BIENNIAL REPORT OF THE BOARD OF DIRECTORS OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

Recommendations for Improvements to the Congressional Accountability Act

Required by Section 102(b) of the Congressional Accountability Act
Issued at the Conclusion of the 118th Congress for Consideration by the 119th Congress

December 2024

EXECUTIVE SUMMARY

The Office of Congressional Workplace Rights (OCWR) Board of Directors submits this report to Congress pursuant to section 102(b) of the Congressional Accountability Act (CAA). In accordance with the CAA, the Board is to provide each Congress with recommendations regarding the applicability to the legislative branch of federal workplace rights, safety and health, and public access laws and regulations. The Board's fulfillment of this requirement provides Congress with information and recommendations necessary to *ensure parity* between the rights and protections applied to the legislative branch and those applied to the executive branch and the private sector.

Currently executive branch and private employees have protections and rights that legislative branch employees do not have. In this report, the Board addresses and recommends changes to the CAA's substantive protections and obligations and to the necessary implementing procedures and regulations. Adoption of these recommendations would ensure that Congress meets the goal that it set for itself: to apply to the legislative branch those workplace rights and obligations that it has applied to the executive branch and the private sector. The following is a summary of the Board's recommendations:

Create Parity with the Executive Branch and the Private Sector

- Require legislative branch offices to maintain records of workplace injuries and illnesses.
- Provide comparable parental bereavement leave for legislative branch employees.
- Provide comparable nursing protections for legislative branch employees.
- Provide comparable religious compensatory time for all legislative branch employees.
- Provide comparable whistleblower protections to legislative branch employees.
- Provide comparable protections from retaliation for non-employees under the CAA's Americans with Disabilities Act (ADA) public access provisions.
- Provide comparable protections for legislative branch employees who serve on jury duty, declare bankruptcy, or have their wages garnished.
- Require legislative branch offices to maintain records required under other federal workplace rights laws.

Improve Implementation of Existing Rights to Ensure Parity

- Empower the OCWR General Counsel to seek a court order to temporarily enjoin unfair labor practices.
- Allow disclosure of proceedings involving disability-related public access and labor-management issues.
- Approve pending OCWR regulations in the legislative branch, including:
  - Fair Labor Standards Act regulations related to overtime pay.
  - Family and Medical Leave Act regulations related to paid parental leave and leave benefits for servicemembers and their families.
  - Federal Service Labor-Management Relations Statute regulations related to collective bargaining in the legislative branch.
  - Uniformed Services Employment and Reemployment Rights Act regulations related to workplace protections for servicemembers.
  - Americans with Disabilities Act regulations related to public access to facilities.
  - Fair Chance to Compete for Jobs Act regulations related to protections for job applicants in the legislative branch.

More information about the Board's recommendations can be found on OCWR's website at www.ocwr.gov.

STATEMENT FROM THE BOARD OF DIRECTORS

In 2025, the Office of Congressional Workplace Rights (OCWR) celebrates the 30th anniversary of the passage of the Congressional Accountability Act (CAA), which was enacted by Congress in 1995 with nearly unanimous approval. This milestone anniversary marks the establishment of OCWR and reflects the steadfast commitment of Congress to the American public that it will apply to itself labor, employment, accessibility, and health and safety laws on par with those that apply to the executive branch and the private sector.

This commitment is an ongoing one. To ensure that it continues to be fulfilled, section 102 of the CAA, 2 U.S.C. § 1302, requires the Board of Directors of OCWR to issue a report to each Congress that describes: (1) to what degree such provisions of federal law are applicable or inapplicable to the legislative branch; and (2) whether any inapplicable provisions should be made applicable.

The Board believes that now is the time to celebrate the many accomplishments that Congress has made in the area of workplace rights and to acknowledge the many recommendations in previous Section 102(b) Reports that Congress has adopted. However, much work remains. We highlight in this Section 102(b) Report additional recommendations for amendments to the CAA to apply to the congressional workplace employee protections applicable to the executive branch or the private sector, as well as key recommendations that the Board has made in past Section 102(b) Reports that have not yet been implemented.

On the eve of this historic milestone, we are pleased to submit to Congress these 2024 biennial recommendations for amendments to the CAA. We welcome the opportunity to further discuss these recommendations and ask for careful consideration of them by the 119th Congress.

Sincerely,

BARBARA CHILDS WALLACE,
Chair, Board of Directors

BARBARA L. CAMENS,
Member

ALAN V. FRIEDMAN,
Member

ROBERTA L. HOLZWARTH,
Member

SUSAN S. ROBFOGEL,
Member

SUMMARY OF RECOMMENDATIONS

The chart below shows recommendations in past Section 102(b) Reports enacted by Congress.

