

destructive activities. If anything, there is an equal, and perhaps even greater, need for Boys & Girls Clubs in the United States of today. As the president of the Boys and Girls Clubs of America, Tom Garth recognized that fact, and he worked hard to create an organization that would effectively reach out to today's children and offer them an attractive alternative to running afoul of the law.

Mr. Garth began his career with the Boys & Girls Clubs as the games room director of the Boys Club in East Saint Louis, a city well known for being a tough town where opportunities for its citizens, especially its children, are scarce. Working in such an environment had a tremendous effect on Mr. Garth and would help influence how he would run the Boys & Girls Clubs of America when he became president of that organization in 1988.

By all accounts, the tenure of Tom Garth was a successful period in the history of the Boys & Girls Clubs of America. Under his leadership, this organization established hundreds of new clubs in areas where positive activities for children were desperately needed, contributions to the organization increased, and most significantly, the membership of the organization has more than doubled, growing to include 2,300,000 boys and girls. This is an impressive accomplishment and a proud legacy for Mr. Garth to have achieved.

Mr. President, I have long been a supporter of the Boys & Girls Clubs of America, and it was a pleasure to come to know Mr. Garth over the many years he was with the organization. He was a man with a clear vision of what he wanted the Boys & Girls Clubs to be and what it would take to meet those goals. I am told that one of his last requests was to those who he left behind at the Boys & Girls Clubs of America, urging them to work to ensure that by the year 2000, 3 million children would be served by the clubs. That is a worthy goal and one which each of us in this Chamber would do well to support and help bring to fruition.

Tom Garth was a man with tremendous drive and determination, and without question, he could have risen to head any of America's leading corporations. Instead of being motivated by the notion of a successful and financially rewarding business career, Tom Garth was motivated by a desire to make a difference and to make sure that the young people of the United States who needed a helping hand, a safe haven, or a role model, were given them. Through his 40-year career with the Boys & Girls Clubs, he gave millions of children more than a fighting chance to grow into productive members of society, and he has truly had a positive impact on this Nation through his work. He will be missed by all those who knew him, and we join his widow, Irene, in mourning his loss.

TRIBUTE TO THE LATE ADRIENNE BROWN

Mr. THURMOND. Mr. President, earlier this month a tragedy befell James Brown, one of South Carolina's most famous sons and one of America's most beloved entertainers, when his wife Adrienne passed away.

James and "Alfie," as Adrienne was affectionately called, had been married for 10 years and were fixtures of Augusta, Georgia and the "Georgialina" area, a region of the Savannah River Valley which includes a number of cities and towns on both sides of the South Carolina and Georgia stateline. The two met back in 1981 when James Brown appeared on the popular syndicated television show "Solid Gold". A native of California, Adrienne was working in the entertainment industry at that time, contributing to the production of programs such as "Days of Our Lives" and "The Young and the Restless", as well as being employed as an artist by NBC television.

After their courtship began, Adrienne became very active in Mr. Brown's entertainment ventures, and some have even credited her as being a key element in his becoming popular with a whole new generation of music lovers. Her passion for the entertainment industry and sense for business led her to become chief executive officer of Alfie Enterprises and the James Brown Dancing Stars, as well as the executive producer of the "James Brown's Living in America" pay-per-view television show. The Browns were married in 1985, and their decade long marriage was one that was filled with strong feelings between husband and wife, and many marveled at the bonds that held the two together.

On January 16, after a memorial service that was attended by an overflow crowd of more than 800 family, friends, and admirers, Alfie Brown was laid to rest. The Charleston Post & Courier carried an article about the service which I think captures the esteem in which this woman was held and I ask unanimous consent that it be included in the RECORD following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Charleston Post & Courier, Jan. 16, 1996]

SOUL SINGER BROWN BURIES HIS WIFE

AUGUSTA.—Soul singer James Brown buried his wife Tuesday after a funeral in a historic theater overflowing with mourners.

New York activist the Rev. Al Sharpton was among the more than 800 friends, relatives and fans who filled the Imperial Theatre to console Brown on the death of his wife, Adrienne.

"She was one of the few people around him who didn't want anything from him except to be James Brown," Sharpton said.

"Mr. Brown, you face a lonely time. Remember you have what most stars never have—someone who loves you," he said.

Mrs. Brown, 45, died in Los Angeles Jan. 6, two days after undergoing cosmetic surgery.

Officials at the Los Angeles County coroner's office have ruled out foul play, but they haven't determined what caused her death.

Brown, dressed in black and wearing sunglasses, blew a kiss to the 100 or so people lining the street outside who were unable to get a seat in the theater.

He did not speak during the funeral.

"She loved James very much," said Al Miller, a family friend. He was so distraught he could speak only a few words.

The glossy black casket was covered with a huge spray of red roses, and scores of other flower arrangements covered the stage around it.

A large portrait of Mrs. Brown was suspended over the casket, and a white cross was projected on the curtain at the back of the stage.

After the service, Mrs. Brown was buried at Walker Memorial Gardens.

Nancy Thurmond, wife of Sen. Strom Thurmond, R-S.C., and a close friend of Mrs. Brown, said she had "devoted herself to helping James Brown continue leading the world as the Godfather of Soul."

"She showed great courage in combining the public arena with private life. She was often in the lonely fringe throughout it all. She had a tremendous giving heart," Mrs. Thurmond said.

The Rev. Reginald D. Simmons, who officiated at the service, said the Browns' 10-year marriage was strong despite some tumult.

He said he talked to her two days before she died, and she was looking forward to coming home.

"God gave her a husband. Despite things down, up or turned around, he was steadfast and unyielding," Simmons said. "Their relationship was going to be for better or for worse. Her life was filled with mostly good things."

Mrs. Brown had accused her husband at least three times of assault, but each time she either withdrew the accusations or the charges were dismissed.

Brown, 62, denied beating his wife and said in November that she was being treated for drug addiction.

The Browns met in 1981 on the set of the TV music show "Solid Gold," where she was a hair stylist.

