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on
"THE CONGRESSIONAL WORKPLACE: SAFETY CONCERNS AND FUTURE PLANS"
Hearing before the U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings and Emergency Management
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Good afternoon, Madam Chairman, Mr. Diaz-Balart and Members of the Subcommittee. Thank you for the opportunity to testify today concerning the Office of Compliance and our role in promoting safety and health, accessibility, and workplace rights in the legislative branch. With me at the witness table is Peter Ames Eveleth, General Counsel of our Office. As the Congressional Accountability Act confers responsibility for occupational safety and health and accessibility issues upon the General Counsel, Mr. Eveleth has joined me to answer any questions you may have on the important issues that are the subject of today's hearing.

OFFICE OF COMPLIANCE OVERVIEW

I would like to start by giving a brief overview of the mission of the Office of Compliance. In 1995, Congress passed the Congressional Accountability Act ("CAA"), which required Congress and its agencies to follow, for the first time, most of the same employment, labor, accessibility, and safety and health laws that Congress required the private and public sectors to follow.

The CAA also created the Office of Compliance - an independent, non-partisan agency with a five-member Board of Directors - to implement an effective dispute resolution system for the resolution of employment-related claims by Congressional employees; enforce certain provisions of the CAA; and educate Congress, its employing offices, and Congressional employees about their workplace rights and obligations.

We not only educate and inform the Congressional community about the CAA's requirements, we are also statutorily required to provide Congress with annual statistics about the claims and contacts with the OOC by the Congressional community; biennial inspection reports about compliance with the Occupational Safety and Health Act (better known as OSHA) and the Americans with Disabilities Act ("ADA"); and to advise Congress about whether federal workplace laws that are currently inapplicable to Congress should be made applicable, something our Board of Directors sometimes calls "parity gaps" between Congressional accountability under the law versus private and public sector accountability under the law.

Our FY 2009 annual report – State of the Congressional Workplace – which was released in July 2010, summarized our most recent reports together in one source and provided additional contextual information to the Congressional community. It was our first effort to provide the Congressional community with a holistic view of the work we do and the Congressional

workplace. It was widely-distributed, well-received by many readers, and I think one of the reasons we all sit here today.

The annual report summarized the work we do with respect to workplace rights, as well as safety and health. Most of our workplace rights efforts are performed quietly, as the CAA mandates confidentiality while addressing these issues administratively. Our other areas of focus, however, are typically addressed more openly. For example, just two weeks ago, the OOC conducted a representation election in which CVC Capitol Guides voted in favor of representation by the American Federation of State, County and Municipal Employees ("AFSCME"). We issued the formal certification of the union as collective bargaining representative of the Guides this Monday, September 27th.

Focusing more on the subject matter of this hearing, our safety and health work includes conducting biennial inspections and responding to requests for inspection -- like the ones we received from CVC employees concerning a number of potential safety and health hazards. We are continuing this investigation and will provide a copy of our final report to the employees and AOC/CVC management once it is finished.

Our inspections identify hazards so that employing offices are aware of them and can abate them. Each hazard is assigned a risk assessment code that is based upon the severity of bodily harm or death that can occur and the probability of occurrence. In the past 6 years we have witnessed a substantial decline in the number of hazards in the Congressional workplace. In the 109th Congress, we found 13,141 hazards. Although our 111th Congress inspection has not been completed, our annual report projected 6,300 hazards – a 50% reduction from the prior inspection. This number was based in part on inspections that had been completed at the time our annual report went to print. We also noted in our annual report that the final number of hazards for the 111th Congress might be even lower. That is because AOC and other employing offices are constantly working on abatement of hazards – they are not waiting for our inspections to be completed.

Our agency does more than find hazards and assess their nature. In addition to conducting inspections, we provide technical assistance. For instance, at the request of Congress, we conducted a comprehensive pre-inspection of the CVC before it opened in December 2008. We surveyed the facility from top to bottom and identified hundreds of safety and health hazards and barriers to accessibility. Because the facility was not yet occupied, remedying these deficiencies was more efficient and, in some instances, less expensive than had we waited until after it was open. We worked closely with AOC staff throughout this process to ensure that the CVC could open on time, free from safety hazards and fully accessible to visitors, Members, and employees with disabilities. We are pleased to report that all occupational health and safety hazards identified during the 2008 pre-inspection have now been abated. Most accessibility barriers to individuals have been removed, and the AOC is continuing to work on resolving the remainder.

