congress.

**Applying ADA Standards**

In their application, ADA standards are quite technical and detailed. A full examination of ADA standards applied during the OOC’s inspections can be found in the *OOC’s Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations conducted during the 111th Congress* at [www.compliance.gov](http://www.compliance.gov).

**Solutions for Barrier Removal**

Solutions for barrier removal are technical and require providing information about proper measurements under the ADA’s standards. For each barrier found during inspections, the OOC offers corrective measures to remove the barrier and ensure that it complies with the ADA. Details of those offered solutions can be found in the *OOC’s Report on Americans with Disabilities Act Inspections Relating to Public Services and Accommodations conducted during the 111th Congress* at [www.compliance.gov](http://www.compliance.gov).

**II. ACHIEVEMENTS & COMPLIANCE ASSESSMENT: INSPECTION FINDINGS OF HOUSE BUILDING EXTERIOR PATHWAYS AND SELECTED RESTROOMS IN THE HOUSE AND SENATE**

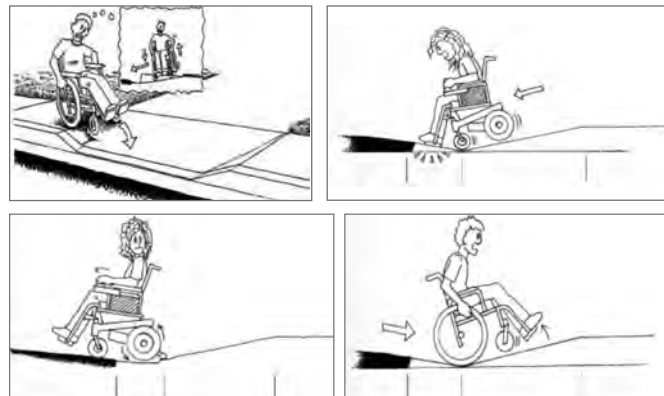
**Inspection Findings of House Building Exterior Pathways**

The OOC ADA inspections during the 111th Congress focused on the exterior areas of the House Office Buildings, including Cannon, Longworth, and Rayburn (Senate Office Building exterior areas are currently being inspected). During its inspections, the OOC identified two types of exterior pathway barriers: (1) curb ramp barriers; and (2) additional barriers on the sidewalks themselves, such as changes in level of sidewalk surface (vertical change/surface barriers), cross slopes too steep, and protruding objects in the sidewalk corridor.

**Understanding the Impact of the Barriers Found**

Most employees, constituents, and visitors to the House Office Buildings cannot access these buildings without using the curb ramps and sidewalks that surround the buildings. The OOC’s inspections found that the existing sidewalks are difficult for people with disabilities to navigate because of one or more of the following deficiencies (which are also referred to as “barriers” or “barriers to access”):

- Ramp is too steep or pitches people sideways



When the curb ramp slope is too steep, a wheelchair going down the ramp can flip forward at the bottom of the ramp when the foot rest catches on the ground where the ramp slopes up to the street. Conversely, when going up a ramp that is too steep, the wheelchair can flip backwards due to the abrupt changes in grade. When the curb ramp slopes steeply sideways (the cross slope), wheelchairs can fall over sideways or be pushed out of the crosswalk and into traffic.

- Cracks and gaps on the ramp that are too deep or too wide. Deep or wide cracks and gaps can trap the small steering wheels on wheelchairs or the even smaller anti-tip wheels on motorized wheelchairs and thereby cause stability and control problems.



Slab Joint Too Wide & Too Deep      Transition Too High

- Bumps on the bottom of the ramp used for cane detection are worn.



People who use canes because of vision impairments use the truncated domes on curb ramps to detect the presence of the ramp. When the domes wear down, they need to be replaced so that they can be detected by those using canes.

- **Sidewalk contains abrupt changes in level.**



Severe cross slopes make it difficult for wheelchair users and other pedestrians to maintain their lateral balance because they must work against the force of gravity. People using crutches or canes may be forced to turn sideways in order

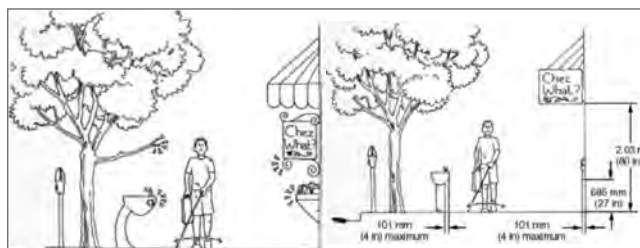
to keep their base of support at a manageable angle. Cross slopes can also cause wheelchairs to veer to the side, which increases their risk of rolling into the street. The impacts of cross slopes are compounded when combined with steep grades and uneven surfaces. Sidewalk designers must balance the negative effects that cross slopes have on pedestrian mobility against the necessity of including cross slopes to provide adequate drainage.

The stability of wheelchairs can also be affected by abrupt changes in level which can occur, for example, when the edges of concrete slabs are raised or lowered by the heaving or settling caused by tree roots or frost.

- **Protruding objects can injure people with disabilities if they cannot be detected.**

Objects that protrude into the sidewalk corridor but are higher than 80 inches are not a problem for people with vision impairments because most pedestrians require less than 80 inches of headroom. In addition, people with vision impairments who use long white canes to navigate (if they are of adult stature and using their canes skillfully) will usually detect and avoid objects on the sidewalk that extend below 27 inches. However, obstacles that protrude into the sidewalk between 27 inches and 80 inches and do not extend to the ground are more difficult to avoid because the long white cane is unlikely to contact the object before the person contacts the object. Pedestrians with vision impairments often travel close to the building line. Therefore, if an object is mounted on a wall or the side of a building, it should not protrude more than 4 inches into the sidewalk corridor. If an object is mounted on a post that can only be approached from the front, it can protrude up to 12 inches because the angle of the long white cane allows a pedestrian who is blind to identify the post before bumping into the protruding object. However, if the post-mounted object can be approached from the side, it should protrude no more than 4 inches into the sidewalk corridor. Signs

mounted on two posts should have a crossbar at 12 inches above the walking surface so that a pedestrian using a long white cane can readily detect the sign.



In the above illustration, the tree branch, water fountain, sign and planter are all protruding objects that are access barriers for cane users

This illustration shows how the barriers in the previous illustration can be modified to provide access

The least possible amount of protrusion should be used in each situation. Furthermore, because pedestrians with vision impairments do not always travel in the pedestrian zone, protruding objects should be eliminated from the entire paved portion of the sidewalk corridor. Protruding objects do not need to be eliminated if they are separated from the sidewalk corridor with a planting strip or other type of setback.

# CURB RAMP ANATOMY

Accessible sidewalks must have “curb ramps.” A curb ramp can either be a short ramp cutting through a curb or ramp built up to the curb. Curb ramps provide access for people who use wheelchairs. Without a curb ramp, these people would be prevented from using the sidewalk because of the barrier created by the curb. However, curb ramps can create major information barriers for people with vision impairments who rely on the curb to identify the transition point between the sidewalk and the street.

Curb ramps are designed to provide access to people who use wheeled forms of mobility. A curb ramp allows people who use wheelchairs and other wheeled devices to negotiate the elevation change between the roadway and the sidewalk without having to negotiate the curb. Without curb ramps, people who use wheelchairs would not be able to independently access the sidewalk and street. However, not all wheelchairs perform the same on a curb ramp. For example, most powered mobility devices are maneuverable in small spaces due to their short wheelbase. Scooters have a longer wheelbase but have manual steering, and most can perform a three-point turn in tight spaces. Manual wheelchairs can turn on their own wheelbase but are difficult to steer on a cross slope as they tend to turn downhill.