They lived in nearby Beech Island, but Brown maintained his offices and recording studio in Augusta, where he got his start.

A memorial service was held last week in Los Angeles, Mrs. Brown's hometown.

Several stars, including singer Little Richard, attended.

NOTICE OF ADOPTION OF PROCEDURAL RULES

Mr. THURMOND. Mr. President, pursuant to the Congressional Accountability Act of 1995, a Notice of Adoption of Regulations and Submission for Approval and Issuance of Interim Regulations, together with a copy of the adopted regulations, was submitted by the Office of Compliance, U.S. Congress. These regulations relate to irregular work schedules and interns. The notice announces the adoption of the final regulation as an interim regulation on the same matters. The Congressional Accountability Act specifies that the Notice and regulations be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice and adopted regulations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938 (INTERNS; IRREGULAR WORK SCHEDULES)

NOTICE OF ADOPTION OF REGULATIONS AND SUBMISSION FOR APPROVAL AND ISSUANCE OF INTERIM REGULATIONS

Summary: The Board of Directors, Office of Compliance, after considering comments to its general Notice of Proposed Rulemaking published October 11, 1995 in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations to implement sections 203(a)(2) and 203(c)(3) of the Congressional Accountability Act of 1995 ("CAA"). The Board is also adopting and issuing such regulations as interim regulations for the House, the Senate and the employing offices of the instrumentalities effective on January 23, 1996 or on the dates upon which appropriate resolutions are passed, whichever is later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate, respectively.

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540-1999. Telephone: (202) 724-9250.

Background and Summary

Supplementary Information: The Congressional Accountability Act of 1995 ("CAA"), Pub. L. 104-1, 109 Stat. 3, was enacted on January 23, 1995. 2 U.S.C. sections 1301 et seq. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. In addition, the statute establishes the Office of Compliance ("Office") with a Board of Directors ("Board") as "an independent office within the legislative branch of the Federal Government." Section 203(a) of the CAA applies the rights and protections of subsections a(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 ("FLSA") (29 U.S.C. 206(a)(1) and (d), 207, and 212(c)) to covered employees and employing offices. 2 U.S.C. section 1313. Sections 203(c) and 304 of the CAA directs the Board to issue regulations to implement the section. 2 U.S.C. sections 1313(c), 1384.

Section 203(c)(2) of the CAA directs the Board to issue substantive regulations that "shall be the same as substantive regulations issued by the Secretary of Labor . . . except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under" the CAA. 2 U.S.C. section 1313(c)(2). However, section 203(a)(2) excludes "interns" as defined by Board regulations from the definition of "covered employee" for the purpose of FLSA rights and protections. Additionally, section 203(c)(3) of the CAA directs the Board to issue regulations for employees "whose work schedules directly depend on the schedule of the House of Representatives or the Senate" that shall be "comparable to", rather than "the same as", the provisions of the FLSA that apply to employees who have irregular work schedules.

On October 11, 1995, the Board published a Notice of Proposed Rulemaking ("NPR") in the Congressional Record (141 Cong. R. S15025 (daily ed., October 11, 1995)), inviting comments from interested parties on the proposed regulations relating to "interns" and "irregular work schedules." Six comments were received responding to the proposed regulatory definition of "interns," and thirteen on the proposed irregular work

schedules regulation. Comments were received from employing offices, trade and professional associations, advocacy organizations, a labor organization, and Members of Congress. In addition, the Office has sought consultations with the Department of Labor regarding the proposed regulations, pursuant to section 304(g) of the CAA. After considering the comments received in response to the proposed rule, the Board has adopted and is submitting these regulations for approval by the Congress. Moreover, pursuant to sections 411 and 304, the Board is issuing such regulations as interim regulations. The Board is also adopting and issuing such regulations as interim regulations for the House, the Senate and the employing offices of the instrumentalities effective on January 23, 1996 or on the dates upon which appropriate resolutions are passed, whichever is later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate, respectively.

I. DEFINITION OF "INTERNS"

A. Summary of Proposed Regulation

The proposed regulation defined the term "intern" to be any individual who: "(a) is performing services in an employing office as part of the pursuit of the individual's educational objectives," and "(b) is appointed on a temporary basis for a period not to exceed one academic semester (including the period between semesters); provided that an intern may be reappointed for one succeeding temporary period."

B. Summary of Comments

Six comments were received regarding the proposed definition of "intern" in the Notice of Proposed Rulemaking. The commenters agreed with the approach taken in the proposed regulation. However, commenters suggested that the proposed definition of "interns" was vague or overbroad in one or more respects. After considering these comments, the Board has decided to modify the regulation, as discussed below.

1. Subpart (a): Requirement that an intern "perform[] service as part of the pursuit of the individual's educational objectives"

Subpart 1(a) of the proposed regulation established as the first criterion for eligibility as an "intern" that the individual must be "performing services in an employing office as part of the pursuit of the individual's educational objectives" (emphasis added).

Two commenters expressly approved of this subpart, and recommended that the Board not change it. One commenter argued that this criterion was overbroad and would be subject to potential abuse by employing offices because the intern need not be enrolled in an educational program in a degree-awarding institution. This commenter opined that virtually all employees view their employment as a way to achieve some "educational objective," since most hope to get on-the-job experience that will qualify them for better paying opportunities. In the view of this commenter, an employing office could easily characterize the individual's work as "in pursuit of educational objectives" to avoid its FLSA obligations. This commenter recommended that an alternative definition of "intern" be adopted—one that would be modeled on the elements used to determine the status of "trainees" under the FLSA, which specifies that the individual must be a student enrolled in a degree program at an educational institution to qualify.

In the Board's considered judgment, requiring an intern to be enrolled in a degree program at an educational institution would be unduly restrictive because such a require-

ment would exclude arrangements considered valid under current internship practice. The Board does not believe Congress intended to preclude internships during a teacher's sabbatical year or between undergraduate and graduate school. Therefore, the Board does not recommend that such a requirement be imposed. Instead, the Board shall modify subpart (a) of the regulation to state that an employee must be performing services in the employing office as part of a demonstrated educational plan which should be in writing and signed by both. In the Board's view, this requirement would be satisfied where the intern is enrolled in a degree program at an educational institution or where the intern's employment is part of an educational program or plan agreed upon between the employing office and the intern. In the Board's view, these requirements will satisfactorily decrease the risk of abuse of this provision by any employing office.