SAFETY AND ACCESSIBILITY OF THE CONGRESSIONAL WORKPLACE

We believe some of the most significant hazards currently in the community are the most serious and long-standing fire and life safety hazards in most of our historic and iconic buildings on Capitol Hill: the House and Senate Office Buildings, the Capitol, and Library of Congress buildings. In 2000 and 2001, the OGC issued a series of citations regarding open stairwells, lack of properly rated fire doors and other fire safety issues in the three House Office Buildings, the Russell Senate Office Building, the Capitol, and the Adams and Jefferson buildings of the Library of Congress.

While much progress has been made in increasing the level of fire safety in some buildings, substantial critical work remains to be undertaken. Accordingly, our office continues to focus on the abatement of these fire hazards and is working collaboratively with the AOC to that end. For its part, the AOC has worked closely with our office in developing effective abatement measures, and, as detailed below, has developed proposed plans to abate these outstanding hazards as well as correct several other non-citation fire safety deficiencies. The AOC is to be credited for creatively developing plans that would assure adequate protection for Congressional staff and visitors, while at the same time would preserve the architectural integrity of these historic structures.

We understand and appreciate that the AOC has limited budgetary resources and that not all hazards can be abated overnight. Until the hazards can be permanently remedied, the Architect has instituted important interim measures to provide additional fire safety. In addition, the AOC has certified that all exit stairways in the Rayburn House Office Building (Citation 20) have been fitted with code-compliant fire doors, closing mechanisms, and panic hardware from the basement level to the top floor. Construction on stairway enclosures in the Longworth House Office Building is underway, with an estimated completion date of July 2011. A new egress point was completed during the 110th Congress, which adds needed exit capacity to the building.

As to the Cannon House and Russell Senate Office Buildings (Citations 18 and 19, respectively), abatement efforts have been on hold pending review by a Blue Ribbon Panel whose appointment was requested by the Senate Rules Committee. That Panel issued its final report September 17, 2010; we look forward to working closely with the Architect as we evaluate the Report, its recommendations and the Architect's plans to proceed.

In addition to improving measures that permit occupants to escape safely from fire-affected areas and prevent fires from spreading, we continue to emphasize the use of mechanisms to detect fires when they do occur. The AOC installed new smoke detectors and sprinklers within several legislative branch facilities. The Rayburn building is fully covered by smoke detection equipment; the Adams building decks are fully protected; the Longworth and Cannon buildings are almost entirely covered; the Russell building is over 80% covered; 95% of the Jefferson building is covered. The Capitol is at least one-third covered by sprinklers; design work is ongoing to cover the remaining spaces, most of which are historically significant. We understand that the AOC intends to provide complete smoke detection capability in all legislative branch facilities.

Another high-risk target area is the Capitol Power Plant utility tunnels. As you know, the life-threatening hazards present in those tunnels led our General Counsel to file the first-ever complaint under the Congressional Accountability Act to obtain abatement. We signed a settlement with the Architect in 2007 that laid out a 5-year plan to abate the hazards entirely. A great deal of progress has been made, thanks to the resources provided by Congress, as well as the cooperative efforts of AOC staff and our OOC Tunnels Liaison. Assuming sufficient funding, that project is on track for complete and timely abatement in 2012.

FUTURE PLANS

In the 112th Congress, we will target the most dangerous workplaces and activities because private sector experience shows that these occupations result in the highest numbers of workplace injuries and illnesses. Under the Occupational Safety and Health Act, private firms are required to report to the Secretary of Labor injuries and illnesses that take place on the job. For example, according to the Bureau of Labor Statistics, landscapers have the highest injury and illness rate of any occupation. In 2008, the latest data available, the machinery, pesticides, vehicles and other tools used by these workers, especially when combined with working conditions that may include temperature extremes, ice, rain, heights and other factors, resulted in 6 occupational injuries or illnesses per hundred employees. To put it in context, the comparable injury rate for all industries, including state and local government, was 4.2%. Thus landscaping caused 40% more injuries than the all-industry rate, meaning that landscapers suffered on-the-job injuries more frequently than workers in any other type of activity.

We extrapolate from private sector statistics to identify the highest-risk occupations here on the Hill. We believe it makes sense to infer that a landscaper working on the Capitol grounds performs activities that are quite similar to those of a groundskeeper at, for example, a college campus or corporate headquarters.

