Statement of E. Wade Ballou, Jr., Legislative Counsel  
Office of the Legislative Counsel  
U.S. House of Representatives  

Before the House Subcommittee on Legislative Branch  
Appropriations  
Regarding Fiscal Year 2020 Appropriations  
March 12, 2019

Mr. Chairman and distinguished Members of the Subcommittee, thank you for the opportunity to present to you the fiscal year 2020 appropriation request for the Office of the Legislative Counsel.

I am pleased and honored to appear before you today in my capacity as Legislative Counsel of the House of Representatives. I appreciate the past and continuing support of the Members of the Subcommittee for the Office. The Office, established on February 24, 1919, as the Legislative Drafting Service (section 1303 of the Revenue Act of 1918 (Ch. 18, 1141)), continues to fulfill its mission, now 100 years old.

Mission

The Office advises and assists committees and Members express their legislative policies by preparing bills, resolutions, and amendments that clearly, faithfully, and coherently express these policies (2 U.S.C. 281a). The Office is neutral as to matters of legislative policy. From its beginning the Office has provided legislative drafting assistance to Members representing all political viewpoints while maintaining confidentiality with each. With the support of this Subcommittee, we would like to continue this tradition and improve our ability to provide this important service to the committees and Members of the House.

Office Budget Request

For fiscal year 2020, I am requesting $11,937,000 for salaries and expenses of the Office of the Legislative Counsel.
Services

Drafting

The Office strives to prepare drafts that accurately reflect the legislative objectives of the Member or committee concerned, that are legally sufficient to carry out that policy, and that are as clear and well organized as possible under the circumstances. The Office seeks, to the extent possible within existing time constraints and scope of work, to improve the clarity and technical accuracy of each draft, avoid drafting errors, reduce unnecessary confusion, avoid future litigation, and avoid foreseeable, but unintended, consequences. A necessary precondition for this work is access to an up-to-date codification of Federal law. For this purpose, the Office has long relied on the positive law titles of the United States Code prepared and maintained by the Office of the Law Revision Counsel and on our internally maintained set of nonpositive law Statutory Compilations.

During the 115th Congress, the Office prepared the following number of documents:

<table>
<thead>
<tr>
<th></th>
<th>Bills</th>
<th>Amendments</th>
<th>Resolutions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual requests</td>
<td>25,484</td>
<td>15,776</td>
<td>2,282</td>
<td>43,542</td>
</tr>
<tr>
<td>All versions of requests</td>
<td>92,260</td>
<td>35,065</td>
<td>7,319</td>
<td>134,644</td>
</tr>
</tbody>
</table>

When compared to the 114th Congress, these numbers represent an approximate 10% increase over the numbers of bills, amendments, and resolutions produced during the 114th Congress. For calendar year 2018, the average number of drafts per Member served by the Office was 21. However, the Office generated 146, 141, and 120 drafts for 3 Members, respectively. When all versions of drafts are taken into account, the total versions produced for the top 3 Members is 477, 366, and 356, respectively. The front office intake process received 24,092 discrete client emails during the 115th Congress. These requests do not include emails sent directly to attorneys.

The last bill in the 115th Congress is numbered H.R. 7401, which suggests that approximately 30 percent of the bill drafts the Office prepared were introduced.
In addition to drafting, the Office prepares each bill as ordered reported to the House and the accompanying document (Ramseyer) showing changes in current law made by amendments and repeals contained in the bill, as required by clause 3(e) of House Rule XIII. During the the 115th Congress, the Office prepared 1,038 Ramseyers for reported bills, 86 Rules Committee Prints, and 30 comparison prints in compliance with clause 12a of Rule XXI.

Putting these statistics in any kind of meaningful perspective is difficult because some drafts are mostly formatting while others are complex, requiring months of intensive work by a team of experienced attorneys. As indicated above, each final draft is often preceded by multiple earlier versions, each typically involving a significant investment of time.

Bills and amendments continue to be lengthy and complex. Many are the result of years of work by committees and Members. The Office participated in many areas of work during 2018. Some of these are listed in Appendix II of this document.