Recommendation	History	Status of Recommendation
Mandatory Anti-Discrimination, Anti-Harassment, and Anti-Retaliation Training	First recommended to the 112th Congress (2010 report). Last recommended to the 115th Congress (2016 report).	Enacted by Congress in Dec. 2018 (through S.3749).
Adopt all Notice-Posting Requirements that Exist Under the Federal Anti-Discrimination, Anti-Harassment, and Other Workplace Rights Laws Covered Under the CAA	First recommended to the 106th Congress (1998 report). Last recommended to the 114th Congress (2014 report).	Enacted by Congress in Dec. 2018 (through S.3749).
Extend Coverage to Library of Congress Employees	First recommended to the 106th Congress (1998 report).	Enacted by Congress in Dec. 2018 (through S.3749).
Redesignate the "Office of Compliance" as the "Office of Congressional Workplace Rights"	First recommended to the 114th Congress (2014 report).	Enacted by Congress in Dec. 2018 (through S.3749).
Apply the Wounded Warrior Federal Leave Act of 2015 to the Legislative Branch	First recommended to the 115th Congress (2016 report).	Enacted by Congress in Dec. 2018 (through H.R.6160).
Approve Proposed VEOA Regulations	First recommended to the 110th Congress (2006 report). Last recommended to the 111th Congress (2008 report).	Enacted by Congress in 2011.

The charts below show the status of the recommendations in this Section 102(b) Report for the 119th Congress.

Recommendation	History	Status of Recommendation
Require Legislative Branch Offices to Maintain Records of Workplace Injuries and Illnesses to Ensure Workplace Safety (per 29 U.S.C. § 657(c)) **See page 8.**	First recommended to the 111th Congress (2008 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Parental Bereavement Leave for Legislative Branch Employees (per 5 U.S.C. § 6329d) **See page 9.**	First recommended to the 118th Congress (2022 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Nursing Protections for Legislative Branch Employees (per 29 U.S.C. § 218d) **See page 9.**	First recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Religious Compensatory Time for all Legislative Branch Employees (per 5 U.S.C. § 5550a) **See page 10.**	First recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Whistleblower Protections to Legislative Branch Employees (per 5 U.S.C. § 2302(b)(8) and 5 U.S.C. § 1221) **See page 10.**	First recommended to the 106th Congress (1998 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Protections from Retaliation for Non-Employees under the CAA's ADA Public Access Provisions (per 42 U.S.C. § 12203) **See page 11.**	First recommended to the 118th Congress (2022 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**

Recommendation	History	Status of Recommendation
Provide Comparable Protections for Legislative Branch Employees Who Serve on Jury Duty (per 28 U.S.C. § 1875) **See page 11.**	First recommended to the 105th Congress (1996 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Protections for Legislative Branch Employees and Applicants who are or have been in Bankruptcy (per 11 U.S.C. § 525(a)) **See page 12.**	First recommended to the 105th Congress (1996 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Provide Comparable Protections for Legislative Branch Employees who are or have been Subject to Garnishment (per 15 U.S.C. § 1674(a)) **See page 12.**	First recommended to the 105th Congress (1996 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Require Legislative Branch Offices to Maintain Records Required under other Federal Workplace Rights Laws **See page 12.**	First recommended to the 106th Congress (1998 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Empower the OCWR General Counsel to Seek a Court Order to Temporarily Enjoin Unfair Labor Practices (per 5 U.S.C. § 7123(d)) **See page 12.**	First recommended to the 117th Congress (2020 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**
Allow Disclosure of Proceedings Involving Disability-Related Public Access and Labor-Management Issues **See page 13.**	First recommended to the 117th Congress (2020 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.**

