

Statement of
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Committee on Appropriations, United States House of Representatives
Fiscal Year 2021 Budget Request
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Chairman Ryan, Ranking Member Herrera Beutler, and Members of the Legislative Branch Subcommittee, thank you for allowing me the opportunity to submit for the record this statement regarding the budget request for Fiscal Year (FY) 2021 for the Office of Congressional Workplace Rights (OCWR). I want to express our appreciation to this Subcommittee for its continued support of the OCWR and its mission to advance workplace rights, safety, and health for employees in the legislative branch, and accessibility for members of the public with disabilities.

The OCWR's Statutory Mandate

The Congressional Accountability Act of 1995 (CAA) embodies a promise by Congress to the American public that it will hold itself accountable to the same federal workplace and accessibility laws that it applies to private sector employers and executive branch agencies. Congress established the OCWR to administer the CAA.

We are a very small office with a very broad mandate. With 28 FTE positions inclusive of a part-time Board of Directors, the OCWR serves the same functions as multiple agencies in the executive branch, including the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Department of Labor, and the Federal Labor Relations Authority. We are responsible for enforcing federal workplace and accessibility laws that cover more than 30,000 employees in the legislative branch, including the House of Representatives, the Senate, the United States Capitol Police, the Library of Congress, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Congressional Accessibility Services, and our own office, among others. We administer the administrative dispute resolution (ADR) process established by the CAA to resolve workplace disputes; we carry out a program of training and education on the laws made applicable to the legislative branch by virtue of the CAA; and we advise Congress on needed changes and amendments to the CAA.

Furthermore, our General Counsel is responsible for inspecting—at least once each Congress—over 18 million square feet of facilities and grounds in the legislative branch for compliance with the Occupational Safety and Health (OSH) Act, as well as the public areas of all facilities in the legislative branch for compliance with titles II and III of the Americans with Disabilities Act (ADA). The OGC is further responsible for investigating allegations of OSH, ADA, and unfair labor practice (ULP) violations filed under the Act, and for filing and prosecuting complaints of OSH, ADA and ULP violations.

The CAA Reform Act

On December 21, 2018, the Congressional Accountability Act of 1995 Reform Act, S. 3749, was signed into law. Not since the passage of the CAA in 1995 has there been a more significant moment in the evolution of legislative branch workplace rights. The new law focuses on protecting victims, strengthening transparency, holding violators accountable for their personal conduct, and refining the adjudication process.

The Reform Act also includes many important changes that dramatically expand the OCWR's duties and responsibilities, as well as the number of employees covered by the CAA. These new duties and responsibilities under the Reform Act include:

- substantially modifying the ADR process under the CAA, including creating additional procedures for preliminary hearing officer review of claims;
- developing and implementing procedures for Members of Congress to reimburse the Treasury for awards and settlement payments resulting from specified harassment or retaliation claims;
- developing and implementing procedures for employing offices to reimburse the Treasury for payments resulting from specified claims of discrimination;
- appointing one or more confidential advisors to provide information to legislative branch employees about their rights under the CAA;
- renaming our office as the Office of Congressional Workplace Rights to more clearly inform the legislative branch community of our mission;
- extending CAA protections to unpaid staff, including interns, detailees, and fellows, as well as employees of the Stennis Center for Public Service, the China Review Commission, the Congressional-Executive China Commission, and the Helsinki Commission;
- significantly expanding OCWR reporting obligations;
- developing and administering a biennial climate survey of all legislative branch employees to collect information on the workplace environment and attitudes regarding sexual harassment;
- creating a program to permanently retain records of investigations, mediations, hearings, and other proceedings;
- establishing an electronic system to receive and keep track of claims; and
- developing and implementing means by which legislative branch employees who work outside of the Washington, D.C., area—such as in Members' district offices—have equal access to OCWR services and resources.

Some of the changes in the CAA Reform Act became effective immediately, such as the name change of our Office, but most became effective 180 days from enactment, i.e., on June 19,

2019. The biennial workplace climate survey of the legislative branch—which was designed in FY 2019—is currently being administered for the first time in FY 2020.