Formatting Requested by Members

Among the duties that are ancillary to our primary purpose are responses to requests from Members to put their own legislative language in XML format and the proper statutory style but without analysis, review, or correction by attorneys. These are situations in which the Member either requires that legislative language be turned around so quickly that we cannot process it through our normal system of attorney analysis and review or requests that we not perform our analysis and review. Unfortunately, this is not an insignificant part of our work and it is a purely clerical function. We often have our clerical staff format these requests with little attorney supervision and are searching for a better way to accommodate these kinds of requests.

Services Not Performed

Given the current size of our staff and workload, we are not able to provide certain other additional services that are often requested. These include extensive research, preparing side-by-side analyses of House and Senate bills, drafting explanatory language for committee reports, preparing summaries or analyses of sections of bills, and preparing comparative prints. These tasks are more appropriately performed by other offices, such as the Congressional Research Service.
In addition, in order to maintain our impartiality, it has always been our policy not to prepare letters or memoranda explaining, defending, promoting, or justifying any particular legislative proposal. We also do not prepare documents relating to the oversight or constituent services responsibilities of Members.

**Workload Fluctuation**

Peak periods always present management challenges. We continue to see many omnibus bills, including requests from individual Members. The complexity of Federal law continues to increase. Externally imposed constraints frequently dictate our operational timetable. Assembling multifaceted legislation in a thoroughly professional manner and minimizing errors is a growing challenge, even for our most experienced staff.

To address these situations, the Office uses structured teams organized on the basis of subject areas. There are 16 teams currently, some more formally structured than others. When the workload for a team spikes, attorneys from other teams frequently volunteer to help, especially with amendment requests for the Floor. These volunteers permit us to use those with the most expertise to work with the committees and leadership on both sides of the aisle.

In addition, we continue to contract with recently retired attorneys from the Office for work on an as-needed basis. These experienced attorneys are required to have no actual or potential conflicts of interest.

**Managing Deadlines**

The pace of the legislative process continues to be rapid. In particular, deadline situations in the context of Rules Committee and House Floor schedules are increasingly making it very difficult for our attorneys to adequately review proposed language or make a serious determination as to its legal effectiveness. In these circumstances, we at best are able to offer only formatting services, which at times results in a decreased quality of the work product. In addition, these deadlines frequently require night and weekend work. A byproduct of this way of working is decreased satisfaction with the work of the Office, both from attorneys in the Office and clients outside of the Office.

In other contexts we receive requests for “formatting” or “rush” jobs. We respond to these requests to the extent we can, but we do give priority to those requests for which we can make a meaningful contribution to the
final product. Consequently, formatting and rush jobs are often handled by our paralegal staff.

**Turnaround Time**

Members often ask how soon the Office can “turn around” their projects. There is no single answer to this question. Projects not requiring attorney involvement may be processed quickly, but the quality of the drafting will reflect the absence of value added by a skilled drafter. With a quick turnaround, there is no assurance that the language will (1) legally accomplish what its sponsor wants it to do, (2) be referred to the desired committee, (3) be enforceable, (4) avoid conflicts with existing law, (5) give authority to the correct Federal agency, (6) be well-organized and free of technical errors, or (7) avoid litigation and questions from the press that cannot easily be answered.

Even in cases where the Member or committee desires to have the best possible draft prepared, the turnaround time varies. Often it takes twice as long to review, analyze, and rebuild a draft prepared by outside groups as it would to draft the bill from scratch because we first need to unearth the policy within language that may not be completely clear and then begin drafting from there.

Our coverage of Federal law is broad but thin. Attorneys specialize, and when a topic is timely and of interest to many Members, the one, two, or three attorneys competent to work on that topic are often inundated with drafting projects. We prioritize our efforts by usually handling conference drafting requests first, Floor amendments second, and committee projects third, as required by our charter (2 U.S.C. 281b). Bills for introduction by individual Members are dealt with only after those higher priority projects are finished, and they are handled in the order in which we receive them. We realize that Members are disappointed not to have every request they send to us processed immediately, but absent wasteful and unlimited resources, we will never be able to meet that standard.