Recommendation	History	Status of Recommendation
Approve Pending FLSA Regulations (per 2 U.S.C. § 1313(c)(1)) **See page 13.**	First recommended to the 118th Congress (2022 report). Last recommended to the 119th Congress (2024 report).	**Partially enacted by Congress.** Congress originally approved the regulations in 1996. The House approved OCWR's 2022 regulations in Dec. 2022. The 2022 regulations apply to the House only. The Senate and Other Employing Offices are still covered by the 1996 regulations.
Approve Pending FMLA Regulations (per 2 U.S.C. § 1312(e)(1)) **See page 14.**	First recommended to the 115th Congress (2016 report). Last recommended to the 119th Congress (2024 report).	**Partially enacted by Congress.** Congress originally approved the regulations in 1996. The House approved OCWR's 2021 updated regulations in Dec. 2022. The 2022 regulations apply to the House only. The Senate and Other Employing Offices are still covered by the 1996 regulations.
Approve Pending FSLMRS Regulations (per 2 U.S.C. § 1351(d)(1)) **See page 14.**	First recommended to the 118th Congress (2022 report). Last recommended to the 119th Congress (2024 report).	**Partially enacted by Congress.** Congress originally approved the regulations in 1996 (for certain employing offices). The House approved OCWR's 1996 regulations in May 2022. The 2022 regulations apply to the House only.
Approve Pending USERRA Regulations (per 2 U.S.C. § 1316(c)(1)) **See page 15.**	First recommended to the 110th Congress (2006 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.** The Board first submitted regulations in 2009. The Board submitted updated regulations for approval in 2023.
Approve Pending ADA Public Access Regulations (per 2 U.S.C. § 1331(e)(1)) **See page 15.**	First recommended to the 115th Congress (2016 report). Last recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.** The Board first submitted regulations in 1997. The Board most recently submitted updated regulations for approval in 2023.
Approve Pending FCA Regulations (per 2 U.S.C. § 1316b(d)(1)) **See page 15.**	First recommended to the 119th Congress (2024 report).	**Not yet enacted by Congress.** The Board submitted regulations for approval in 2024.

RECOMMENDATIONS FOR THE 119th CONGRESS

I. Create Parity with the Executive Branch and the Private Sector

A. Require Legislative Branch Offices to Maintain Records of Workplace Injuries and Illnesses to Ensure Workplace Safety.

The Board has long recommended amending the CAA to apply the critical recordkeeping requirements of the Occupational Safety and Health Act (OSH Act) to the congressional workplace. Under the CAA, Congress and its instrumentalities are exempt from critical OSH Act requirements that apply to the private sector, including section 8(c) of the OSH Act which requires employers to make, keep and preserve, and provide, upon request, records necessary and appropriate for the enforcement of the OSH Act (29 U.S.C. § 657(c)).

In enacting the OSH Act, Congress recognized that "[f]ull and accurate information is a fundamental precondition for meaningful administration of an occupational safety and health program."[1] Congress observed that a recordkeeping requirement should be included in that legislation because "the Federal government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries, illnesses, and deaths."[2]

Without access to such information, OCWR is unable to effectively enforce several critical safety and health standards within the legislative branch. For example, substantive occupational safety and health standards concerning asbestos in the workplace, providing employees with safety information regarding hazardous chemicals in their workspaces, and emergency response procedures in the event of the release of hazardous chemicals all rely on accurate recordkeeping to ensure that employees are not exposed to hazardous materials or conditions. But because the CAA does not contain section 8(c)'s recordkeeping requirements, employing offices may contend that they are not required to maintain or submit such records to OCWR for review.

Moreover, without the benefit of section 8(c) authority, OCWR is also hampered in its ability to access records needed to develop information regarding the causes and prevention of occupational injuries and illnesses. 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."[3]

Recordkeeping improves safety. When conducting inspections of employers in the private sector, inspectors routinely request to view records of workplace injuries and illnesses at the outset of the inspection. This helps inspectors improve the focus of their inspection. For instance, if the records contain multiple instances of a particular type of injury, this may indicate to the inspector to investigate specific equipment and work processes that may have given rise to those injuries. Relatedly, if the records show that multiple employees have experienced similar work-related illnesses, this may indicate to the inspector a possible exposure to a hazardous substance in the workplace. In short, these records help inspectors determine which hazards may exist in the workplace and whether different controls or personal protective equipment (PPE) might reduce injuries and illnesses.

Because Congress is exempt from these recordkeeping requirements, OCWR occupational safety and health (OSH) inspectors — who are statutorily charged with annually inspecting the congressional campus to ensure workplace safety — are dependent on voluntary reporting by employees and employing offices to determine the types of injuries or illnesses that congressional workplaces are experiencing.

From OCWR's experience, voluntary reporting is often insufficient to produce a comprehensive record of incidents.

The consequences of a lack of recordkeeping requirements were demonstrated during OCWR's investigation of occupational safety and health concerns arising out of the events of January 6, 2021. As an essential part of OCWR's OSH investigation of the events that day, the OCWR Office of the General Counsel requested that the USCP identify the types and causes of injuries sustained by United States Capitol Police (USCP) officers. However, because the USCP was not required to maintain a list of employees injured under the provisions of the OSH Act, as applied by the CAA, the information provided by the USCP was so lacking in detail, particularly as to the specific causes of the described injuries, that it was impossible for the General Counsel to determine precisely how each of these employees were injured.[4] As a result, OCWR's ability to prescribe appropriate remedies to keep the congressional workplace safe was severely hampered.