2. Subpart (b): Requirement that the individual be appointed "on a temporary basis for a period not to exceed one academic semester (including the period between semesters); provided that an intern may be reappointed for one succeeding temporary period"

Subpart (b) of the proposed rule set out the second criterion for determining whether an individual in an employing office would be an "intern": that the individual be appointed "on a temporary basis for a period not to exceed one academic semester (including the period between semesters); provided that an intern may be reappointed for one succeeding temporary period."

All six commenters suggested that the Board modify the proposed regulation to define a specific, determinative time limit for an internship to qualify under the regulation's definition. The commenters suggested that the length of time for a qualifying internship (and any extension thereof) under this part be expressed as a defined term of days or months. Commenters suggested periods ranging from "120 days in any 12-month period," to "5 months," to "9 months."

Three commenters suggested that the term "academic semester" is ambiguous because many educational institutions divide their academic calendars into "trimesters" or "terms" of varying duration as well as "semesters." Similarly, some commenters found the provision that an intern may be reappointed for one succeeding "temporary period" ambiguous because the term "temporary period" was not defined and could be subject to varying interpretations.

One commenter quoted the following provision of section 3 of H.Res. 359, contained in 2 U.S.C. section 92 (Note): "interns shall be employed primarily for their educational experience in Washington, District of Columbia, for a period not to exceed one hundred and twenty days in one year . . ." This commenter suggested that the reference to one academic semester be changed to "120 days in any 12 month period" to ensure consistency with this provision.

One commenter stated that the one semester time limit may be too short, since many of the schools from which employing offices recruit interns administer their internship programs on an annual, as opposed to semester, basis. This commenter suggested that, under the current definition, employing offices will be unable to attract top-level interns and the efficiency of the offices will be undermined. The commenter suggested the applicable time limit for an intern position should be one year, defined as two consecutive semesters.

Another commenter suggested the regulation should specify that summer internships are acceptable under the rule. This commenter also recommended that the regulation expressly state that the definition of

"intern" "is not intended to cover other similar job positions such as volunteers or fellows, nor does it cover pages," which is stated in the Summary section of the NPR regarding this proposed regulation (141 Cong. R. S15025 (daily ed., October 11, 1995)).

The Board agrees that subpart (b) of the proposed regulation should be modified (1) to allow for the appointment and reappointment of interns for periods of varying length and (2) to state a definite maximum term for the entire internship, including any reappointment periods. After considering the alternatives suggested by the commenters, the Board shall modify the proposed regulation to state that an intern may be appointed for periods of any length, so long as the total period of internship does not exceed 12 months. This definition expresses the Board's understanding of the term "academic semester" in the proposed regulation and adopts the suggestion that the internship be subject to a defined time period unconnected to the academic calendar of any particular educational institution.

The Board notes that, since the final regulation allows internships for periods of longer than 120 days in one year, under H.Res. 359, a Member who chooses to employ an intern for longer than 120 days in a year may be required by House rules to count that intern against the 18 permanent clerk-hire allotment. However, nothing in the Board's final regulation requires an employing office to employ an intern for the entire period permitted by the definition; the final regulation simply sets a maximum period within which an internship may qualify to meet the exclusion of section 203(a)(2) of the CAA. Employing offices (or the House itself) are free to impose more stringent limitations on their employment of interns. The definition of "intern" in the final regulation establishes only the CAA's ceiling on the period of time an intern may be employed and still meet the exclusion of section 203(a)(2) of the CAA.

The regulation shall also state that the definition of "intern" does not cover volunteers, fellows or pages, as suggested by a commenter. The Board believes that, as modified, this definition makes clear that summer internships may meet the definition, provided that the other criteria of the regulation are met. Therefore, the explicit statement to that effect suggested by a commenter is unnecessary.

II. IRREGULAR WORK SCHEDULES

A. Introduction

Section 203(c)(3) of the CAA directs the Board to issue regulations for employees "whose work schedules directly depend on the schedule of the House of Representatives or the Senate that shall be comparable to the provisions of the Fair Labor Standards Act of 1938 that apply to employees who have irregular schedules." Section 203(a)(3) states that, "[e]xcept as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation."

Section 1 of the rule proposed in the NPR developed a standard for determining whether an individual's work schedule "directly depends" on the schedule of the House of Representatives or the Senate." In sections 2 and 3 of the rule proposed in the NPR, the Board proposed two irregular work schedule provisions which would be applicable to such employees. Section 2 of the proposed regulation, which allowed for the use of so-called "Belo" agreements, was modeled almost verbatim on the requirements of section 7(f) of the FLSA. (See 29 U.S.C. section 207(f)). Section 3 of the proposed regulation, which was modeled on section 7(o) of the FLSA, established conditions under which employing of-

fices could provide compensatory time off in lieu of overtime compensation to employees whose work schedules "directly depended" on the schedules of the House or the Senate. (See 29 U.S.C section 207 (o)).

In addition to inviting general comments on the regulation proposed in the NPR, the Board invited comments on four specific issues: (1) whether the regulation should be considered the sole irregular work schedules provision applicable to covered employees or whether, in addition, section 203 of the CAA applies the irregular hours provision of section 7(f) of the FLSA with respect to covered employees whose work schedules do not directly depend on the schedules of the House or the Senate; (2) whether the contracts and agreements referenced in section 2 of the proposed regulation (so-called "Belo" agreements) can or should be permitted to provide for a guaranty of pay for more than 60 hours and whether the terms and use of such contracts and agreements should differ in some other matter from those permitted in the private sector; (3) whether and to what extent the regulations may and should vary in any other respect from the provisions of section 7(f) of the FLSA; and (4) whether and to what extent section 7(o) of the FLSA is an appropriate model for the Board's compensatory time off regulations and whether and to what extent the Board's regulations should vary from the provisions of section 7(o) of the FLSA.