**Information Technology**

The Office continues to develop and implement information technology for use by personnel inside the Office as well as by Members, staff, and the public. The Office has an IT team consisting of 3 persons as well as contracts with several vendors for software support and development. Major work is as follows:

- **USLM.**—Since 2011, the Office has been partnering with the Clerk of the House, the Government Publishing Office, and the Law Revision Counsel
to update legislative data from a DTD-dependent xml to a USLM Schema xml, allowing for the future development of enhanced legislative drafting and interpretive tools. This project continues the development work with the US Code (Law Revision Counsel), providing enrolled bills, Statutes at Large, and the Code of Federal Regulations in the USLM format, providing Statute Compilations in the USLM format (see below), and in future phases the bills, resolutions, and amendments in the USLM format.

- **Clause 12a Comparative Print tools.**—The Office began partnering with the Clerk of the House in January 2017 in the development and deployment of software tools designed to enable the House to comply with the requirements of clause 12a of House Rule XXI (known as the Posey Rule). Future development of these tools is expected to allow Members and staff to operate them with a high degree of accuracy from a House website.

- **Statute Compilations.**—The Office began partnering in 2018 with the Clerk of the House and GPO in posting Office Statute Compilations in GPO Collections and converting the format of these compilations into the USLM format. This is an ongoing project that is necessary to the development of the Clause 12a Comparative Print tool. It also has a transparency benefit for researching Federal law.

- **Microcomp Replacement.**—The Office uses a XML authoring tool (known as XMetal) to produce draft legislation. Part of this process relies on GPO’s Microcomp to print legislative drafts in pdf format for delivery to Members. The Office is participating with GPO in the development of a replacement for Microcomp.

- **Office 365 Development and Deployment.**—The Office is in phase III of a project which has replaced its wiki Intranet with a Sharepoint site and is working with HIR to leverage more of the capacities of Office 365 to enhance Office functions. This project is expected to continue through the 116th Congress. Internally, the Office expects to make business process improvements based in part on management advice obtained through a partnership with the House Inspector General. In addition, the Office is in the early stages of building a Member portal on Sharepoint to replace its Member website.

- **iManage.**—The Office first deployed iManage (its document management system) in 2004 and is updating its functionality to better leverage its capabilities.

- **Office servers and software.**—The Office continues to enhance its hardware and software to provide for better service to Members and to enhance its capacity for continuing operations in light of threat environments to the House of Representatives.
Personnel

Staff

Our existing authorized staffing level is 87. As of January 1, 2019, the Office has a staff of 70, allocated as follows:
• 49 attorneys, one of whom is the Legislative Counsel and 6 of whom are in the Office training program.
• 7 clerks and paralegals.
• 5 comparative print and compilations staff.
• 3 information technology personnel.
• 1 office administrator.
• 1 human resources administrator.
• 4 front office support staff.

Our need to continue hiring personnel is an ongoing, important one. In spite of our recent hiring successes, we have not kept up with employee departures. During 2018, the Office onboarded 10 employees, as follows:
• 6 attorneys.
• 2 clerk/paralegals.
• 2 front office staff assistants.
Also as a result of recruiting efforts during 2018, 8 attorneys and 2 summer associates are committed to join the Office in 2019. Finally, in April 2018, the Office established and filled a new position, human resources administrator, to assist with the hiring, onboarding, and training of employees.

Training

During 2018 no fewer than 20 attorneys served as tutors in the Office’s attorney training program, which is approximately 40 percent of the total number of attorneys in the Office (and an even higher percentage if attorneys in tutorial, or otherwise ineligible to tutor, are excluded from that total number). In addition to the tutoring provided for full-time attorneys, the Office hosted 5 summer associates in 2018 (4 of whom will be returning as full-time attorneys in 2019). 9 attorneys assisted in the summer program as mentors.
Recruitment, Training, and Retention of Attorneys