Accordingly, the Board again strongly recommends — as it has for years — that legislative branch employing offices be required to maintain records of workplace injuries and illnesses under OSH Act section 8(c). As demonstrated from experience, workplace injury and illness recordkeeping is essential to ensuring safety and health in the congressional workplace.

B. Provide Comparable Parental Bereavement Leave for Legislative Branch Employees.

The National Defense Authorization Act for Fiscal Year 2022 amended the provisions of the Family and Medical Leave Act (FMLA) to establish a new paid leave category for most federal civilian employees, which was codified in title 5 FMLA (5 U.S.C. § 6329d). Under section 6329d, executive branch employees are entitled to 2 workweeks of paid parental bereavement leave in connection with the death of an employee's child.

However, because legislative branch employees are not governed by the provisions of title 5 FMLA, but are instead covered by title 29 FMLA, as applied by the CAA, they are not covered by this important workplace benefit.

The Board recommends that the CAA be amended to provide paid parental bereavement leave for legislative branch employees. Such an amendment would help balance work and family responsibilities by allowing employees to take reasonable paid leave in the catastrophic circumstance of the death of a child and would ensure parity between the legislative and executive branches.

C. Provide Comparable Nursing Protections for Legislative Branch Employees.

In December 2022, Congress passed into law the Consolidated Appropriations Act, 2023 (H.R. 2617), which included the language of the Providing Urgent Maternal Protections for Nursing Mothers Act (or "PUMP for Nursing Mothers Act"). The PUMP Act amended the Fair Labor Standards Act (FLSA) to expand protections for nursing employees. These employees are now entitled to reasonable break time and a private space to pump at work for up to 1 year after their child's birth.

Under the CAA, only certain sections of the FLSA apply to the legislative branch — specifically, sections 206, 207, and 212. Prior to the adoption of the PUMP Act, protections for nursing employees were included in section 207(r) of the FLSA. The PUMP Act struck section 207(r) and created a new section – section 218d – to contain the expanded protections. In striking section 207(r) from the FLSA and failing

to amend the CAA to apply section 218d to the legislative branch, Congress removed the existing protections for legislative branch employees and failed to provide them the new protections.

Since 2022, Congress has introduced several technical amendment bills to apply the PUMP Act protections to the legislative branch.[5] The Board believes that the protections of the PUMP Act should apply to legislative branch employees and urges Congress to amend the CAA so that section 218d of the FLSA applies to the legislative branch. Such an amendment would ensure that the rights and protections of nursing employees in the legislative branch are equivalent to those of nursing employees in the executive branch and the private sector.

D. Provide Comparable Religious Compensatory Time for all Legislative Branch Employees.

In 1978, to further the free exercise of religious beliefs by federal employees, Congress amended title 5 of the U.S. Code to establish a system of religious compensatory time off (5 U.S.C. § 5550a). Section 5550a requires executive agencies, military departments, judicial branch agencies, the Library of Congress, the Botanic Garden, the Office of the Architect of the Capitol, and the government of the District of Columbia to allow employees whose personal religious beliefs require them to abstain from work at certain times of the workday or workweek to work alternate work hours so that the employees can meet their religious obligations.

Although some legislative branch employees are covered by section 5550a, a substantial number — including those who work in offices in the House and Senate, the Congressional Budget Office (CBO), the Government Publishing Office (GPO), and OCWR — are not. As a result, a substantial number of legislative branch employees are not currently entitled to section 5550a's benefits and protections, despite the intent of Congress that section 5550a benefit all federal employees.[6]

The Board recommends that Congress amend the CAA to include section 5550a, thereby providing parity to all legislative branch employees regarding their ability to work alternate work hours so that they can meet their religious obligations. Such an amendment would enable legislative branch employees, especially those of minority faiths, to exercise their religious beliefs without being forced to lose a portion of their pay or use annual or other leave. And it would help ensure that all legislative branch employees "are treated equally, regardless of their religion, and to make sure that no [legislative branch] employee is discriminatorily or unnecessarily penalized because of their devotion to their faith."[7]

E. Provide Comparable Whistleblower Protections to Legislative Branch Employees.

Federal law provides broad employment protections to executive branch employees who disclose information that the whistleblower reasonably believes evidences (1) a violation of any law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; or (5) a substantial and specific danger to public health and safety.[8] However, there are no analogous protections for legislative branch employees, even for those who would raise an issue with a committee of jurisdiction or other appropriate legislative branch official. This lack of statutory protection leaves legislative branch employees, who would otherwise provide critical information, at risk for retaliation. The absence of whistleblower protections also risks depriving Congress of information it needs to oversee the entirety of the legislative branch in the public interest.