The Board has carefully reviewed the public comments received in response to the NPR and has further studied both the text and the legislative history of sections 203(a)(3) and 203(c)(3), as well as the provisions governing overtime compensation under section 7 of the FLSA. After doing so, the Board has concluded that the regulations relating to irregular work schedules should, consistent with both the special rules of sections 203(a)(3) and 203(c)(3) and established interpretations of the FLSA, be as follows:

First, for employees whose schedules directly depend upon the schedules of the House of Representatives or the Senate, the substantive regulations shall provide that an eligible employee is entitled to overtime compensation for working in excess of 40 hours but less than 60 hours in a workweek and is further entitled to overtime compensation or compensatory time off for hours worked in excess of 60 hours in a workweek. An employee's schedule shall be deemed to "directly depend" upon the schedule of the House or the Senate where the eligible employee performs work that directly supports the conduct of legislative or other business in the chamber and works hours that regularly change in response to the schedule of the House or the Senate.

Second, for other employees whose schedules do not "directly depend" upon the House or Senate schedule but who nevertheless work irregular or fluctuating work schedules, the provisions of sections 203(a)(3) and 203(c)(3) of the CAA do not apply and compensatory time off should not be available. Employing offices may nevertheless adopt any of several options, generally available under the FLSA, which satisfy overtime payment requirements in the context of irregular or fluctuating work schedules. The availability of these options addresses many of the concerns expressed in the comments received in response to the NPR.

B. Summary of Comments

1. Applicability of 7(f) of the FLSA under the CAA

In the NPR the Board asked several questions regarding the applicability of section 7(f) of the FLSA under the CAA. The commenters were divided on the question of whether the proposed regulation should be

considered the sole irregular work schedule provision applicable to covered employees or whether, in addition, section 203 of the CAA applies the irregular hours provision of section 7(f) of the FLSA to covered employees whose work schedules do not directly depend on the schedule of the House or Senate.

Two commenters believed that the CAA allows an irregular work schedule provision only for employees whose work schedules directly depend on the schedules of the House or the Senate. Thus, the proposed regulation should be the sole irregular work schedule provision.

Conversely, three commenters suggested that the proposed rule should not be the sole irregular work schedule provision but that the Board should implement a second rule on irregular work schedules which applies to covered employees other than those whose schedules directly depend on the schedule of the House or Senate. These commenters noted that section 203 of the CAA expressly applies the entirety of section 7 of the FLSA to covered employees. Consequently, under the view of these commenters, section 7(f), the irregular work schedule provision of the FLSA, should apply to all covered employees, not just to those whose schedules directly depend on that of the House or Senate.

In addition to the issue of the general applicability of 7(f), the NPR posed the more specific questions of (1) whether the contracts or agreements referenced in 7(f) can or should be incorporated into the CAA's regulations so as to provide for a guaranty of pay for more than 60 hours; and (2) whether the terms and use of such contracts or agreements should differ in some other manner from those permitted in the private sector.

Three commenters specifically stated that the 60-hour maximum should apply to the proposed regulation, again relying on the rationale that the CAA requires that the Board's rules be the same as those which apply to the private sector. Further, several commenters stated that, in general, the Board's regulations which implement the CAA should not deviate from those regulations applicable under the FLSA to the private sector—which implicitly includes "Belo" plans.

Several commenters addressed the question of whether, as a general matter, the rule on irregular work schedules should vary from section 7(f) of the FLSA. All agreed that the regulation should not vary from section 7(f) of the FLSA. Two commenters contended that the CAA applies the FLSA to the legislative branch in the identical manner that the FLSA applies to the private sector. One commenter argued that the rule on irregular work schedules should include provisions for compensatory time off because the Board's rule need only be "comparable" to section 7(f) of the FLSA.

2. Definition of "directly depends" under section 1 of the proposed regulation

Section 1 of the proposed regulation stated that a covered employee's work schedule "directly depends" on the schedule of the House of Representatives "only if the employee's workweek arrangement requires that the employee be scheduled to work during the hours that the House or Senate is in session and the employee may not schedule vacation, personal or other leave or time off during those hours, absent emergencies and leaves mandated by law." The proposed rule further stated that an employee's schedule on days the House or the Senate is not in session does not affect the question of whether the employee's schedule directly depends on that of the House or the Senate. Seven commenters had concerns about the definition of when an employee's work schedule "directly depends" on the schedule of the House or the Senate.

Four commenters found the definition too narrow, citing examples of covered employees who work for committees or support offices or agencies who they thought would not fit into a strict reading of the proposed regulation. These commenters said that employees of those offices who frequently must serve the Senate or the House "until the conclusion of specified legislative sessions or specified legislative business" have schedules that are determined by the House or the Senate, and not by their employing offices. Further, these commenters said that employing offices frequently limit severely their employees' ability to take leave during these times, absent an emergency. The commenters claimed that, because the proposed rule requires that the employee's position must require them to be on duty whenever the House or the Senate is in session, it excludes the employees of those offices and committees whose schedules are clearly mandated by that of the House or the Senate but who are not necessarily required to be at work during every hour the House or the Senate is in session. These commenters further asserted that these employees may, on occasion, take leave while the House or the Senate is in session, when their issue areas or responsibilities are not scheduled for debate and that this too would make them ineligible under the proposed irregular work schedule provision. These commenters expressed concern that, if such employees do not qualify for the irregular work schedule provision, many employing offices will not be able to afford the overtime their employees presently put in on a regular basis. Apart from the actual monetary cost, these commenters could not see how such offices would be able to anticipate adequately the amounts of overtime they will have to pay when planning their budgets because of the uncertainty in their schedules.

Another commenter suggested that the rule should also make clear that employees can be granted time away from work, or work on a reduced hour schedule, while the House or the Senate is not in session, and still be covered by the irregular work schedule provision. This commenter also suggested that the regulations should give employing offices authority to determine whether schedules for their employees directly depend on the schedule of the House or the Senate.