For many people with mobility impairments, curb ramps are not critical

to access. In fact, in some situations, curb ramps make navigation more difficult for some people with mobility impairments. Crutches and canes are sized to fit the individual user so that the energy required for ambulation is minimized on a hard, level surface. Use of these types of walking aids is more difficult on sloped surfaces such as curb ramps. Cane, walker, or crutch users must lower their body forward when going downhill. On uphill slopes, the cane or crutch must be lifted higher and placed on the surface. The user must have the strength to lift his or her body up over the supporting device. Widening the crosswalk to allow people to use either the curb or the curb ramp will enhance access for cane and crutch users who are not comfortable traveling on a sloped surface.

The curb is the most reliable cue that people with vision impairments use to identify the transition between the

sidewalk and the street. The installation of curb ramps removes this cue and replaces it with a ramp, which is much more difficult to detect. Therefore, it is important that as curb ramps are installed to create access for people who use wheelchairs, they are installed in such a way as to maximize detectability for people with vision impairments. Where gradual slopes are desirable for people who use wheelchairs, a detectable warning at the bottom of the curb ramp can provide the information blind pedestrians can rely on. People who use canes because of vision impairments use the truncated domes on curb ramps to detect the presence of the ramp. When the domes wear down, they need to be replaced so that they can be detected by those using canes.

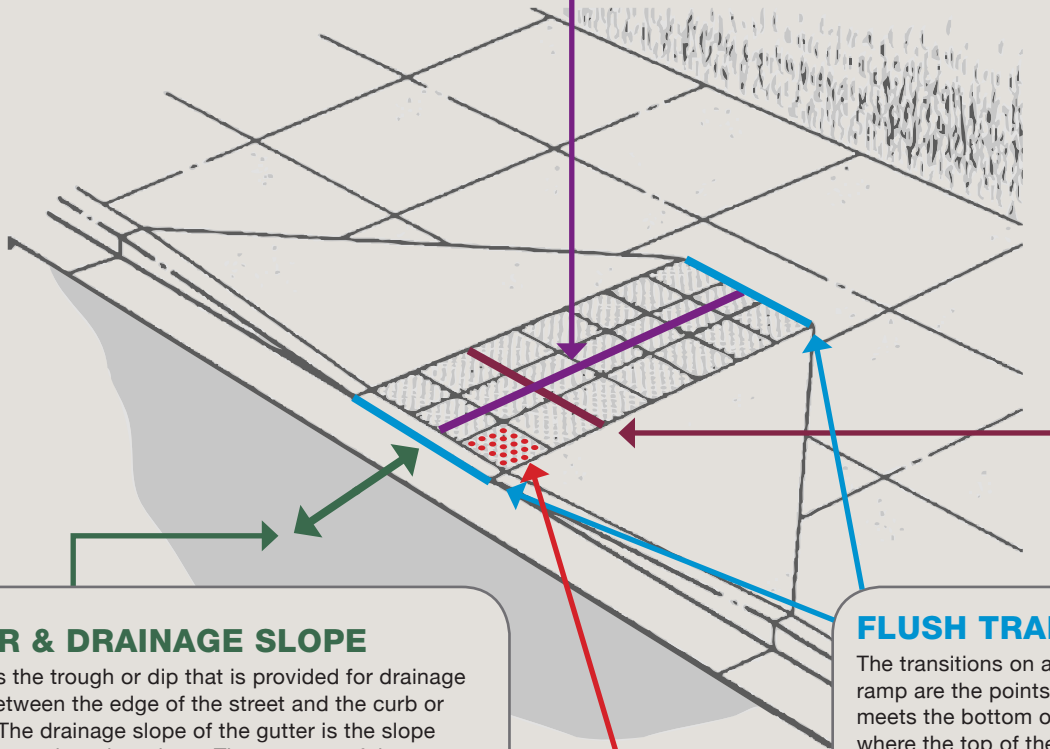
Generally, curb ramps have 5 parts that must be examined to determine whether a barrier exists.

## RUNNING SLOPE

The running slope of the curb ramp is the slope in the direction that people travel when going up and down the ramp run.

## CROSS SLOPE

The cross slope of the curb ramp is the slope in the direction that people travel when going across a sidewalk.



## GUTTER & DRAINAGE SLOPE

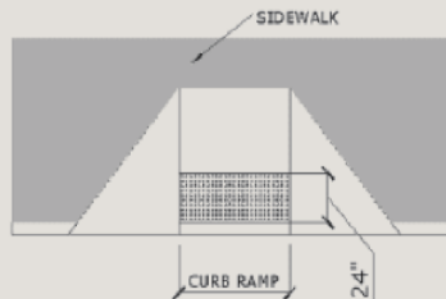
The gutter is the trough or dip that is provided for drainage purposes between the edge of the street and the curb or curb ramp. The drainage slope of the gutter is the slope parallel to the curb and roadway. The purpose of the drainage slope is to channel water along the street. Because pedestrians generally enter the roadway by crossing perpendicularly over the gutter, pedestrians experience the drainage slope of the gutter as a cross slope. Likewise, after pedestrians go down the curb ramp towards the street, they experience the cross slope of the gutter as an uphill grade that often continues until the middle of the street because of the crown of the roadway.

## FLUSH TRANSITIONS

The transitions on and off the curb ramp are the points where the gutter meets the bottom of the ramp and where the top of the ramp meets the sidewalk. A rapid change of grade, such as what might be found between the base of a curb ramp and the gutter, may be difficult to negotiate because the wheelchair's footrests or anti-tip wheels cannot clear the ground surface. In general, footrests are positioned low to the ground and extend beyond the front casters.

## DETECTABLE WARNINGS

Detectable warnings, a distinctive surface pattern of domes detectable by cane or underfoot, are used to alert people with vision impairments of their approach to streets and hazardous drop-offs. For a ramp that is perpendicular to the sidewalk, the detectable warnings are to be placed at the bottom grade break. Detectable warnings are intended to provide a tactile equivalent underfoot of the visible curbline; those placed too far from the street edge because of a large curb radius may compromise effective crossing detection.



**Total Barriers On All Existing Exterior Pathways of House Office Buildings**

The total number of barriers that surround House buildings are presented in the chart below.

The maps that follow illustrate the severe challenge that people with disabilities face when they need physical access to House Office Buildings. The House inspections revealed that access for people with disabilities to these buildings, and to the programs, services and activities provided within them, is being adversely affected by the presence of curb ramps and sidewalks that do not comply with the ADA Accessibility Standards.

These curb ramps and sidewalks are all part of the Capitol grounds that are constructed and maintained by the Office of the Architect of the Capitol. Sidewalks are considered facilities that must be made accessible under the ADA, and government offices that construct and maintain sidewalks are required to survey their sidewalks and develop a transition plan that shows when and how the sidewalks will be made accessible.

	Cannon	Longworth	Rayburn	Total Barriers	
<b>Total Exterior Pathway Barriers</b>	46	53	55	154	54% of the total barriers pose a safety risk for people with disabilities
Barrier Severity Code A = Safety Consideration	21	32	31	84	
Barrier Severity Code B = Block Access	9	10	7	26	
Barrier Severity Code C = Major Inconvenience	16	11	17	44	
<b>Curb Ramp Barriers</b>	23	16	32	71	Of the 30 curb ramps outside of House Buildings, 93% do not comply with the ADA
Barrier Severity Code A = Safety Consideration	8	9	21	38	
Barrier Severity Code B = Block Access	5	1	3	9	
Barrier Severity Code C = Major Inconvenience	10	6	8	24	
<b>Vertical Change/Surface Barriers</b>	11	15	10	36	64% of sidewalk barriers pose safety risks, such as wheelchair instability
Barrier Severity Code A = Safety Consideration	6	12	5	23	
Barrier Severity Code B = Block Access	0	3	3	6	
Barrier Severity Code C = Major Inconvenience	5	0	2	7	
<b>Slope Barriers</b>	10	18	6	34	62% of slope barriers pose safety risks, such as causing a wheelchair to tip over/ backwards
Barrier Severity Code A = Safety Consideration	7	10	4	21	
Barrier Severity Code B = Block Access	3	5	1	9	
Barrier Severity Code C = Major Inconvenience	0	3	1	4	
<b>Protruding Objects</b>	2	4	7	13	Protruding objects, such as low tree branches, can cause facial and eye injuries and other harm
Barrier Severity Code A = Safety Consideration	0	1	1	2	
Barrier Severity Code B = Block Access	1	1	0	2	
Barrier Severity Code C = Major Inconvenience	1	2	6	9	