Statutory protections for legislative branch employees who disclose evidence of wrongdoing must be carefully drafted in light of the special constitutional role of Congress as the nation's forum for robust policy debate. To be effective, such protections must respect important legislative branch prerogatives,

accommodate the need for confidentiality during congressional deliberations, and, more generally, protect the necessary confidentiality of sensitive information handled in many contexts across the legislative branch. Effective whistleblower protections must account for the wide range of workplace environments and job functions, from librarians to landscapers to law enforcement officers to committee staff, and accommodate the concerns unique to each position.

To achieve these important ends, the Board recommends that Congress amend the CAA to protect and provide parity to legislative branch employees who make whistleblower disclosures to officials or entities specifically designated to receive such disclosures, such as an instrumentality's Inspector General or an appropriate committee of jurisdiction. This approach would parallel laws in the executive branch designed to protect whistleblowers who work in special environments, who must also follow specific procedures to make protected disclosures to designated individuals or entities through designated channels.[9]

To facilitate compliance with the recommended whistleblower protections, the Board further recommends that OCWR be granted investigatory and prosecutorial authority over whistleblower reprisal complaints, by incorporating into the CAA authority analogous to that granted to the Office of Special Counsel for executive branch claims.

F. Provide Comparable Protections from Retaliation for Non-Employees under the CAA's ADA Public Access Provisions.

The Americans with Disabilities Act of 1990 (ADA) is unique among the laws applied by the CAA as it affords protections to members of the public as well as to employees. The rights and protections for the public are found in section 210 of the CAA (2 U.S.C. § 1331), which incorporates titles II and III of the ADA. Section 210 requires that legislative branch employing offices make their public services, programs, and activities – as well as the facilities where these services, programs, and activities are provided – accessible to individuals with disabilities.

Section 208 of the CAA, 2 U.S.C. § 1317, prohibits employing offices from intimidating, retaliating against, or discriminating against employees who exercise their rights under the CAA. However, section 208 does not authorize ADA retaliation claims by members of the public who are not covered employees.

Section 503 of the ADA (42 U.S.C. § 12203) prohibits retaliation, interference, coercion, or intimidation against "any individual" relating to exercising their rights under the ADA's public access provisions. Although section 503 covers both the public and private sectors, that section is not incorporated by the CAA, and thus does not apply to the legislative branch. Therefore, non-employee members of the public are unable to bring ADA retaliation claims under the CAA.

This parity gap is contrary to the purpose of the CAA and deters members of the public with disabilities from asserting their rights under the ADA in the legislative branch. Accordingly, the Board recommends that the CAA be amended to incorporate the ADA's section 503 anti-retaliation provisions.

G. Provide Comparable Protections for Legislative Branch Employees Who Serve on Jury Duty.

Jury duty is a fundamental civic responsibility. Section 1875 of title 28 of the U.S. Code provides that no employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States. This section currently does not cover legislative branch employees. For the reasons set forth in several previous Section 102(b) Reports, the Board continues to

recommend that the rights and protections against discrimination on this basis should be applied to covered employees and employing offices within the legislative branch.

H. Provide Comparable Protections for Legislative Branch Employees and Applicants who are or have been in Bankruptcy.

Section 525(a) of title 11 of the U.S. Code provides that "a governmental unit" may not deny employment to, terminate the employment of, or discriminate with respect to employment against, a person because that person is or has been a debtor under the bankruptcy statutes. This provision currently does not apply to the legislative branch. Reiterating the recommendations made in several previous Section 102(b) Reports, the Board continues to recommend that the rights and protections against discrimination on this basis should be applied to covered employees and employing offices within the legislative branch.

I. Provide Comparable Protections for Legislative Branch Employees who are or have been Subject to Garnishment.

Section 1674(a) of title 15 of the U.S. Code prohibits terminating an employee because their wages have been garnished. This section is currently limited to private employers. For the reasons set forth in several previous Section 102(b) Reports, the Board continues to recommend that the rights and protections against discrimination on this basis should be applied to covered employees and employing offices within the legislative branch.