A third commenter suggested that the Board specifically state in the rule that the irregular work schedule provisions apply to employees of committees, joint committees, and (presumably) other offices in similar situations. Alternatively, this commenter suggested that, if the Board does not wish to take that approach, the rule should be changed to state that the employee's work schedule "directly depends" on the schedule of the House or the Senate if that employee's "normal workweek schedule is determined based in whole or in part on the hours the House or Senate is in session and on the legislative calendar of the House or the Senate."

Conversely, two commenters believed that the definition in the proposed regulation of when an employee's schedule "directly depends" on that of the House or the Senate was too broad. One of these commenters suggested that the definition in the NPR (1) is not in keeping with what the Secretary of Labor deems an irregular work schedule in the private sector and (2) is subject to abuse by employing offices because it is too easy to meet, in this commenter's view.

This commenter asserted that the Department of Labor's regulations make it clear that employees who fall within the irregular work schedule provisions must have schedules that "fall above and below the normal

work week." According to this commenter, section 774.406 of those regulations states that, if the employee's hours fluctuate only above the maximum workweek prescribed in the statute, the employee's schedule is not considered irregular. This commenter insisted that the Board's proposed rule failed to include a provision that would require the employee's hours, at some point, to fall below the normal workweek schedule. This commenter saw this omission as creating an opportunity for employing offices simply to mandate that these employees be at work whenever the House or the Senate is in session, as well as working a regular forty-hour week when the House or the Senate is not in session.

A second commenter read the proposed rule as potentially allowing employing offices to include employees under the irregular work schedule provision when, in fact, those employees do not work irregular hours or have workweeks of fewer than forty hours. This commenter suggested that the Board should clarify the rule to provide that an employee's schedule "directly depends" on the schedule of the House or the Senate when "the employees must, as a result of that schedule, actually work workweeks which fluctuate significantly."

Finally, one commenter read the proposed definition as either too narrow, or too broad, depending on the intended meaning of the phrase "during the hours that the House or Senate is in session." This commenter observed that, if one interprets this phrase as requiring only that some of the employee's work hours coincide with the hours the House or the Senate is in session, the definition is too broad because virtually every House or Senate employee that works on Capitol Hill would qualify. This commenter also observed that, if the phrase is read strictly to mean that an employee must work all of the hours that the House or the Senate is in session, the definition is too narrow, for the same reasons given by the four commenters discussed above. This commenter suggested that a better definition of when an employee's schedule "directly depends" on the schedule of the House or the Senate is when "the employee's work schedule is dictated primarily by the schedule of the [House or the] Senate."

3. Availability of compensatory time off and the applicability of section 7(o) of the FLSA

In the regulations proposed in the NPR, the Board also invited comment on the propriety and advisability of using section 7(o) of the FLSA, which authorizes public sector employees to give compensatory time off in lieu of overtime compensation to public sector employees, as the model for determining whether employees whose schedules directly depend on the schedule of the House or the Senate should receive compensatory time off. The commenters were divided on this issue.

Six commenters opposed the provision of compensatory time off, asserting that the Board should not use section 7(o) as a model for the Board's regulations. These commenters stated that authorization of compensatory time off under section 203(c)(3) of the CAA would be inconsistent with the strict private sector prohibition against the use of compensatory time off in lieu of overtime compensation under the FLSA.

In these commenters' view, compensatory time off under section 7(o) is not available to the private sector and, consequently, should not be available to Congress, since the CAA allegedly requires Congress to "live by the rules of the private sector." Moreover, these commenters cite legislative activity of the 103rd Congress, in which various compensatory time provisions were proposed and re-

jected. Finally, these commenters cite various floor statements given during the debate on the CAA, which, they claim, state that compensatory time off is not available under the CAA.

One commenter argued that section 203(c)(3) of the CAA gives the Board discretion to authorize the use of compensatory time only if the "provisions of the [FLSA] that apply to employees who have irregular schedules" authorize such overtime. This commenter pointed to the Interpretative Bulletin found at 29 C.F.R. section 778.114, which allows fixed salaries for fluctuating workweeks, and argued that the Board is not permitted to authorize compensatory time off under its irregular work schedule regulation except insofar as time off would have to be offered and utilized pursuant to this Interpretative Bulletin, i.e., not at all.

Conversely, five commenters suggested that authorizing compensatory time off in lieu of overtime pay under the proposed regulations is appropriate under the FLSA as applied by section 203 of the CAA. Further, three of these commenters specifically stated that section 7(o) of the FLSA is an appropriate model for the Board's regulations on compensatory time off. One commenter, citing a report that accompanied H.R. 4822, in the 103rd Congress, the predecessor to the CAA (S. Rep. No. 397, 103d Cong., 2d Sess. 18 (1994)), stated that the question of compensatory time off was specifically addressed by the Congress and that section 7(o) of the FLSA was approved as the appropriate model for determining accrual and use of compensatory time off. Since H.R. 4822 was substantially the same as S.2, the bill which ultimately was enacted as the CAA, this commenter concluded that this "legislative history" suggests that a regulation authorizing compensatory time off and modeled after section 7(o) must also be acceptable under the CAA.

One commenter offered two further comments on the proposed rule. First, this commenter suggested that compensatory time off earned prior to January 23, 1996, should be used in accordance with the policies in effect at the time that the compensatory time was accrued, including policies governing payment for unused compensatory time upon termination of employment. According to this commenter, if no prior policies existed for use of compensatory time off, then the use of that accrued compensatory time should be governed by the new regulations. Further, this commenter argued that the 240-hour cap on accrued compensatory time should only apply to compensatory time accrued as of January 23, 1996 and that anything earned prior to that date (under the old system) should not count toward the 240-hour cap.

C. Final Regulation: The Board shall authorize employing offices to provide compensatory time off, subject to limitations, for employees whose work schedules "directly depend" on the schedule of the House or the Senate. In addition, the provisions of the FLSA as applied to covered employers under section 203 of the CAA authorize employing offices to utilize several methods of computing pay for employees who work irregular or fluctuating hours.