Recruiting and retaining well-qualified attorneys is becoming exceptionally difficult. The high salary levels of attorneys in private practice creates a huge disparity between private-practice salaries and those of Government lawyers, and housing costs in the Washington metropolitan area are also high. The salary cap has been frozen since 2009 while the inflation rate during that period is greater than 16%, resulting in an inflation adjusted salary reduction at the cap in 2018 of more than $25,000. Indeed, this salary reduction was an important factor in the departures of 2 senior attorneys during the 115th Congress. On the positive side, the House student loan repayment program has been very helpful to us in our recruitment efforts. Overall, however, the recent Federal budgetary uncertainties, and the possibilities of indefinite salary freezes and reductions in benefits may be discouraging the best of the law student pool from considering working in the Office. We are also concerned about our continued ability to retain new and particularly midlevel attorneys in the current environment, given the years we invest in training each new attorney. Indeed, we lost 4 junior attorneys in the 115th Congress. The ability to provide regular, predictable merit raises for the extraordinary work performed by the attorneys in the Office (consistent with legislative offices and executive branch agencies) continues to be extremely important to retaining skilled attorneys. In order to accommodate that, our salary schedule provides predictable raises during an attorney’s first 15 years of service, subject to the availability of appropriations.

The complexity of legislation requires years of training new attorneys to become legislative drafters of the high quality to which we always aspire. Training a drafter is a multiyear process. Our basic tutorial program generally requires two years under close supervision by an experienced attorney. During the tutorial, the new attorney progresses through increasingly more difficult and complex legislative requests and learns not only basic drafting but client-relation skills and House procedure. The new attorney is then graduated into mentorship on one or more subject matter teams and remains in mentorship for at least an additional year. For complex areas such as Medicare, Medicaid, and tax, the mentorship will be considerably longer. It is estimated that it takes about seven years to attain general drafting competency.

Managing the Office is increasingly complex. The Legislative Counsel has relinquished day-to-day drafting responsibilities for this reason. We have 9 senior attorneys in the Office who have been with the Office for more than 20 years: of these, 6 have been with the Office for more than 30 years, and 2 for more than 40 years. In order to plan for the retirement of so many
attorneys in the near future as well as the unanticipated departure of mid-level attorneys, the Office needs to continue to hire new attorneys—

(1) to address the pace and volume of requests the Office receives, 
(2) to have attorneys who are sufficiently trained in the relevant subject areas positioned to assume primary drafting responsibilities when a senior attorney retires or a more junior attorney leaves the Office, and 
(3) to have sufficient personnel to allow attorneys to work in teams.

There is a similar situation with our clerk-paralegal staff. Our senior clerk-paralegal has more than 30 years of experience, 3 have between 10 and 20 years of experience, 1 has 1 year of experience, and 2 with less than 6 months of experience. We believe that we need to add 3 more clerk-paralegals to work appropriately with our attorneys.

The additions of both attorneys and clerk-paralegals will require additional space.

**Nonpersonnel Expenditures**

The major nonpersonnel expenditures for the Office are associated with the maintenance and enhancement of existing Office software systems to better serve our clients, as well as periodic updates for Office computer hardware.

**Collaboration With Other Offices**

The Office collaborates with many other offices to accomplish the work of the House, including with the Office of the Law Revision Counsel, the Clerk of the House, the Government Publishing Office, Congress.gov, the Secretary of the Senate, and the Office of the Senate Legislative Counsel. We are working with House Information Resources as it moves to MS Office 365 and its suite of collaborative software tools. In addition, we are continuing to work informally with the management advisory staff of the Office of the Inspector General to streamline our back office processes and our Office structure generally.
Conclusion

Thank you for the support this Subcommittee has given the Office. This support has enabled us to develop and maintain the ability to provide quick, efficient, and expert drafting assistance to the Members and committees of the House. We are continuing our efforts to improve our services wherever possible.

This completes my testimony. I am happy to answer any questions that any Member of the Subcommittee may have.
Appendix

I. History of Office

While Members of the Subcommittee are familiar with the Office, for the benefit of others who may review this testimony, it may be helpful to provide a brief synopsis of our functions and history.