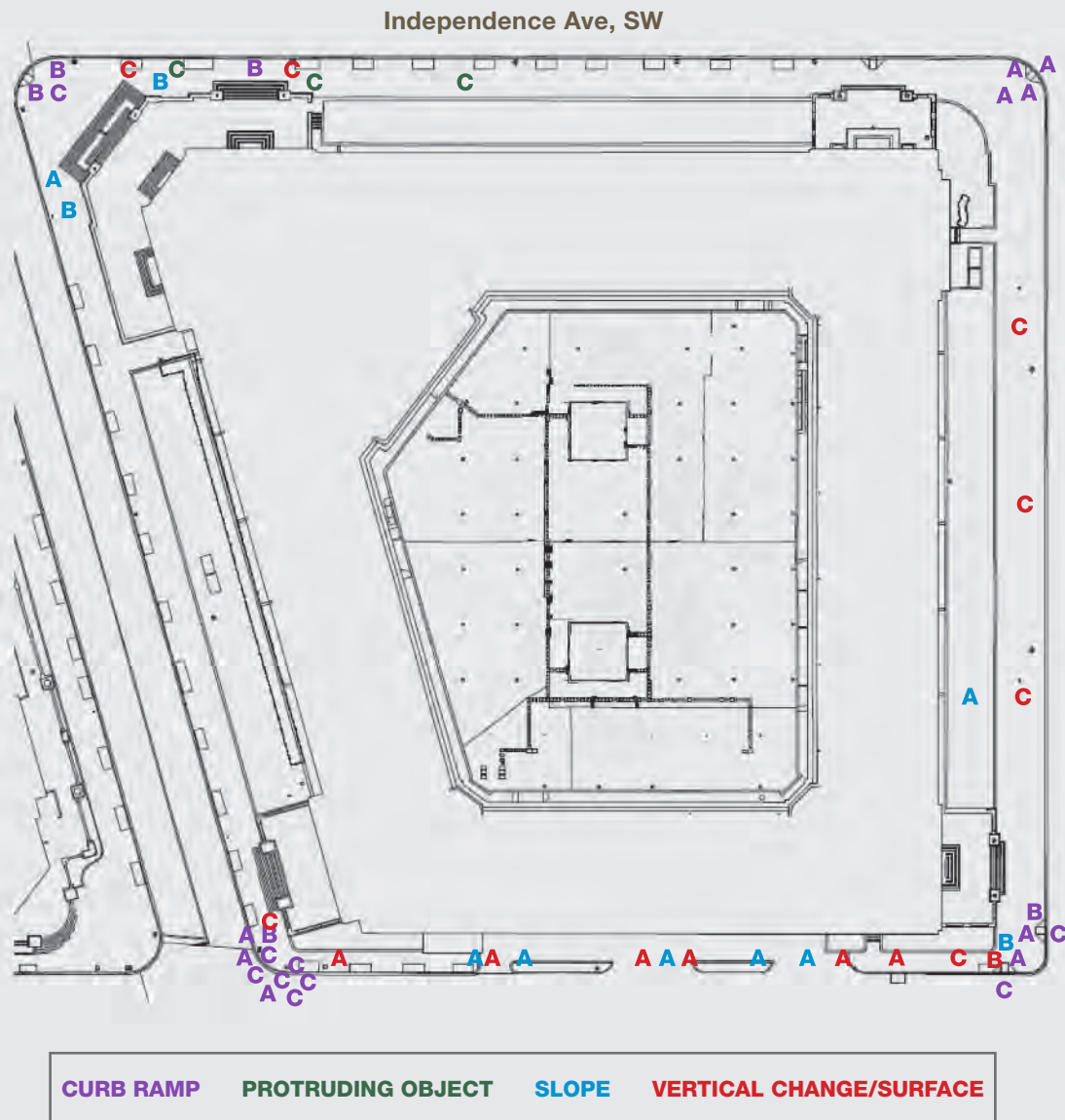




## LOCATIONS OF BARRIERS TO ACCESS OUTSIDE OF CANNON BUILDING

### + All Barriers Outside of Cannon Building

This map shows the locations of all 46 exterior pathway barriers outside of the Cannon Building. Of the 46 barriers, 21 are Severity Code A, which are a safety consideration for people with disabilities; 9 barriers are Severity Code B, which block access; and 16 are Severity Code C, which are a major inconvenience.



## + Focus Map of Curb Ramps Outside of Cannon Building\*

This map focuses on 7 curb ramps outside of the Cannon Building. Within the 7 curb ramps, the OOC found 23 barriers: 8 are Severity Code A, which are a safety consideration for people with disabilities; 5 are Severity Code B, which block access; and 10 are Severity Code C, which are major inconveniences.

**CURB RAMP 16**  
Cross Slope at Bottom Landing Too Steep (B), Transition Not Level (B) & Ramp Outside Marked Crosswalk (C)

**CURB RAMP 15**  
Counter Slope of Adjoining Gutter Too Steep (B)

**CURB RAMP 14**  
Running Slope, Counter Slope of Adjoining Gutter & Top Landing Slope All Too Steep (All Severity Code A) & Wide Cracks on Ramp (C)