In addition to the options available to private sector employers under the FLSA for addressing irregular or fluctuating work hours, the regulations adopted by the Board shall allow employing offices additional flexibility in the case of employees whose work schedules "directly depend" on the schedule of the House or the Senate. Specifically, for these employees, the Board's regulations shall provide for compensatory time off in lieu of overtime compensation to a limited extent.

1. Compensatory time-off

At the outset, the Board rejects the argument made by several commenters that allowing compensatory time off in lieu of overtime pay is not within the Board's discretion. Section 203(c)(3) provides that the Board may issue regulations for covered employees whose schedules "directly depend" on the schedule of the House or the Senate "that shall be comparable to the provisions of the [FLSA] that apply to employees who have irregular schedules." In turn, section 203(a)(3) of the CAA provides that, "[e]xcept as provided in regulations under subsection (c)(3), covered employees may not receive compensatory time in lieu of overtime compensation." The plain import of this statutory language is that the Board may provide for compensatory time off in its irregular work schedule regulations; indeed, any other construction of the statute would render the exception clause of section 203(a)(3) meaningless, which traditional canons of construction generally forbid.

While legislative history cannot in any event rewrite such statutory text, the Board also notes that, contrary to the argument of some commenters, nothing in the CAA's legislative history in fact forbids the Board from authorizing compensatory time off in lieu of overtime compensation for employees whose schedules directly depend on the schedule of the House or the Senate. The only legislative materials of the 104th Congress referenced by these commenters are a floor statement by a Senator and the section-by-section analysis submitted during the Senate's consideration of the CAA. See 141 Cong. Rec. S445 (daily ed., Jan. 5, 1995); 141 Cong. Rec. S623-S624 (daily ed., Jan. 9, 1995). However, the referenced floor statement and section-by-section analysis were made in the context of discussing the general prohibition of compensatory time off under section 203(a)(3) of the CAA (and under section 7(a) of the FLSA). They were not made in reference to the specific terms of sections 203(a)(3), which explicitly do not proscribe the authorization of compensatory time off in the context of employees whose schedules directly depend on the schedule of the House or the Senate. Indeed, not only do these sections not explicitly proscribe the authorization of compensatory time-off in this context, they in fact implicitly authorize compensatory time-off in this one specified circumstance.

Some commenters referred to legislative activity of the 103rd Congress in arguing that compensatory time-off may not be allowed. But, as noted above, legislative history is not law and cannot properly be used to rewrite statutory text. Moreover, to the extent that legislative history of a prior Congress is relevant in determining the meaning of an act passed by the current Congress (but see *Landgraf v. USI Film Products*, 114 S.Ct. 1483, 1496 (1994)), the "legislative history" cited is, in all events, consistent with the approach taken by the Board.

For example, S. 1824, which was considered by the 103rd Congress, applied the protections of the FLSA to the Senate, but exempted employees whose work schedules are dependent on the legislative schedule of the Senate. See S. 1824, section 304(b); S. Rep. 103-297 (103d Cong., 2d Sess.) at p. 31 (1994). Because employees whose schedules are "dependent" on the Senate's schedule were completely excluded from FLSA protections under S. 1824, there was no need to consider the compensatory time off issue for those employees. Similarly, H.R. 4822, which was sent to the Senate on August 12, 1994, expressly allowed compensatory time off for all covered employees to the same extent that section 7(o) of the FLSA authorized compen-

satory time off for state and local government employees. See H.R. 4822, section 103(a)(3); S. Rep. 103-397 (103d Cong., 2d Sess.) at p. 18 (1994). Finally, H.R. 4822, as reported by the House, gave the Office of Compliance authority to consider the appropriate rule for employees with irregular schedules. See H.Rep. 103-650 (Part 2) (103d Cong., 2d Sess.) at p. 15 (1994). Clearly, to the extent that it is relevant, the available legislative history from the 103rd Congress does not reflect an intent categorically to prohibit the Board from allowing compensatory time off for employees with schedules that directly depend on the schedules of the House or the Senate.

Some commenters also referred to statements of legislators written after the CAA was passed regarding Congress's alleged intent regarding compensatory time off. However, courts do not view after-the-fact statements by proponents of a particular interpretation of a statute as a reliable indication of what Congress intended when it passed a law, even assuming that extra-textual sources are to any extent reliable for this purpose. See *Gustafson v. Alloyd Co., Inc.*, 115 S.Ct. 1061, 1071 (1995). The Board thus does not find such statements to limit its discretion under the statute as enacted.

The Board also does not agree with the commenters who asserted that the CAA uniformly adopts all aspects of private sector law in applying rights and protections to covered employees and employing offices within the legislative branch. The Board notes, for example, that section 225(c) of the CAA prohibits any award of civil penalties or punitive damages against offending employers, even though such penalties and damages would be available in private sector actions. Similarly, the Board notes that section 203(a)(2) excludes "interns" from the rights and protections of the FLSA, even though in many cases such interns would be entitled to such rights and protections under the same circumstances in the private sector. The Board further notes that covered employees asserting FLSA rights and protections must first exhaust confidential counseling and mediation remedies prior to filing an action in federal court; in contrast, private sector FLSA plaintiffs may proceed directly to court. In addition, the Board notes that, whereas private sector FLSA plaintiffs enjoy a limitations period of two years (three in the case of willful violations), 29 U.S.C. section 255, covered employees must initiate claims within 180 days of an alleged violation. See sections 402 and 225(d)(1) of the CAA. In short, private sector employers and employing offices under the CAA are treated differently in several instances; and sections 203(a)(3) and (c)(3) indicate that the use of compensatory time off in the context of employees whose schedules directly depend on the schedules of the House and the Senate is one of the allowable differences.