Professional legislative drafting in the House of Representatives began in 1916 as an experiment offered to the House by a professor at Columbia Law School, Middleton Beaman. The experiment was regarded by the House as a success, and Mr. Beaman was appointed Legislative Counsel to the House in 1918 pursuant to an amendment to the Revenue Act of 1918. At first, the Office focused primarily on tax legislation. Over the following decades, the work of the Office gradually expanded to cover every area of Federal law. Much of this work is amendatory in nature because the drafter is striving to achieve coherence by placing the new policy into existing law. On January 28, 1929, the House adopted the Ramseyer Rule, which required a comparative print showing changes to existing law proposed to be made by reported bills to enable the reader to more quickly comprehend the impact of the proposed changes. These Ramseyers had the salutary effect of improving the draft, thereby helping to avoid drafting errors, reduce unnecessary confusion, avoid future litigation, and avoid foreseeable, but unintended, consequences. Ramseyers are necessary complements to amendatory bills.

A statutory charter for the Office was enacted in the Legislative Reorganization Act of 1970 (2 U.S.C. 281 et seq.). This was followed by an expansion in staff and, over time, a gradual change that resulted in the current specialization system within the Office. Under that system, each attorney primarily handles legislative drafting requests in specific areas of Federal law and strives to achieve a high level of substantive knowledge and expertise in those areas. In addition, the Office has a staff of 5 professionals dedicated to preparing the comparative prints required by House Rules and building and maintaining the Statute compilations database.

The Office has long maintained compilations of nonpositive law to aid in the drafting of bills and amendments. These compilations are now in electronic form and are necessary for the preparation of Ramseyers. Early compilations were maintained in notebooks and contained the up-to-date law with amendments taped onto statutes. From time to time, these notebooks would be printed by the Government Publishing Office upon
request of a committee and made available for widespread use. When available, the Office would use these GPO prints as a new base and begin again the scissors and taping process. During the 1990s, the Office had all of its compilations typeset and proofread by GPO, thereby creating our first electronic database. These compilations were coded using GPO locator codes. Since then, the database has been converted into XML format through a project with the Senate Secretary’s Office and the Office of the Legislative Counsel of the Senate. The Office publishes many of its compilations of major laws on the Office’s website in the form of Adobe Acrobat PDF files. These documents are essential to the lawmaking process but are not available in such a definitive, updated manner from any other source inside the Congress or elsewhere. (This does not include the United States Code provisions that are available from the Law Revision Counsel or from copyrighted, outside, nongovernmental sources.)

In order to provide for the more timely preparation of the Ramseyers, particularly for larger bills with shorter reporting deadlines, and with funding from this Subcommittee, in 2004 we began developing the Ramseyer suite of software tools. These tools not only aid in the preparation of Ramseyers, they also are used to maintain and update our compilation database and to aid drafters by quickly providing a view of the written changes to law during the drafting process. While these programs are helpful, they require a person to review (and correct where appropriate) their output for technical accuracy. Additional refinements are still needed to ensure the ability of the software to work in virtually all amendment circumstances.

The original reason for the Ramseyer Rule remains, almost 90 years after its adoption. In fact, due to the vast change in the legislative process enabled by computer technology, the desire for these comparative prints has intensified. Committees and Members want comparative prints at a variety of stages of the legislative process. In addition to changes in law, there is a desire to see changes that amendments propose to make to bills and to have a redline showing changes between different versions of the same bill. The most recent addition to the House Rules, Rule XXI, clause 12, requires several of these comparative prints for unreported bills, amendments in the nature of a substitute, and changes made through the Rules Committee process. As desirable as all of this may be, the Office needs additional resources to accommodate these requests while maintaining accuracy.
II. Sampling of Work Performed During 2018

This Appendix contains a list of some of the work performed by the Office during 2018.