**CURB RAMP 13**  
Running Slope Too Steep (B) & Bottom Landing Too Steep (A) & Top Landing Cross Slope Too Steep (C)

**CURB RAMP 12**  
Running Slope Too Steep (A) & Water Accumulates at Gutter (C)

**CURB RAMP 18**  
Cross Slope & Counter Slope of Adjoining Gutter Too Steep (A) & Other Barriers (C)

**CURB RAMP 19**  
Counter Slope of Adjoining Gutter Too Steep (A) & Other Barriers (C)

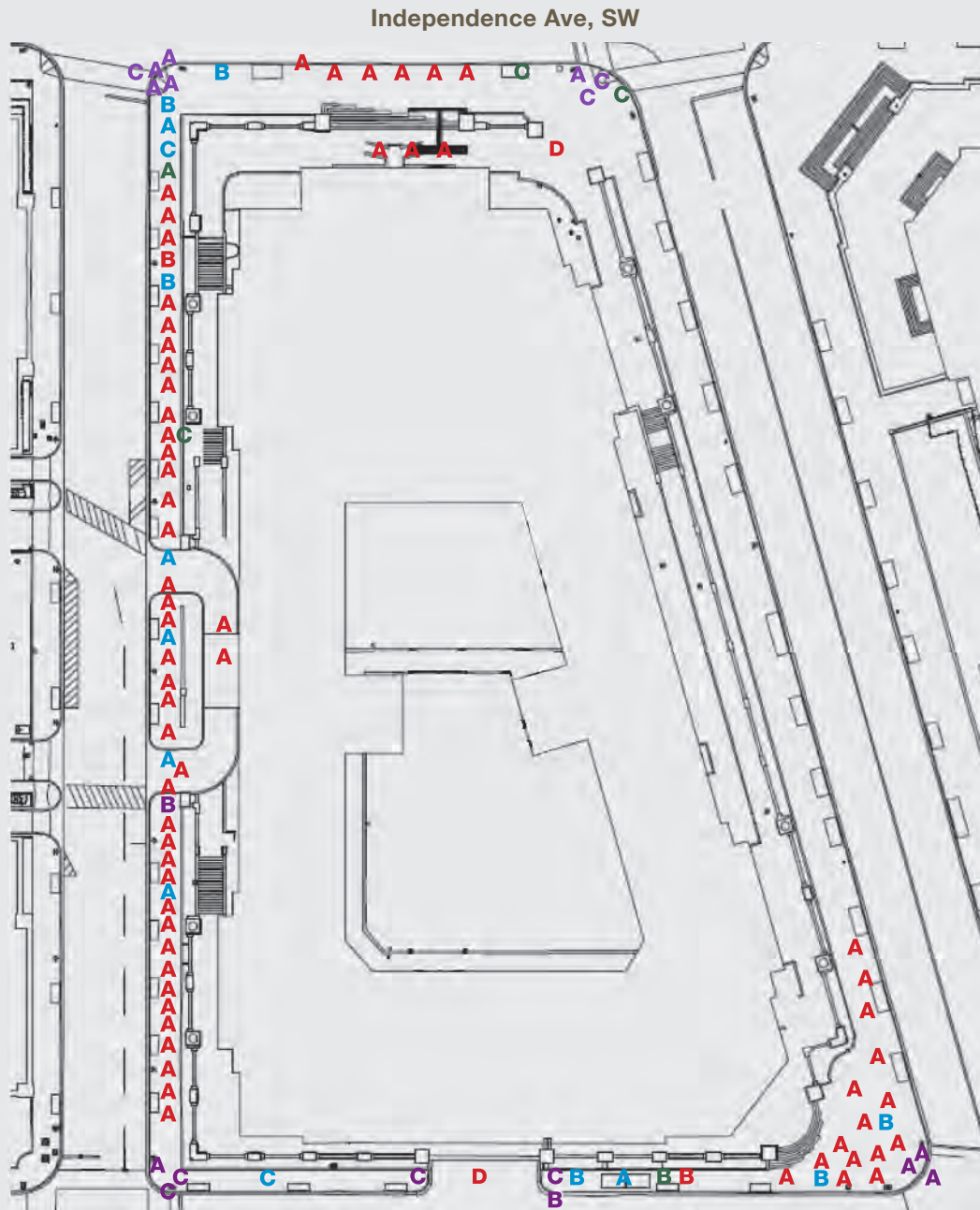
Independence Ave, SW

\*The OOC found no barriers to access at Curb Ramp 17 (east side of Cannon Building).

## LOCATIONS OF BARRIERS TO ACCESS OUTSIDE OF LONGWORTH BUILDING

### + All Barriers Outside of Longworth Building

This map shows the locations of all 53 exterior pathway barriers outside of the Longworth Building. Of the 53 barriers, 32 are Severity Code A, which are a safety consideration for people with disabilities; 10 are Severity Code B, which block access; and 11 are Severity Code C, which are a major inconvenience.



CURB RAMP	PROTRUDING OBJECT	SLOPE	VERTICAL CHANGE/SURFACE
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## + Focus Map of Curb Ramps Outside of Longworth Building

This map focuses on the 6 curb ramps (including a missing curb ramp) outside of the Longworth Building; none complied with the ADA's standards. Within the 6 curb ramps, the OOC found 16 barriers: 9 are Severity Code A, which are a safety consideration for people with disabilities; 1 is Severity Code B, which blocks access; and 6 are Severity Code C, which are major inconveniences.

**CURB RAMP 21**  
 Cross Slope of Ramp & Top & Bottom Landings All Too Steep (All Severity Code A), Slab Joints & Cracks Too Wide (A) & Detectable Warning Deteriorated (C)

**CURB RAMP 20**  
 Slab Joints & Cracks Too Wide (A), Ramp Outside Marked Crosswalk (C) & Detectable Warning Deteriorated (C)

**CURB RAMP 24**  
 Cross Slope of Ramp & Top Landing Too Steep (A) & Counter Slope of Adjoining Gutter Too Steep (A)

**CURB RAMP 22**  
 Slab Joints & Cracks Too Wide (A), Detectable Warning Deteriorated (C) & Ramp Outside Marked Crosswalk (C)

**CURB RAMP 23**  
 Running Slope Too Steep (B) & Detectable Warning Deteriorated (C)

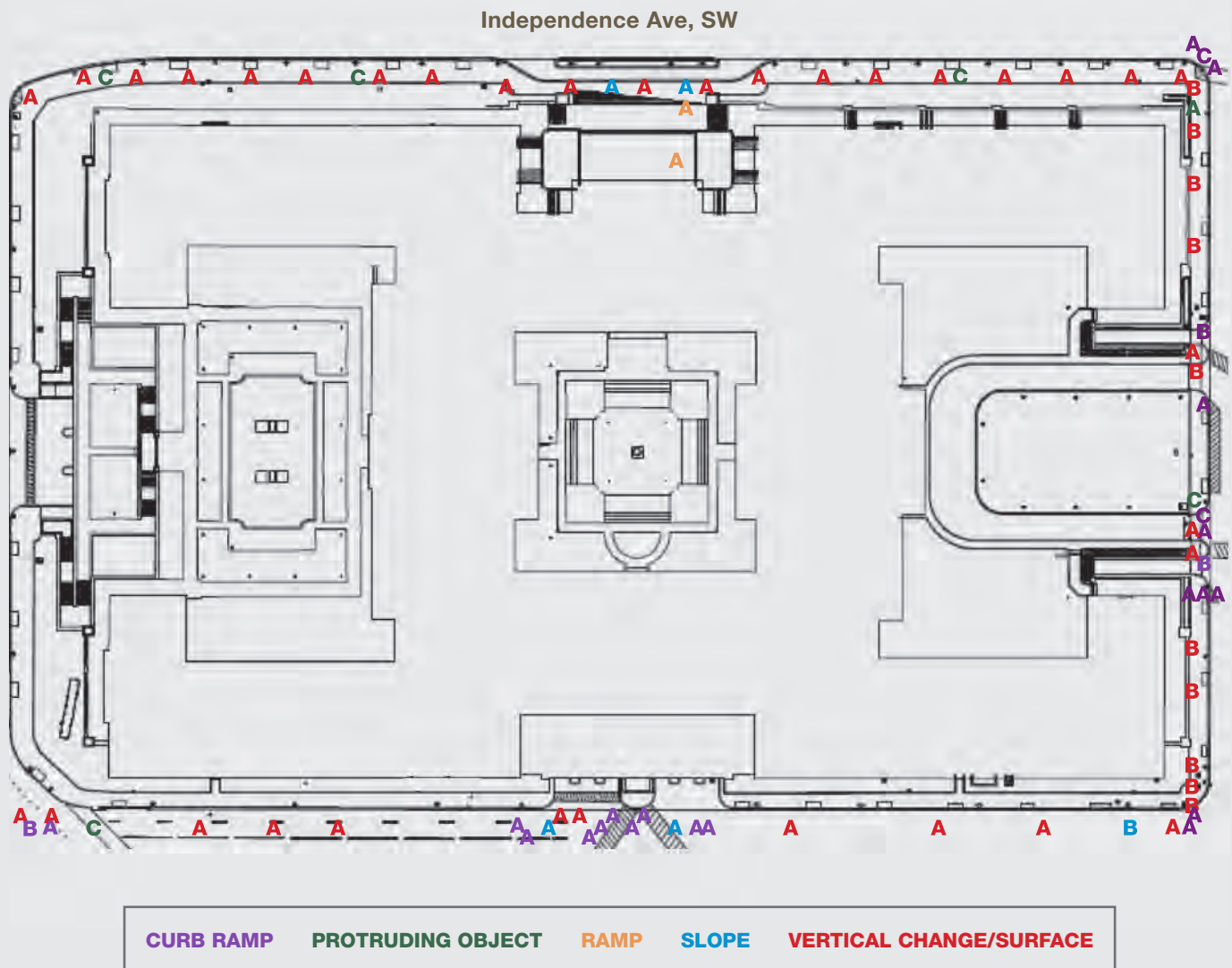
No Curb Ramp (B)