J. Require Legislative Branch Offices to Maintain Records Required under other Federal Workplace Rights Laws.

The Board has also recommended in previous Section 102(b) Reports, and continues to recommend, that Congress adopt all recordkeeping requirements under federal workplace rights laws, including title VII. Although some employing offices in the legislative branch keep personnel records, there are no legal requirements under the CAA to do so. Records can greatly assist in the speedy resolution of claims. Moreover, both employers and employees benefit from the retention of documented personnel actions. Employers can use records as critical evidence to demonstrate that no violation has occurred, while employees can use records as critical evidence to assert their rights.

II. Improve Implementation of Existing Rights to Ensure Parity

A. Empower the OCWR General Counsel to Seek a Court Order to Temporarily Enjoin Unfair Labor Practices.

Section 220 of the CAA (2 U.S.C. § 1351) applies certain provisions of the Federal Service Labor-Management Relations Statute (FSLMRS) to the legislative branch. In general, the OCWR General Counsel exercises the same authority delegated to the General Counsel of the Federal Labor Relations Authority (FLRA), under 5 U.S.C. §§ 7104 and 7118, in the executive branch, including the authority to investigate allegations of workplace unfair labor practices (ULPs) and to file and prosecute complaints regarding ULPs.

The CAA, however, does not incorporate the provisions of 5 U.S.C. § 7123(d), which allows parties to ULP proceedings in the executive branch to request the FLRA General Counsel to seek appropriate temporary relief, including the issuance of a temporary restraining order. This important statutory provision in the FSLMRS allows the FLRA General Counsel to seek, in appropriate cases when a ULP

complaint is issued, temporary relief in any United States District Court when it would be just and proper to do so and the record establishes probable cause that a ULP is being committed.

Granting the OCWR General Counsel the authority to seek appropriate temporary injunctive relief would protect parties from irreparable harm during ULP litigation.[10]

B. Allow Disclosure of Proceedings Involving Disability-Related Public Access and Labor-Management Issues.

The CAA generally requires confidentiality in proceedings before OCWR to protect the privacy of individuals. However, Congress excluded proceedings under the OSH Act from these confidentiality provisions because it determined that the public interest in transparency concerning safety and health on Capitol Hill outweighed any value in keeping them confidential.

As with OSH Act proceedings, proceedings involving ADA public access and labor-management issues primarily involve public and institutional concerns, as well as concerns on the part of key stakeholders to labor-management relationships, with maintaining facilities, policies, and programs that are safe, healthful, accessible, and free from ULPs. The current lack of transparency in these matters is unnecessary to protect individual privacy and undermines the confidence of the public and of central stakeholders that those statutory mandates are being fully enforced.

Accordingly, section 416 of the CAA (2 U.S.C. § 1416) should be amended to eliminate these unnecessary confidentiality restrictions and provide transparency to the public and to key stakeholders.

C. Approve Pending OCWR Regulations.

Congress has not approved several substantive OCWR Board regulations necessary to fully implement workplace protections made applicable to legislative branch employees by the CAA.

As discussed below, the regulations that have been approved for the House but are awaiting congressional approval for the Senate and other employing offices in the legislative branch are the Board's (1) updated regulations concerning overtime pay; (2) updated regulations concerning paid parental leave and leave benefits for servicemembers and their families; and (3) regulations concerning collective bargaining.

The regulations awaiting congressional approval for all employing offices in the legislative branch are the Board's (1) regulations concerning employment and reemployment protections for servicemembers and their families; (2) amended regulations concerning the access rights of members of the public with disabilities; and (3) proposed regulations concerning protections for job applicants in the legislative branch.

The Board urges Congress to approve these regulations.

- **Fair Labor Standards Act (FLSA) Regulations.**

The CAA's FLSA provisions provide for minimum wage and overtime compensation for certain legislative branch employees.[11] If nonexempt, these employees are entitled to overtime compensation when working over 40 hours in a workweek.

The FLSA's overtime exemptions are not defined in the FLSA itself but by regulations issued by the Secretary of Labor.[12] Through the CAA, Congress requires that OCWR's FLSA regulations substantially mirror regulations issued by the Secretary of Labor. Congress last approved OCWR regulations implementing the FLSA in 1996. Since that time, as the Secretary of Labor has updated its overtime regulations, OCWR has updated its regulations to reflect the Secretary's changes. The last such update was in September 2022, when OCWR revised its FLSA regulations to reflect the Secretary's substantial increase in the minimum salary test used to determine who may be exempt from overtime protections.[13]

In December 2022, the House of Representatives, by resolution, approved the Board's amended FLSA regulations, thereby applying them to House employees and offices.[14] The Senate must take similar action to apply those regulations to Senate offices and employees. Full approval by both houses is necessary to make these regulations applicable to legislative branch employees of instrumentalities, including the Library of Congress (LOC) and the USCP.