- 2018 was a farm bill year, and the Ag team focused much of the year on what was enacted as the Agriculture Improvement Act of 2018, P.L. 115-334.
- Our Appropriations team prepared many bills and amendments throughout the year and especially during the holiday periods of the recent shutdown.
- The Education & Labor team devoted significant time to education matters, including late nights and weekends.
- The Energy & Environment team’s many projects include the following:
  - Two titles and additional miscellaneous provisions for America’s Water Infrastructure Act, P.L. 115-270, which among other matters culminated several years of work relating to drinking water and hydropower.
  - The reauthorization of the Brownfields program, which also was the product of multiple years of work and included in the 2018 Consolidated Appropriations Act, P.L. 115-141.
  - Various bills relating to fuels (including nuclear, gas, high-octane, and renewables), fees, energy security (including cybersecurity), hydroelectric projects, and other issues.
    - Bills relating to various emission standards.
- The Financial Services team prepared more than 150 bills reported from the Financial Services Committee, including flood insurance reform and housing finance reform.
- The Foreign Affairs team addressed many matters relating to the Department of State, international security, global health, human trafficking, sanctions relating to specific countries, and appropriations.
- Projects of our General Government team included the following:
  - The reauthorization of the Office of National Drug Control Policy (which was passed as part of H.R. 6).
The Music Modernization Act (H.R. 1551, P.L. 115–264) which, among other things, created a modernized system for music licensing.

- The work of the Health team spanned topics such as opioids, ACA-related health insurance market stabilization, CHIP reauthorization related projects, projects related to hurricane relief for territories and CHIP funding for territories, health extenders, projects to expand and reform Medicare, and various other Medicare, Medicaid, CHIP, health information, FDA, health insurance, and public health. Among the matters enacted into law (some as part of budget packages) are the following:
  - SUPPORT for Patients and Communities Act (H.R. 6 opioids, comprised of about 60 separate bills) – P.L. 115-271.
  - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule submitted by Secretary of Health and Human Services relating to compliance with title X requirements by project recipients in selecting subrecipients – P.L. 115-23.
  - To amend title XIX of the Social Security Act to delay the reduction in Federal medical assistance percentage for Medicaid
personal care services furnished without an electronic visit verification system, and for other purposes – P.L. 115-222.


- In addition, the following large bills passed the House:
  - Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2018, H.R. 7328, see also H.R. 6378.
  - Over-the-Counter Monograph Safety, Innovation, and Reform Act of 2018, division B of H.R. 7328, see also H.R. 5333.

- The House team addressed various issues, including rules for the 116th Congress (H. Res. 6), matters affecting public printing and the availability and dissemination of documents of the Federal Government, the Congressional Accountability Act of 1995 Reform Act (P.L. 115-397), matters relating to the Legislative Branch Appropriations Act, 2019, division B of P.L. 115-244, and work on what became H.R. 1 of the 116th Congress.

- Many matters were addressed by the Judiciary team, including bankruptcy, immigration, and border security. Immigration and border security which required a significant amount of drafting, frequently under tight turnaround deadlines.

- Our National Security team prepared—
  - H.R. 5515 (P.L. 115—232) the John S. McCain National Defense Authorization Act for Fiscal Year 2019, the conference report of which was prepared under a significantly compressed schedule. 1,005 amendments were offered during the course of consideration in subcommittee and full committee and on the Floor, a 400% increase from the number prepared for the 2013 NDAA bill. In addition, several reform components of this bill (including recommendations from the 809 Panel) were prepared as well for publication on the Armed Services Committee website.
  - Various projects relating to veterans, including the VA MISSION Act of 2018 (P.L. 115-182), and matters relating to personnel laws, the appeals process, reform of the health care system, and asset and infrastructure review.
  - Various homeland security bills, many of which were enacted into law as standalone measures and many others which were incorporated into other vehicles.
  - Intelligence measures, which advanced but ultimately were not enacted. Various matters, including the Family First Act (P.L. 115-123), were addressed by the Public Assistance team.
• Matters handled by the Telecom team included the operation of the FCC and the availability of electromagnetic spectrum. See section 511 of division E and division P of the Consolidated Appropriations Act, 2018 (P.L. 115-141).


• Among the matters addressed by the Transportation team are matters including the FAA Reauthorization Act of 2018 (P.L. 115-254), America’s Water Infrastructure Act (P.L. 115-270), and matters relating to the Coast Guard, appropriations, and brownfields.