Independence Ave, SW

## LOCATIONS OF BARRIERS TO ACCESS OUTSIDE OF RAYBURN BUILDING

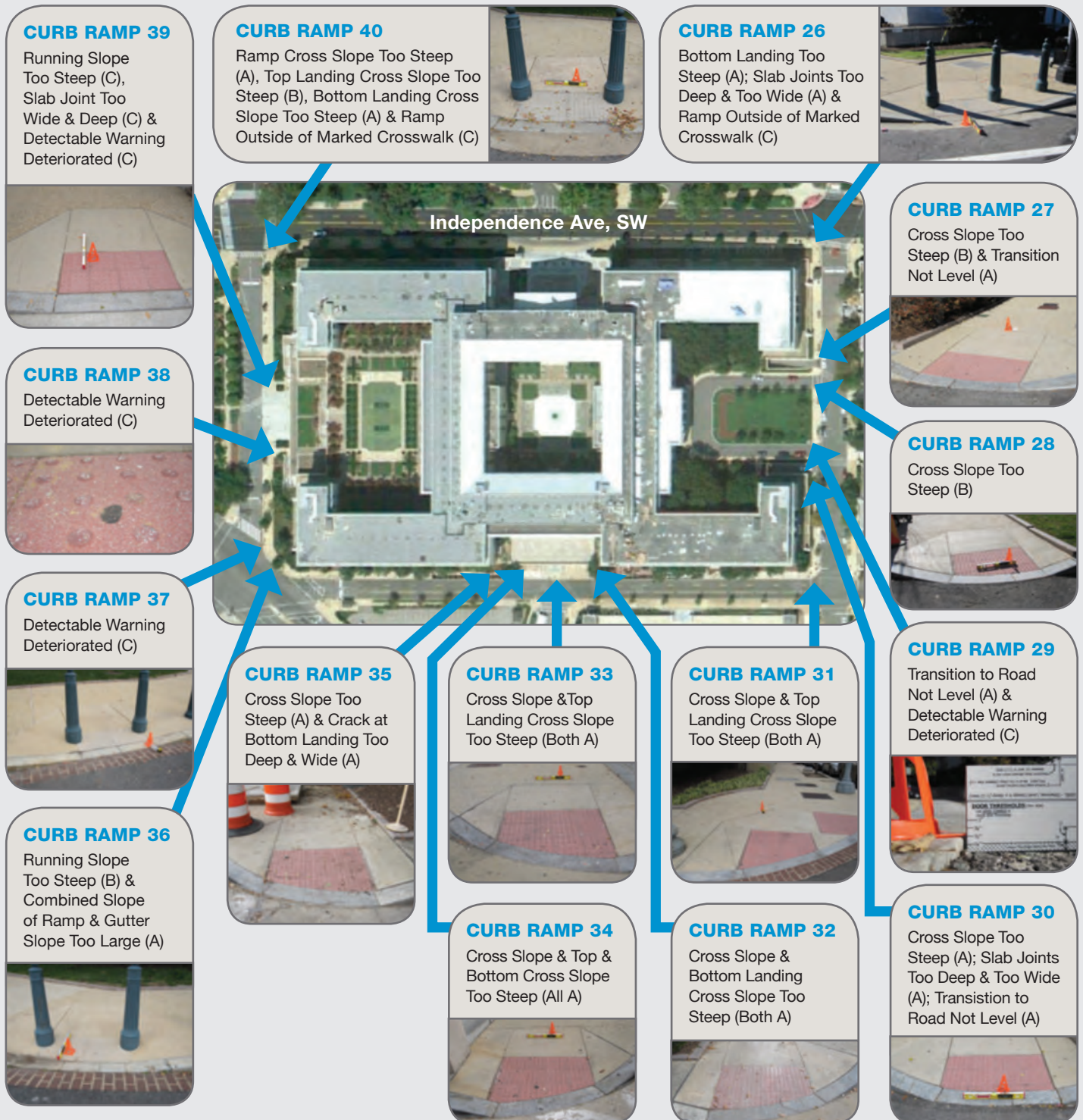
### + All Barriers Outside of Rayburn Building

This map shows the locations of all 55 exterior pathway barriers outside of the Rayburn Building. Of the 55 barriers, 31 are Severity Code A, which are a safety consideration for people with disabilities; 7 are Severity Code B, which block access; and 17 are Severity Code C, which are a major inconvenience.



## + Focus Map of Curb Ramps Outside of Rayburn Building\*

This map focuses on the 15 curb ramps outside of the Rayburn Building. Within the 15 curb ramps, the OOC found 32 barriers: 21 are Severity Code A, which are a safety consideration for people with disabilities; 3 are Severity Code B, which block access; and 8 are Severity Code C, which are major inconveniences.



\*The OOC found no barriers to access at Curb Ramp 25 (south side of Rayburn Building).

## Inspection Findings of Selected Restrooms from the House and Senate

### Understanding the Types of Barriers Found in Restrooms

Both the 1991 and 2010 ADA Standards set out design and engineering standards to make public restrooms accessible to people with disabilities. The OOC is proposing solutions that would bring the non-complying elements of restrooms into compliance with the 2010 ADA Standards. The OOC has inspected only restrooms that have been altered to become ADA accessible restrooms and are so identified. Although the alteration of a restroom may have taken place when the 1991 ADA Standards should have been followed, if the alteration is currently not in compliance with the 1991 Standards, as of March 15, 2012, the regulations require that the non-complying portions be corrected to comply with the 2010 ADA Standards to the maximum extent feasible. Some of the pertinent standards and the reasoning behind the standard are set forth below.

- **Wheelchair Access to Toilet Rooms**

Toilet rooms and wheelchair accessible toilet stalls must have sufficient door clearances and clear floor space to allow for wheelchair access. This means that these spaces must have enough room to allow a person using a wheelchair to maneuver into position at the toilet and be able to make both a side and front transfer from the wheelchair to the toilet. The standards therefore require that there be sufficient clearances around the toilet and that toilet compartments meet minimum size requirements. The standards also regulate the height of the toilet and specify where grab bars must be located. Other features that provide access include specifications for hardware and flush controls and the location of toilet paper dispensers, coat hooks, and mirrors.

- **Sinks and Countertops**

Sinks and countertops cannot be too high, need enough clear space underneath to allow for knee and toe clearance, and require sufficient clear floor space to allow a person using a wheelchair to maneuver into position. Any plumbing under the sink or counter top must be insulated or otherwise protected to prevent users from being cut by sharp or abrasive surfaces or burned by hot pipes. Faucets for sinks and any other valves or knobs in the restroom must meet the control standard (be operable with one hand; not require tight grasping, pinching or twisting of the wrist; and be activated with a maximum of 5 pounds of force).

- **Urinals**

In restrooms that have urinals, at least one urinal must be designed for use from a wheelchair. If hung on a wall, the urinal must be deep and low enough to provide access. Stall-type urinals (which extend to the floor) provide greater accessibility for a broader range of persons, including people of short stature. There must be a clear floor space in front of the urinal at least 30 inches wide and 48 inches deep.

### Barriers Found From Restroom Surveys in Selected House & Senate Buildings

During the 111<sup>th</sup> Congress, the OOC surveyed one restroom in each of the primary Senate office buildings (Russell, Dirksen, and Hart) and in each of the primary House office buildings (Rayburn, Longworth, and Cannon).

The results from these surveys are summarized in the table below.