Until the 2022 OCWR regulations are fully approved by Congress, many covered employees in the legislative branch may be denied the overtime pay to which they would be entitled for comparable work performed in the executive branch or private sector. Approval of the regulations will ensure that Congress and the legislative branch at large are able to attract and retain a talented, motivated, and high-performing workforce.

- **Family and Medical Leave Act (FMLA) Regulations.**

The CAA's FMLA provisions provide rights and protections for legislative branch employees needing leave for specified family and medical reasons.[15] In December 2021, the Board adopted FMLA regulations to implement recent amendments to the FMLA and transmitted the regulations to Congress.[16] These OCWR FMLA regulations would implement FMLA amendments that (1) provide up to 12 weeks of paid parental leave for the birth, adoption, or placement in foster care of a child[17] and (2) enhance leave benefits for servicemembers and their families. These regulations would further revise the definition of "spouse" to include same-sex spouses to remain consistent with Supreme Court precedent and the Department of Labor's definition in its February 25, 2015 Final Rule.[18]

In December 2022, the House of Representatives, by resolution, approved the Board's amended FMLA regulations, thereby applying them to House employees and offices.[19] As with the Board's modified FLSA regulations, the Senate must take similar action in order to apply the modified FMLA regulations to Senate offices and employees. Full approval by both houses is needed to make these regulations applicable to legislative branch employees of instrumentalities.

- **Federal Service Labor-Management Relations Statute (FSLMRS) Regulations.**

Through the CAA, Congress made applicable to the legislative branch specific sections of the FSLMRS, which governs unionization and collective bargaining in the executive branch. In 1996, the Board adopted final regulations implementing those sections of the FSLMRS in the legislative branch. That same year, Congress approved these regulations for certain employees and employing offices covered by the CAA, such as the Office of the Architect of the Capitol (AOC) and the USCP..

However, at that time, Congress did not approve complementary regulations adopted by the OCWR Board necessary to implement those sections of the FSLMRS for most offices listed in section 220(e)(2) of the CAA (2 U.S.C. § 1351), i.e., most offices within the House of Representatives or the Senate, the Congressional Budget Office (CBO), and OCWR.

In May 2022, the House of Representatives approved the complementary regulations through a resolution, thereby extending the labor-management rights and obligations of the FSLMRS to House employees and offices.[20] Full approval by both houses would apply the regulations to employees and offices in both the House and Senate and to the additional legislative branch offices listed in section 220(e)(2), and ensure that the protections afforded by the FSLMRS apply to the entire legislative branch, similar to how they apply in the executive branch. Accordingly, the Board urges Congress to adopt resolutions approving these regulations.

- **Uniformed Services Employment and Reemployment Rights Act (USERRA) Regulations.**

The CAA's USERRA provisions protect servicemembers and veterans from discrimination on the basis of their service and allow them to regain their civilian jobs upon return from service. The Board's USERRA regulations, first transmitted to Congress over 15 years ago, have not yet been approved. In April 2023, the Board made minor amendments to its USERRA regulations and transmitted the amended regulations to Congress for approval.

Congressional approval of the USERRA regulations would signal a continued commitment to the welfare of servicemembers in the legislative branch — where they remain a significantly underrepresented percentage of the workforce — by granting them the same workplace protections and entitlements as servicemembers in the executive branch and the private sector.

- **Americans with Disabilities Act (ADA) Public Access Regulations.**

The CAA's ADA public access provisions protect the right of members of the public with disabilities, including constituents and employees, to accessible facilities, programs, services, activities, and accommodations in the legislative branch. In March 2023, the Board made additional modifications to the pending ADA regulations that it adopted in 2016 and transmitted the amended regulations to Congress for approval. In accordance with the CAA, the 2023 amended ADA regulations incorporate by reference the most recent comparable regulations issued by the Department of Justice and the Department of Transportation. If approved by Congress, these regulations would provide much-needed guidance both to those charged with the legal duty to provide accessible services and accommodations, as well as to the members of the public who have the right to such accessibility.

- **Fair Chance to Compete for Jobs Act (FCA) Regulations.**

The CAA's FCA provisions protect job applicants in the legislative branch by prohibiting employing offices from inquiring into an applicant's criminal history record information prior to a conditional offer of employment. The FCA, as applied by the CAA, provides that employees who inquire into an applicant's criminal history record information in a manner that violates the FCA may be subject to discipline including suspensions from employment and fines.