The OCWR's FY 2021 Budget Justification

In our FY 2021 budget justification, we are requesting \$7,500,000 for FY 2021 operations, which is an increase of \$1,167,330 or 18% from the enacted amount for FY 2020, as well as three additional FTEs. The FY 2021 budget request focuses on supporting the OCWR's statutory mandates and improving the delivery of services to the covered community under the CAA. The requested amount is necessary for the Office's mandated operations, including hearings, mediations, safety and health inspections, ULP investigations, and ADA inspections. This amount will also allow us to carry out our statutory mission to educate and train Members of Congress, their staff, and other legislative branch offices and employees on their rights and responsibilities under the CAA through the development of materials specifically designed for the legislative branch, and that are easily understood, practical rather than legalistic, and proven effective.

The OCWR did not seek an increase to its funding for FY 2020 from FY 2019 levels. Nonetheless, we have made significant progress on many of the initiatives discussed above, including developing and implementing a secure e-filing system, and revising virtually all publications and education and training materials that the OCWR produces to incorporate the changes set forth in the Reform Act. Although many of the initial changes mandated by the Reform Act have already been implemented using FY 2019 or FY 2020 funds, higher levels of funding will be required to expand and improve on these efforts moving forward, especially with respect to our Information Systems program. For example, the OCWR's secure e-filing system, which is now operational, will require continued cybersecurity upgrades and design modifications to assure information security and confidentiality. Online training and educational modules also must be continually updated to reflect changes in the law and to fully discharge our statutory mandate to educate and assist legislative branch offices and employees. New ADR procedures, such as preliminary review by hearing officers of all claims, will affect the costs associated with adjudication of those claims. Moreover, the legislative branch climate survey, once developed, will require ongoing funding to administer it every 2 years, as mandated by the Reform Act.

More than 60% of the requested amount reflects personnel costs, including increased compensation and benefits associated with additional staff hired during this fiscal year. The remainder of the requested amount would pay for contract services, including cross-servicing providers such as the Library of Congress and the National Finance Center, and other services, equipment, and supplies needed to operate the OCWR.

Of the FY 2021 requested amount, the OCWR is requesting that a total of \$1,000,000 remain available until September 30, 2022 for the services of essential contractors, including hearing officers, mediators, and safety and health inspectors, and for the ongoing costs associated with administering the biennial climate survey of legislative branch employees.

Alternative Dispute Resolution Program

The OCWR requests a total of \$450,000 for non-personnel services for FY 2021 for administration of its ADR program, which represents our best estimate for the cost of administration of that program in the coming fiscal year. The CAA establishes an ADR process that provides employing offices and covered employees a neutral, efficient, and cost-effective means of resolving workplace disputes. We strive to ensure that stakeholders have full access to these ADR procedures. The OCWR enjoys a 100% affirmance rate in employment cases by the U.S. Court of Appeals for the Federal Circuit. The OCWR continues to do more with less, maintaining a flat rate of pay for contract mediators, a standardized hourly fee for hearing officers, and rate limitations for other outside service providers.

In any given year, it is difficult to predict the number of cases that will be filed with the OCWR's ADR program, the complexity or duration of administrative proceedings, or the overall costs associated with case processing and adjudication. Recent developments add to the difficulty of making such predictions for FY 2021. In FY 2018, for example, Library of Congress employees were allowed to file claims with the OCWR for the first time. Other changes in the Reform Act—such as extending CAA protections to unpaid staff, including interns, detailees, and fellows—also increase the pool of potential claimants under the ADR process. Moreover, as discussed above, on June 19, 2019, the ADR process changed significantly. The new process, as required by the Reform Act, is outlined in our FY 2021 budget justification. It requires, among other things, that an additional hearing officer be appointed to conduct a preliminary review in each case filed on or after June 20, 2019 that raises claims of unlawful employment discrimination, harassment, or reprisal, among other claims. Our budget justification takes these considerations into account in arriving at our best estimate of the costs for administering this program in FY 2021.

Education and Training Programs

The OCWR is requesting a total of \$370,000 for non-personnel services for FY 2021 for its Education and Training Programs. The OCWR has a statutory mission to educate and train Members of Congress and legislative branch employees on their rights and responsibilities under the CAA.

In FY 2019, following the passage of the Reform Act, the OCWR created and disseminated educational materials on its revised ADR process, including developing an orientation video explaining the substantive provisions of the CAA and the revised ADR process to resolve claims of violations of the Act. To ensure that the legislative branch community was aware of the new provisions of the Reform Act, the OCWR also posted updated FAQs on its website and disseminated to covered employees e-newsletters and printed materials explaining the changes. As required by the CAA Reform Act, in FY 2019 the OCWR also created and distributed for posting more than 4,000 posters informing legislative branch employees of their rights under the CAA. The OCWR also enhanced its curriculum to include related courses on preventing unconscious bias in workplace decision-making, and bystander intervention techniques for those who witness harassment or other forms of discrimination. The OCWR also delivered training in person, online, and via video conferencing to legislative branch employees throughout the country, including unpaid staff.