As our annual report explains, unlike the OSHAct, the CAA does not require employing offices in the legislative branch to maintain records of illnesses and injuries or make such records available to our office. However, absent access to such data from all legislative branch employing offices, we cannot be certain that we have identified all the worksites where Congressional workers are actually injured. That is why our Board of Directors has recommended that the Congressional Accountability Act be amended to impose the same recordkeeping requirements on legislative branch offices that apply to private sector firms. Again, this would be an effective tool in helping us focus our resources where they are needed most.

In the coming Congress, we are undertaking a new risk-based approach to our biennial inspection to target and devote our inspector resources to potentially high-hazard and high accessibility-barrier areas across campus.

Pre-inspect new facilities

First, we intend to pre-inspect new or significantly renovated buildings – such as the Cannon Building, which will be undergoing major upgrades. As we found with the CVC, we expect that

identifying and correcting hazards and barriers to access before the building is occupied will be more efficient and in at least some instances less expensive. Because ADA requirements are much more comprehensive and stringent in new construction, it is essential that contractors fully adhere to these standards. We intend to work closely with the AOC early in the construction process. We believe substantial savings can be achieved both in time devoted to inspections and in avoiding unnecessary remedial costs by assuring that contractors adhere to recognized OSH and ADA requirements during construction.

Inspect most dangerous workplaces and occupations

Second, we will also target our biennial inspection at the most dangerous workplaces and occupations. We are targeting these activities because, now that we have completed three comprehensive inspections of the legislative branch, we believe it appropriate to concentrate on the highest risks. Like Washington DC, the legislative branch is effectively a city unto itself, with all the activities and services you'd find in any municipality. Some of those activities present higher risks to workers. These include landscaping, workshops and mechanical rooms, the Capitol Power Plant, laboratories and kitchens, among other such worksites.

Confirm abatement of highest-risk hazards

Third, we intend to concentrate our efforts on assuring complete and timely abatement by employing offices of high-risk hazards identified in current and previous biennial inspections. To that end, we have recently reassigned an OSH specialist contractor as Occupational Safety and Health Compliance Manager and appointed a new full time employee as Occupational Safety and Health Program Manager; the latter is charged with responsibility for the development and accomplishment of our risk-based inspection and hazard abatement programs.

Each hazard identified during an inspection is ranked for risk: likelihood of occurrence, severity of harm, and numbers of employees exposed to the hazard. Priorities for abatement are related to the degree of risk. But identification of hazards is only the first step; assuring that the hazards are removed and similar hazards are not created is essential to assure workplace safety.

Identify most serious barriers to accessibility

Fourth, our cooperative work with the AOC extends to accessibility barriers in the legislative branch. During our biennial inspection in the next Congress, we look forward to working with the AOC to determine where the most serious barriers are present, so that projects can be undertaken in priority order. The goal, of course, is to provide unfettered access to constituents, Members and staff with disabilities.

Review compliance with required safety procedures and programs

Finally, we intend to review compliance with selected safety and health procedures and programs that are required by OSHA standards that are applicable to the legislative branch by virtue of the CAA. These programs, such as fall protection, hazard communication, and lockout/tagout were promulgated by OSHA to protect workers from injury and death occurring in the most hazardous

workplace operations. During the current Congress, we have offered and provided technical assistance to employing offices in reviewing their programs. Essential to the effectiveness of these programs is employee and employer knowledge of and adherence to the program requirements. Accordingly, we will be inspecting these programs and interviewing workers to assure their familiarity with their requirements.

Cost-effectiveness remains a vital issue for us in our regular biennial inspections during this time of severe budget constraints. We know that preventing or quickly remedying hazards can save workers' lives and limbs – but it saves money, too. Every workplace injury that doesn't happen means thousands of dollars in savings on workers' compensation, medical bills, lost productivity, overtime payments and a host of other costs. Indeed, between 2001 and 2007, the Library of Congress achieved an estimated $11 million in injury cost avoidance through its injury prevention efforts. Hence our motto, "Safety Pays."

CONCLUSION

On behalf of the Office of Compliance and its Board of Directors, I would like to thank you for the opportunity to appear before you this afternoon to discuss these very important issues. I, along with Mr. Eveleth, look forward to answering any questions you may have.