Barriers Found in One Selected Restroom in Each of the Senate and House Office Buildings							
	Russell	Dirksen	Hart	Rayburn	Longworth	Cannon	Total
Barrier Severity Code A = Safety Consideration	0	2	0	1	2	1	6
Barrier Severity Code B = Block Access	0	2	2	1	4	5	14
Barrier Severity Code C = Major Inconvenience	7	3	2	3	7	4	26
							46

None of the restrooms surveyed complied with the ADA





+ Location and Types of Barriers Found In Each Restroom Surveyed

Location	Existing Condition	Solution	Sev. Code
<b>Cannon</b>			
1st Floor—Toilet Room, Multi-User, Men's- (01-16-C1d1)	Accessible compartment 52" wide	Alteration requires complex redesign beyond the scope of the survey.	B
	Stall hardware requires twisting to operate	Replace existing hardware with compliant hardware.	B
	Door pull provided on pull side only	Install handle(s).	C
	Rear grab bar 36.75" above finished floor to top of gripping surface	Remount existing compliant grab bars at required height. Confirm that wall or partition affords the required strength at new height.	C
	Side grab bar clearance to wall 21.5"	Furr out a smooth wall surface for at least 2" below and 15" above grab bar to provide the 1½" clearance from the wall for the entire length of the grab bar.	A
	Water closet 19" to 25" centerline to side wall	Move existing compliant water closet to required position. Repair/refinish as needed.	C
	Toilet paper dispenser located behind front edge of toilet	Relocate existing compliant toilet paper dispenser as required, ensuring required clearance above and below grab bar. Repair/refinish wall or partition as needed.	C
	Mirror 47" above finished floor (AFF)	Remove existing mirror. Replace with taller mirror with bottom edge of reflective surface mounted at 35" Maximum AFF where not mounted above lavatory or countertop or 40" Maximum AFF where mounted above lavatory or countertop.	B
	Paper towel dispenser requires twisting to operate	Remove existing paper towel dispenser and install new compliant model within reach range where required clear floor space is available. Patch and refinish wall as needed.	B
	Seat cover dispenser 53" AFF, side reach	Relocate existing compliant seat cover dispenser within reach range where required clear floor space is available and dispenser does not obstruct grab bar. Repair/refinish wall as needed.	B
<b>Dirksen</b>			
Ground Floor—toilet room, multi-user, men's-Rules Committee (g-16-sdgm3)	Door remains open for 0 seconds	Adjust existing operating mechanism so that low energy power operated/open door remains open for at least 5 seconds.	A
	No visual alarm	Add compliant visual signal integrated with existing audible alarm system. Coordinate with height requirements (entire lens between 80" AFF and 96" AFF).	A
	Door pull provided on pull side only	Install handle(s).	C
	Coat hook 70" above finished floor, side reach	Install additional coat hook within reach range. It is suggested that this new lowered coat hook be installed on the wall or partition adjacent to the compartment door and not on the back of the compartment door.	B
	Side grab bar 42" long, 6" from rear wall, 48" extension from rear wall	Remove otherwise compliant grab bar and reinstall so that it extends a minimum of 54" from the rear wall and is no more than 12" from the rear wall. Patch and repair wall surface.	C

Location	Existing Condition	Solution	Sev. Code
	Baby changing table 49" above finished floor, forward reach	Relocate baby changing table so handle is within reach range. Coordinate to maintain compliant height of work surface. Repair/refinish as needed.	C
	Seat cover dispenser 56" above finished floor	Relocate existing compliant seat cover dispenser within reach range where required clear floor space is available and dispenser does not obstruct grab bar. Repair/refinish wall as needed.	B
<b>Hart</b>			
First Floor—Toilet Room, Multi-User, Men's-Hart Southeast (1-16-1Cm)	Door pulls not provided	Install handle(s).	C
	Water closet seat 19.75" above finished floor	If greater than 19" AFF, add floor mat the entire width and depth of stall to allow for proper toilet seat height. Make sure edges are beveled at 1:2.	C
	Soap dispenser requires two hands to operate	Install additional compliant soap dispenser. Coordinate with reach range and clear floor space requirements.	B
	Paper towel dispenser 63" above finished floor, forward reach	Install new towel dispenser within the forward reach range required for the available knee/toe clearance at the lavatory (48" AFF Maximum or 44" AFF Maximum if reach to dispenser is 20" - 25" deep). Existing noncompliant towel dispenser may remain.	B
<b>Longworth</b>			
Basement-toilet room, multi-user, men's (b-16-lbc7)	Door remains open for 1.6 seconds	Adjust existing operating mechanism so that low energy power operated/open door remains open for at least 5 seconds.	B
	Door control clear floor space obstructed by trash bin	Remove/relocate/alter nonpermanent constraints to provide required access. Repair/refinish as needed.	B
	Door pull provided on pull side only	Install handle(s).	C
	No coat hook in accessible stall but is provided in other stalls	Install coat hook within reach range. It is suggested that this new coat hook be installed on the wall or partition adjacent to the compartment door and not on the back of the compartment door.	B
	Rear grab bar 36.5" above finished floor to top of gripping surface	Remount existing compliant grab bars at required height. Confirm that wall or partition affords the required strength at new height.	C
	Side grab bar 37" long	Remove existing side grab bar and install new compliant side grab bar. Ensure that grab bar is mounted 12" Maximum from rear wall and extends at least 54" from rear wall.	A
	Water closet 19.25" centerline to side wall	Furr out wall behind grab bar to achieve required centerline clearance to water closet. Extend furring at least 15" above and 2" below the grab bar. Reinstall grab bar. Maintain a 1½" clearance between the grab bar and the furring behind.	C

Location	Existing Condition	Solution	Sev. Code
	Flush mechanism on narrow side of water closet	Remove irreversible flush valve. Alter water supply piping inside wall as needed. Repair/refinish wall. Install new flush valve with handle on open side of water closet.	C
	Toilet paper dispenser 37" from rear wall to front edge, 12" from front edge of seat to centerline of dispenser	Relocate existing compliant toilet paper dispenser as required, ensuring required clearance above and below grab bar. Repair/refinish wall or partition as needed.	C
	Pipes are not insulated	Insulate hot water supply and drain pipes. Ensure that all other sharp or abrasive surfaces are properly covered or filed smooth.	A
	Mirror 42" AFF	There is a full length mirror located elsewhere in the toilet room. No corrections needed.	C
	Paper towel dispenser requires tight grasping and twisting to operate	Adjust mechanism to comply, or replace with a compliant towel dispenser.	B
	Seat cover dispenser 3.5" above grab bar	Relocate dispenser. Coordinate with reach range and clear floor space requirements. Repair/refinish wall or partition as needed.	C
<b>Rayburn</b>			
Basement – Toilet Room, Multi-User, Men's (B-16-349)	Side grab bar 42" long, 10" from rear wall, 52" extension from rear wall	Remove otherwise compliant grab bar and reinstall so that it extends a minimum of 54" from the rear wall and is no more than 12" from the rear wall. Patch and repair wall surface.	C
	Water closet seat 16" above finished floor	Readily achievable: replace existing standard seat with thick seat, or add seat spacer to achieve required height.	C
	Toilet paper dispenser 38" from rear wall to front edge, 12" from front edge of seat to centerline of dispenser	Relocate existing compliant toilet paper dispenser as required, ensuring required clearance above and below grab bar. Repair/refinish wall or partition as needed.	C
	Pipes not insulated	Insulate hot water supply and drain pipes. Ensure that all other sharp or abrasive surfaces are properly covered or filed smooth.	A
	Soap dispenser requires two hands to operate	Install additional compliant soap dispenser. Coordinate with reach range and clear floor space requirements.	B

Location	Existing Condition	Solution	Sev. Code
<b>Russell</b>			
1st Floor— toilet room, multi-user, men's (01-16-sr1m2)	Door pulls not provided	Install handle(s).	C
	Side grab bar 42" long, 10.5" from rear wall, 52.5" extension from rear wall	Remove otherwise compliant grab bar and reinstall so that it extends a minimum of 54" from the rear wall and is no more than 12" from the rear wall. Patch and repair wall surface.	C
	Rear grab bar extends 8" from centerline of the water closet on the narrow side	Remove existing compliant rear grab bar and remount in required location. Provide backing in wall as necessary.	C
	Water closet seat 19.75" above finished floor	Add floor mat the entire width and depth of stall to allow for proper toilet seat height. Make sure edges are beveled at 1:2.	C
	Toilet paper dispenser 29.5" from rear wall to front edge, 11.5" from front edge of seat to centerline of dispenser	Relocate existing compliant toilet paper dispenser as required, ensuring required clearance above and below grab bar. Repair/refinish wall or partition as needed.	C
	Urinal rim 17.5" AFF	Remove existing compliant urinal and adjust or replace existing carrier. Repair/refinish wall as needed. Reinstall existing urinal at required height and adapt flush control as needed.	C
	Soap dispenser requires two hands to operate	Install additional compliant soap dispenser. Coordinate with reach range and clear floor space requirements.	B
	Seat cover dispenser <1" below grab bar	Relocate existing compliant seat cover dispenser. Coordinate with reach range and clear floor space requirements. Preferred location is on the wide end of the rear or side grab bar, and no higher than 40" AFF. Repair/refinish wall as needed.	C

### Cost of Removing Barriers

While the OOC has not received any cost estimates from the AOC, the ETA software used by the OOC for conducting the inspection and developing solutions has provided rough estimates of the costs associated with each solution after adjusting for construction costs in the Washington, D.C. area and the higher costs associated with government construction work.