That the CAA does not foreclose the Board from authorizing compensatory time off, of course, does not end the inquiry. The question remains whether the Board in its discretion should allow the use of compensatory time off in connection with employees whose schedules directly depend on the schedules of the House and the Senate, and if so, to what extent it should do so. In the rule proposed in the NPR, the Board proposed to do so and to use section 7(o) as the model for doing so. However, in the NPR, the Board also specifically invited comment on both its approach and the advisability of using section 7(o) as the regulatory model for this purpose. Upon both further reflection and consideration of the comments received, the Board has determined that, while use of compensatory time off should still be allowed in this context, section 7(o) may not be the most apt analogy.

The Board continues to find that the use of compensatory time off in lieu of overtime pay should be allowed in the context of employees whose schedules "directly depend" upon the schedules of the House or the Senate. The import of section 203(a)(3) is that Congress contemplated that compensatory time off could be allowed in this unique context. Moreover, section 203(c)(3) suggests a special concern and desire by Congress for providing flexibility in connection with employees whose schedules "directly depend" on the schedules of the House and the Senate. The comments received confirm that the work schedules of these unique employees justify special rules that both protect these employees' rights and yet allow for flexibility and cost-control on the part of their employing offices. In the Board's judgment, use of compensatory time off is thus appropriate in this context.

The Board is now convinced, however, that section 7(o) of the FLSA is not the proper model for compensatory time off regulations in this context. Section 7(o) was not designed for and is not limited to employees with irregular work schedules; nor was section 7(o) designed for or limited to employees whose schedules directly depend upon the schedules of the House and the Senate. Accordingly, the Board has concluded, as a matter of discretion, that its regulations in this context should not be modeled after section 7(o).

Rather, the Board has concluded that section 7(f) of the FLSA is the more appropriate starting point for integrating compensatory time off into the CAA scheme. Section 7(f) was expressly designed for employees with irregular work schedules. It thus provides a more apt starting point for the development of regulations concerning employees whose irregular work schedules arise from the schedules of the House and the Senate. Moreover, using section 7(f) as the starting point for regulations has the advantage of building on a structure that already attempts to accommodate the needs of employers of employees with irregular work schedules and the FLSA rights of those employees.

Of course, section 7(f) was not explicitly designed for employers of employees whose schedules directly depend on the schedules of the House or the Senate. And section 203(c)(3) instructs that the Board's regulations for those employees need only be "comparable" and not the "same as" the provisions of the FLSA that address employees with irregular work schedules. Thus, the provisions of section 7(f) may properly be adjusted in order best to address the FLSA rights and obligations under the CAA of employees and employing offices in this special context.

Upon both further reflection and consideration of the comments received, the Board in its considered judgment has concluded that the irregular work schedule provisions of section 7(f) should be modified for employees whose work schedules "directly depend" on the schedule of the House or Senate as follows:

(1) No agreement between the employee and the employing office should be required in this context; the authorization for differential treatment of such employees derives from section 203(c)(3) and the Board's regulations implementing that section of the CAA;

(2) The employee's duties need not necessitate irregular hours of work within the meaning of section 7(f); instead, the employee need only be one of those employees whose work "directly depends" on the schedule of the House or the Senate (as defined in these regulations);

(3) The employee's hours may permissibly fluctuate only in the overtime range, as the statutory concern here is obviously the unpredictability in work schedules that derives

from the conduct of the nation's federal legislative business;

(4) Compensatory time off may be paid in lieu of overtime compensation for any hours worked in excess of 60 hours in a workweek. For overtime hours over 40 and up to 60 hours, the employing office must pay appropriate overtime compensation as otherwise required by the CAA. Of course, if the requirements of section 7(f) are met, pay for the first 60 hours of employment could be governed by that section. This limited use of compensatory time off rules is consistent with the language and evident purpose of sections 203 (a)(3) and (c)(3); it provides employing offices with some flexibility and control over costs in this context; and, by requiring employing offices to pay overtime for the first 20 hours of overtime in a week, it provides sufficient disincentives for employing offices to abuse the use of the provision; and,

(5) An employee who has accrued compensatory time off under section 2, upon his or her request, shall be permitted by the employing office to use such time within a reasonable period after making the request, unless the employing office makes a bona fide determination that the needs of the operations of the office do not allow the taking of compensatory time off at the time of request. An employee may renew the request at a subsequent time. An employing office may, upon reasonable notice, require an employee to use accrued compensatory time-off. Upon termination of employment, the employee shall be paid for any unused compensatory time at the rate earned by the employee at the time the employee receives such payment.

The above rules are sufficiently similar to the provisions of section 7(f) as to be "comparable" within the meaning of section 203(c)(3). See Webster's Third New International Dictionary 461 (1968) ("comparable" defined as "having enough like characteristics or qualities to make comparison appropriate," "permitting or inviting comparison often in one or two salient points," "equivalent, similar"). In the Board's judgment, these rules also best balance and accommodate the rights and obligations of covered employees and employing offices under the CAA.

Finally, as to issues relating to compensatory time off that accrued under other rules prior to January 23, 1996, the effective date of the CAA, the Board concludes that its regulations do not apply. Disputes over the use of such accrued time off, even if they arise after January 23, 1996, are not governed by these regulations and should be directed to the authorities previously responsible for such rules.

2. The standard for determining when an employee's schedule "directly depends" on the schedule of the House or the Senate

Just as it is clear that the Board may authorize compensatory time off in lieu of overtime compensation for employees whose schedules "directly depend" upon the schedules of the House or the Senate, it is equally evident that Congress did not intend that it be made available to all covered employees. Using words of limitation, the CAA states that only those employees whose work schedules "directly depend" on the schedule of the House or the Senate may qualify for compensatory time off in lieu of overtime pay.

Of course, as the comments demonstrate, the phrase "directly depend" is not entirely free of ambiguity. In a broad sense, the times in which the House or the Senate convene to conduct legislative business will impact in varying degrees on the schedule of practically all who work on Capitol Hill or for

Members of Congress, much like the ripple effect of a pebble tossed into water. Thus, an expansive interpretation of "directly depends"—i.e., if it need only be demonstrated that an employee's work hours at any point were influenced to some extent by a daily session of either legislative body—would make compensatory time off almost universally available.