In FY 2020, the OCWR continues to provide information and training opportunities to the covered community, and it is completing revisions of all of its educational materials including its website and print content. The OCWR will require substantial funds in FY 2021 to continue these efforts, which are vital to our ongoing mission to provide stakeholders in the legislative branch with current, dynamic, and innovative educational and outreach materials.

Safety and Health and Public Access

The OCWR is requesting a total of \$150,000 for non-personnel services for FY 2021 for its Occupational Safety and Health and ADA public access inspection programs. Before the OCWR opened its doors in 1996, Capitol Hill buildings had not been subject to even the most basic building codes or regulations. The first inspections led to the discovery of serious fire and other safety hazards in House and Senate buildings and around the Capitol. As a result of OCWR inspections, Congress has abated thousands of serious hazards, reduced numerous barriers to access for individuals with disabilities, and dramatically improved the overall safety and accessibility of the Capitol Hill campus. The OCWR has been instrumental in the development and implementation of cost-effective solutions to safety and access problems by working directly with the Architect of the Capitol and other offices on the Hill. It is during these inspections that our inspectors, who are trained OSH and ADA specialists, can work directly with employing offices, providing technical support at the point where assistance is needed. Our budget request will allow us to continue to provide the level of expertise and assistance that the community deserves.

Information Systems

The OCWR is requesting a total of \$1,272,000 for non-personnel services for FY 2021 for the Information Systems Program. As mandated by the Reform Act, the OCWR successfully launched its secure online claims reporting and tracking e-filing system in June 2019 on a compressed 6-month timeline. The OCWR also implemented other key IT modernization projects in FY 2019, including setting up new network printers that are highly secure by design. In late FY 2019, the OCWR developed and began implementation of its plan for the upgrade of its Facility Management Assistant (FMA) program for Occupational Safety and Health (OSH) inspections. FMA currently runs on an obsolete and unsupported Microsoft platform. The OCWR's OSH team is working to identify the requirements of a Risk Management Suite to meet its needs, plan and design the system, perform independent security categorization of the information contained in the current FMA system, and import current FMA records into the new system.

The Reform Act also mandates enhanced cybersecurity along with a GAO audit of the OCWR's cybersecurity practices. We have already begun to make progress on these priority items in FY 2020: We have initiated the process of revising our IT systems project planning to ensure the development and implementation of policies and procedures incorporating key cybersecurity activities; we have created and will be filling the position of IT Security Project Manager to acquire the cybersecurity project management expertise; and we have also expanded the OCWR IT Director's role to formally include the functions of an IT Risk Executive. In FY 2020, the OCWR will work with the IT Security Project Manager and the IT Risk Executive to develop and implement oversight procedures for each of its externally-operated systems, and to develop and implement policies and procedures for managing cybersecurity risk.

To date, the OCWR has spent over \$500,000 toward updating its cybersecurity, and we will be obligating additional funds for continued updates, maintenance and hosting of its secure web-based e-filing system. However, the objectives of these efforts to protect and safeguard critical information assets can only be assured if the Program is continually monitored, reassessed and upgraded to meet or exceed industry standards. Accordingly, in FY 2020 and 2021, the OCWR will be designing and developing the next generation of its e-filing system, which will be even more secure, robust, and fault-tolerant, with state-of-the-art security measures built in at all layers of its infrastructure. This system will be designed, developed, and built from the ground up, using highly secure encryption at all components and across all layers of its infrastructure – including storage, database, application server, network, and the webserver. The integrity of the Program thus depends upon ongoing funding in FY 2021 and beyond.

Additional Services

The balance of the requested amount covers increases in contract services, including those furnished by cross-service providers, such as the Library of Congress and the National Finance Center, and other services, equipment and supplies needed to operate the OCWR.

Thank you very much for providing us with this opportunity to brief you on our FY 2021 budget request. As the Executive Director of the OCWR, I am proud of the work that our highly professional and talented staff members perform every day. We are available to answer any questions or to address any concerns that the Chair of the Subcommittee or its Members may have.

Susan Tsui Grundmann
Executive Director