The ETA software has estimated the total cost for correcting all of the barriers found in and around the House Office Buildings (including the identified restroom barriers) using the solutions the OOC has recommended at approximately \$1.4 million.

# APPENDIX



## APPENDIX A: ACRONYMS

Above Finished Floor: AFF

Alternative Dispute Resolution: ADR

Americans with Disabilities Act: ADA

Architect of the Capitol: AOC

Capitol Visitor Center: CVC

Congressional Accountability Act of 1995: CAA

Congressional Budget Office: CBO

Congressional Management Foundation: CMF

Employee Polygraph Protection Act: EPPA

Fair Labor Standards Act: FLSA

Family and Medical Leave Act: FMLA

General Counsel of the Office of Compliance: GC

Genetic Information Nondiscrimination Act: GINA

Government Accountability Office: GAO

Government Printing Office: GPO

Library of Congress: LOC

Occupational Safety and Health: OSH

Occupational Safety and Health Act: OSHAct

Office of Compliance: OOC

Risk Assessment Code: RAC

Uniformed Services Employment and Reemployment Rights Act:  
USERRA

Veterans' Employment Opportunities Act: VEOA

## APPENDIX B: STRATEGIC PLAN 2010–2012

### Goals & Accomplishments

Every three years, the Office of Compliance prepares a strategic plan to chart the direction of the Agency's initiatives. Measurements are incorporated into the Strategic Plan to help ensure that the initiatives are accomplished to the extent possible. The Strategic Plan is adjusted periodically to fit changing priorities and circumstances. The OOC summarizes its goals, initiatives, measurements, and accomplishments from October 1, 2010 to September 30, 2011.

#### 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 unfair labor practice disputes.

#### INITIATIVES:

- A. Prioritize OSH and ADA inspections and abatement enforcement according to risk and severity;
- B. Promote improved understanding of compliance requirements through targeted, effective education and technical assistance programs; and
- C. Provide clarity to stakeholders respecting OOC protocols and procedures.

#### MEASURES:

1. Identify, prioritize, and assure the creation of an efficient and cost-effective plan for the responsible employing offices to abate all RAC I and RAC II hazards found in all covered Washington area buildings and facilities.
2. Resolve 80% of all RAC I and RAC II hazards within one year of their discovery.
3. Facilitate pilot inspection of Member District and State offices' self-inspections by end of FY2011.
4. Complete pilot self-inspection program and use survey results to develop a self-inspection program for all Member District and Senate State offices by the end of FY2012. Secure ADA transition plans for all covered Washington, DC area buildings and facilities.

#### SUMMARY OF ACCOMPLISHMENTS:

During FY 2011, the OOC began implementing a new risk-based OSH program that focuses on inspecting and assuring

abatement of higher-risk hazards in some of the facilities and operations that pose the greatest threat of fatalities and injuries to workers and building occupants, including fire and life safety and recurring RAC I and RAC II hazards. The OOC also began to implement our plan to inspect safety programs and procedures mandated by OSHA standards. These standards outline particular programs, such as personal protective equipment and hazard communication for employees exposed to hazardous materials, which are designed to protect workers engaged in both routine work and many higher-hazard operations.

The OOC began conducting public access inspections using recently acquired state-of-the-art software designed specifically for this purpose. Using this software, the OOC completed exterior inspections that identified access barriers to the House Office and Library of Congress Buildings and is working with stakeholders to develop plans for removing these barriers. As resources permit, the OOC is proceeding with exterior inspections that will identify barriers to the other Legislative Branch buildings on the Capitol Hill Campus. Resources permitting, after the exterior inspections are completed, the OOC will proceed with interior public access inspections of Legislative Branch buildings. The OOC will continue to work with stakeholders to develop transition plans to remove all identified barriers and otherwise provide access to Legislative Branch facilities for all.

#### GOAL II:

Provide a fair, efficient, and high quality process for resolving workplace disputes that are presented to the OOC under the CAA.

#### INITIATIVES:

- A. Effectively utilize alternative dispute resolution techniques in OOC proceedings to assist disputants in successfully resolving workplace disputes.
- B. Provide resources to parties coming before the Board of Directors—increasing their knowledge and understanding of the CAA, advancing the application of the CAA, and facilitating the appropriate resolution of matters before the Board.
- C. Support the implementation of the labor-management provisions of the CAA.
- D. Effectuate the Board of Directors' rulemaking authority by tracking and reviewing proposed legislation and regulation, amending the Agency's Procedural Rules, and recommending Congressional approval of substantive regulations adopted by the Board.

**MEASURES:**

1. Utilize the case management system to monitor the use of the OOC by covered employees, spot trends, and develop training programs that target areas where increased education on the rights and protections of the CAA is indicated.
  - Year one, the Agency will review data and determine the topic areas and scope and frequency of training to be provided.
  - Year two, in coordination with its stakeholders, the Agency will develop educational modules that meet the needs of the covered community.
  - Year three, the Agency will provide regular and integrated training for stakeholders on methods of dispute resolution, the provisions of the CAA, and the Agency's procedures.
2. Attain issuance of substantive regulations for the application of VEOA, USERRA, FMLA, FLSA, and GINA under the CAA, and amendments to the OOC's Procedural Rules, as recommended by the Board of Directors of the OOC.

**SUMMARY OF ACCOMPLISHMENTS:**

Throughout the year, the OOC provided training and education to Legislative Branch stakeholders on areas of law and procedure covered by the Congressional Accountability Act. Training based on modules designed to meet the particular needs of each group and agency, was provided to management officials, employees, and union representatives. The OOC also revised and distributed posters, newsletters, and brochures to educate employees and employing offices covered by the CAA.

In addition to its training initiatives, outreach activities included meeting with new Members of Congress to brief them on the Act and the OOC, participating in the House Safety Fair, presenting at a Library of Congress' Brown Bag Series on hostile work environment, and meeting with staff of the Senate Employee Assistance Program. The OOC also participated in the Legislative Branch Diversity Council and the Legislative Branch Employment Dispute Resolution Council to share in the development of initiatives concerning employment in the Legislative Branch.

The expansive nature of the OOC's educational outreach included briefing foreign dignitaries interested in learning how the office manages its unique responsibility to apply the egalitarian principles entrenched in labor and employment law to elected officials and their support agencies.

In addition to its training and outreach activities, the OOC sponsored a conference among its staff, Hearing Officers, and Mediators to provide them with an opportunity to share their

experiences and perspectives on issues that arise during the conduct of ADR proceedings. The OOC also updated its internal policies, revised standard operating procedures, updated its fee structure for service providers, and established a 'no-weapons' policy for OOC proceedings.

In FY 2011, the OOC conducted a representation election for employees of the Gift Shop Division of the Capitol Visitor Center. As a result of the secret-ballot election, the OOC certified that the employees are included in a consolidated unit of employees of the Capitol Visitor Center for purposes of collective bargaining.