In June 2024, the Board issued a notice of proposed rulemaking for its regulations implementing the FCA in the legislative branch. In early December 2024, the Board submitted final regulations to Congress for approval. If approved, these regulations would provide necessary protections for job applicants in the legislative branch alleging a violation of the FCA.

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[1] Senate Report No. 91-1282 (October 6, 1970) respecting the recordkeeping and records provisions of now Section 8(c) of the OSH Act.

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[2] *Id*. *See also* Report No. 91-1291 of the House Committee on Education and Labor, 91st Congress, *2d Session*, p.30, to accompany H.R. 16785 (OSH Act) ("Adequate information is the precondition for responsible administration of practically all sections of this bill.").

[3] *See* "Detailed Frequently Asked Questions for OSHA's Injury and Illness Recordkeeping Rule for Federal Agencies," https://www.osha.gov/enforcement/fap/recordkeeping-faqs.

[4] Office of the General Counsel, Office of Congressional Workplace Rights, *Special Report: Occupational Safety and Health Concerns Arising out of the Events of January 6, 2021*, https://www.ocwr.gov/publications/reports/other-reports/special-report-occupational-safety-and-health-concerns-arising-out-of-the-events-of-january-6-2021-july-2-2021/ (citing U.S. Senate, Committee on Homeland Security and Governmental Affairs and Committee on Rules and Administration, *Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6*, Staff Report at 1 (June 8, 2021), https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf. According to the General Counsel's *Special Report*, of the approximately 1,200 officers defending the Capitol on January 6, fewer than 300 were equipped with much in the way of PPE.

[5] *See* PUMP Technical Correction Act, S. 2219, 118th Cong. (2023); PUMP Technical Correction Act, H.R. 3585, 118th Cong. (2023); Legislative Branch Appropriations Act, 2025, S. 4768, 118th Cong. (2024) (containing the language of the PUMP technical correction acts).

[6] *See* Comptroller General Decision B-193636 (January 9, 1979) (finding although legislative history indicated Congress intended benefit to apply to all federal employees, section 5550a covers only employees of the agencies specified in section 5550a).

[7] 124 Cong. Rec. 15435 (1978).

[8] *See, e.g.*, the Whistleblower Protection Act of 1989, 5 U.S.C. § 2302(b)(8), as amended by the Whistleblower Protection Enhancement Act of 2012, Pub. L. 112-199.

[9] *See, e.g.*, the Intelligence Community Whistleblower Protection Act of 1998, 5 U.S.C. App. § 8H, 50 U.S.C. § 3033, 50 U.S.C. § 3517; and the FBI Whistleblower Protection Enhancement Act of 2016, 5 U.S.C. § 2303(a).

[10] *See, e.g., United States Capitol Police v. Office of Compliance*, 916 F.3d 1023 (Fed. Cir. 2019) (affirming the Board's determination that the USCP had committed a ULP when it refused to participate in an arbitration concerning an officer's termination, where two Federal Circuit Court of Appeal decisions had already flatly rejected the statutory interpretation arguments made by USCP that termination decisions were not subject to arbitration).

[11] *See* at 2 U.S.C. § 1313.

[12] *See* 29 U.S.C. § 213; 29 C.F.R. part 541.

[13] The 1996 FLSA regulations exempt from overtime any employee whose salary (exclusive of board and lodging) is "not less than $155 per week" or "not less than $250 per week" if their primary duty involves management of the employing office and includes the customary and regular direction of two or more

employees. The 2022 OCWR FLSA regulations pending congressional approval increase the salary test to not less than $684 per week (exclusive of board, lodging, or other facilities). *See generally*, 168 Cong. Rec. H8203, S5148 (Sep. 28, 2022).

[14] *See* H. Res. 1516 (117th Cong. 2022).

[15] *See* 2 U.S.C. § 1312.

[16] *See* 167 Cong. Rec. H7224, S8966 (Dec. 7, 2021).

[17] *See Federal Employee Paid Leave Act (subtitle A of title LXXVI of division F of the National Defense Authorization Act for Fiscal Year 2020*, Public Law 116-92, Dec. 20, 2019).

[18] *See* 162 Cong. Rec. H4128, S4475 (June 22, 2016).

[19] *See* H. Res. 1516 (117th Cong. 2022).

[20] *See* H. Res. 1096 (117th Cong. 2022).