The OOC received 142 new Requests for Counseling alleging violations of the CAA, and 116 new requests to mediate disputes under the Act. The OOC provided counseling on all claims filed and, as a cost-savings initiative, mediated a significant number of claims in-house. Nineteen complaints of violation of the CAA were in the Administrative Hearing process in FY11, and the Board of Directors issued decisions in 8 cases pending before it.

The Board's rule making activities included Congressional approval of the Board's substantive regulations implementing the Veterans' Employment Opportunities Act through the CAA. In addition, the OOC continued to review its Procedural Rules, and will develop recommendations for amendments to the Rules, where appropriate.

**GOAL III:**

Improve knowledge of rights and responsibilities under the CAA, both on Capitol Hill and in State and District offices, and increase awareness of the OOC among Legislative Branch employees and employing offices as a primary resource when questions arise.

**INITIATIVES:**

- A. Increase visibility within the covered community and build relationships with those stakeholders who are unfamiliar with the OOC's services.
- B. Become a vital resource for the covered community.
- C. Acknowledge and promote the basic tenets of fair employment practices and workplace rights inherent in the CAA.
- D. Develop a "Model Office" program to recognize those employing offices that seek training and advice from the OOC.
- E. Increase the effectiveness of the OOC website as an informational resource, and implement methods of mutual recognition between the OOC and various Legislative Branch entities.



### **MEASURES:**

1. Increase by 5% from the previous fiscal year, and in each succeeding fiscal year, the number of training opportunities offered to employees and employing offices.
2. Increase by 5% from the previous fiscal year, and in each succeeding fiscal year, the distribution of “fyi’s” produced, and *Fast Facts*, and other published material disseminated to employing and support offices by way of First Call on the House side and the Senate Education and Training Office, as well as other distribution points.
3. Connect with key Legislative Branch stakeholders on issues important to the Agency, achieving direct access to Members, staff, or employee representatives 80% of the time.

### **SUMMARY OF ACCOMPLISHMENTS**

[NOTE: As explained in the OOC’s FY 2009 annual report, the OOC eliminated its measures for this particular goal, however, the OOC continued to implement and carry out the initiatives]

During FY 2011, the OOC distributed more than 33,000 Notification of Rights brochures to the homes of Legislative Branch employees nationwide. This distribution serves as the OOC’s largest outreach effort. Additionally, the OOC mailed 2,988 Notification of Rights brochures to new Senate employees.

During this past fiscal year, the OOC website was visited approximately 35,944 times. The OOC saw a spike in visits to the site in September 2011, with 3,606 hits. This is due in large part to the release of our Annual Report, “State of the Congressional Workplace.” This publication received not only a great deal of attention within the Legislative Branch community, but the press as well.

In addition to the OOC’s publications, in order to further reach the covered community, the OOC participated in four Congressional Research Services presentations for House and Senate employees. This program allows for congressional staffers, many from district offices, to learn about their rights and protections under the CAA.

### **GOAL IV:**

Maximize OOC employee’s capabilities and contributions by increasing satisfaction through innovation, the acquisition of up-to-date technological resources, and maintaining an environmentally-friendly workplace.

### **INITIATIVES:**

- A. Develop and implement an Affirmative Action Policy.
- B. Enhance individual productivity and organizational efficiency and effectiveness through the acquisition of up-to-date technological resources.
- C. Gain additional office/work space to meet the growing needs of the Agency.
- D. Develop and implement a Continuity of Operations Plan (COOP).
- E. Commit to increase the OOC’s efforts for the betterment of the environment.
- F. Create and implement a formalized mentoring program.
- G. Streamline administrative processes to support the smooth functioning of the OOC’s operational responsibilities.

### **MEASURES:**

1. The OOC will review its current diversity outreach activities and seek to expand the diversity of its applicant pool by increasing attendance at job fairs, and posting vacancies and Requests for Proposals in media that reach out to minorities, women, and people with disabilities.
2. Employee satisfaction with the mentoring program will be measured by surveying participating staff and tracking their development. Upon completion of the program, the goal is to maintain at least 75% employee satisfaction with the program over the three year span of this Plan.
3. The OOC will measure the success of its greening activities by surveying each staff member on their use of electricity and recycling in FY 2010, followed by a repeat survey in 2011 and 2012 monitoring for increased conservation activities. The initial survey will be created by July 2010 and distributed. Survey results will be collated and assessed by September 30, 2010.
4. The OOC will track the amount of paper ordered from FY2010 through FY2012, seeking a 10% decrease in the amount of paper used between FY2010 and FY2012.

### **SUMMARY OF ACCOMPLISHMENTS:**

During FY 2011, the OOC continued to improve upon the progress made in FY 2010. After having created and implemented

an Affirmative Action Policy and Plan, the OOC put it to test by reaching out to minorities, women, and people with disabilities and ensuring our pool of applicants was diversified and supportive of equal opportunity.

To enhance workstation security and remain cost-efficient, the OOC entered into an inter-agency agreement with the Library of Congress to obtain desktop computers with advanced operating system software and antivirus updates. To further expand capacity within funding limits, the OOC set up video conferencing equipment in order to conduct meetings with participants throughout the country with the goal of reducing travel-related expenses.

The OOC moved its email system to Microsoft Outlook in order to provide all OOC staff with email addresses that identified the Agency (compliance.gov). The email migration to Microsoft Outlook, already in use by most of our sister agencies on the Hill—increases the security, interoperability and exchange of email traffic with other Hill agencies and external stakeholders.

The OOC worked closely with the House of Representatives Committee on House Administration to develop comprehensive, cost-efficient, and effective ways to communicate with House employees. The OOC continued the development of a process that would allow the OOC to send educational information electronically to all House employees quarterly, while maintaining the security integrity of the House email system.

As with other Legislative Branch agencies, the OOC must be ready to conduct its operations off-site, should an emergency situation require the office to continue its operations remotely. To this end, during FY 2010, the OOC began major development of a Continuity of Operations Plan (COOP). The COOP was initially drafted some years ago; however, with an increased-knowledge base in the area of emergency planning, the OOC determined that significant editing was needed and decided to redraft the COOP. As a result, the COOP now reflects a plan that is current and in line with industry standards. During FY 2011, the COOP remains in draft form as the OOC's resources needed to finalize the COOP are also needed in other areas. Although still in draft form, the COOP provides the basics to operate and recover if an emergency incident arises.

In FY 2011, the OOC continues its recycling program, instituted in FY 2010, and it continues to be a success. The OOC's paper and plastic are no longer thrown away, but placed in receptacles around the office for recycling. Toners are also properly recycled and the OOC has implemented steps to reduce unnecessary printing.

In an effort to increase efficiencies, in FY 2010, the OOC streamlined certain administrative processes and engaged in a campus-wide effort to share services with sister agencies. In FY 2011, the OOC maintains this level of collaboration with its accounting program. The core staff involved with OOC financial transactions are continually trained on changes and also have participated fully in making recommendations for improvement to the financial process. The OOC is also participating with the Legislative Branch Financial Management Council in developing and implementing financial efficiencies within OOC. WebTA (Time and Attendance), implemented FY 2010, has produced continued personnel time savings, as the usage of the system has normalized. OOC's refined process for 'settlement' disbursement has produced again this year a savings of approximately \$8,800 on FY 2011 settlements. The process, instituted in FY 2010, utilizes a 'free' payment system from Department of the Treasury Financial Management Service. This system is more secure, more efficient, enhances the federal government's ability to collect debt, and continues to save taxpayer dollars over the previous method.

The OOC is continuing the policy and practice of collaborating with other Legislative Branch agencies on procurement and in other resource intensive areas. One specific area is Travel in which the OOC is using the Travel MGT contract through GAO/LOC to procure travel services at lower overall cost. The OOC also participated in the Legislative Branch Financial Management Council and its subcommittees: the Financial Systems, GPRA Subcommittee, Internal Controls Subcommittee, and Website Subcommittee.





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