There is no reason to believe that Congress intended such an expansive interpretation of the statutory phrase. The term "directly" connotes a narrower rather than a broader meaning and, indeed, suggests that a relatively immediate connection between the employee's work schedule and changes in the schedule of the House or the Senate was contemplated. Moreover, since sections 203(a)(3) and 203(c)(3) textually refer to each other, and since the allowance of compensatory time off in the context of regulations implementing section 203(c)(3) was to be the exception rather than the rule, a narrower definition of "directly depend" is necessary to honor the statutory text and structure (as well as the general legislative history on the limited availability of compensatory time off).

The question remains, of course, how the term "directly depend" should be defined. In the Board's judgment, the following considerations are relevant:

First, in making the "schedule" of the House and the Senate determinative, Congress appears to have been focusing on the floor activities that occur in each chamber. Each body's "schedule" generally has meaning only in reference to the times at which each House's respective leadership plans to convene a daily session in order to conduct legislative business. While the congressional leaders can decide when to convene a session and what to place on the calendar, the dynamic nature of the legislative process often makes it difficult to control when business will be concluded. For example, a session of the Senate may be unexpectedly protracted by unlimited debate on an issue. Similarly, the schedule of the House may be upset if a bill is brought to the floor under an "open rule" that allows unlimited amendments. Also, as recent experience has demonstrated once again, both Houses are often required to remain in session for extended hours in an effort to resolve differences between the two Houses or between the Congress and the President. This dynamic makes the schedules of the House and the Senate highly irregular and, at times, long, thereby requiring certain employees to work in excess of the maximum workweek prescribed by the FLSA.

Second, in using the adverb "directly" to modify "depend," Congress also appears to have required a relatively close nexus between the floor activities of each body and the work schedule of an eligible covered employee. (See the floor statement of Senator Grassley at 141 Cong. Rec. S624, Jan. 9, 1995: "'Directly' is to be strictly limited to those employees who are essentially floor staff.") From a functional standpoint, the practical reality is that the conduct of legislative business in each chamber requires the efforts of those who literally work in or adjacent to each chamber—such as the legislative clerks, those who staff the cloakrooms, those who provide security, the reporters of debates, and the parliamentarians' staff. Practically, the conduct of legislative business also requires the efforts of some who are not located in either chamber but whose work is directly linked to floor activity on a day-to-day basis—such as those who operate the microphones or the remote cameras that televise the proceedings, those in the Document Rooms, those who maintain the various legislative computer systems that con-

trol the House voting system or that track the proceedings, and those, like the staff of the legislative counsel's offices, who must be available to address substantive matters that may arise in the course of deliberations. These personnel must generally be in attendance, and their employing offices open and staffed, if the two Houses of Congress are to conduct legislative business. By the same token, during those periods when the House or the Senate is not in session, the level of required work may be considerably diminished, thus affording such employees ample opportunity to utilize accrued compensatory time-off.

The Board recognizes that, in a sense, the work of employing offices such as legislative committees and joint committees is linked to the schedules of the House and the Senate—at least when legislation reported out of such committees is placed on the calendar for debate. The Board also recognizes that, in the same sense, employees of committee offices may sometimes have irregular work hours that balloon with protracted consideration of their bills on the floor. However, it is also true that the work of such offices and employees tends not to ebb and flow in the same sense or to the same degree as that of those offices and employees more closely tied to floor activity. Moreover, during those days when the House or the Senate is not in session or has only an abbreviated *pro forma* session, these committees still conduct hearings or at the very least their staffs are likely to be engaged in a full range of activities associated with considering legislation for hearing, for markup or for oversight. These employing offices, thus, maintain a schedule of activities that is separate from and independent of the schedule of the House or the Senate. It, therefore, makes much less sense to say that their employees have schedules that "directly depend" upon the schedule of either body, as contemplated by section 203(c)(3).

Based on these considerations, the Board shall adopt a definition of "directly depends" that requires the eligible employee to perform work that directly supports the conduct of business in legislative areas in the chamber and to work hours that regularly change in response to the schedules of the House or the Senate.

3. The provisions of the FLSA as applied under section 203 of the CAA authorize employing offices to utilize several methods to compute overtime for employees who work irregular or fluctuating hours

In so framing its rules, the Board understands that its regulations under section 203(c)(3) will not themselves resolve all of the concerns raised by commenters regarding the ability of employing offices to anticipate and control payroll costs associated with employees who work fluctuating or irregular hours. But the Board frankly finds that many of these concerns are simply concerns with the obligations that the CAA has imposed on employing offices (just as the FLSA imposes them on other employers); and the Board must reiterate that it generally cannot and should not, in the absence of authority to do so, attempt to resolve for employing offices cost and other such concerns that derive from FLSA compliance obligations under the CAA. Moreover, many of the concerns that have been raised may be addressed by employing offices by resort to methods available under the FLSA to employers generally to potentially control their total payroll and to offset costs due to overtime compensation obligations incurred in a particular workweek. Such methods are also available to employing offices under the CAA, and many of the concerns raised by employing offices may be adequately addressed through the use of these mechanisms.

a. Section 7(f) of the FLSA and "Belo Contracts"

One method of reducing overtime costs available in some situations under the FLSA is the so-called "Belo" contract, a form of guaranteed compensation that includes a certain amount of overtime. Codified by section 7(f) of the FLSA, Belo contracts allow an employer "to pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week." 29 CFR section 778.403. See 29 CFR section 778.404, citing *Walling v. A.H. Belo Co.*, 316 U.S. 624 (1942). Such a contract affords to the employee the security of a regular weekly income and benefits the employer by enabling it to anticipate and control in advance at least some part of its labor costs. A guaranteed wage plan also provides a means of limiting overtime computation costs so that wide leeway is provided for having employees work overtime without increasing the cost to the employer. 29 CFR section 778.404.

Belo contracts may be used by employers where the following four requirements of section 7(f) are met:

(1) the arrangement is pursuant to a specific agreement between the employee and the employer or to a collective bargaining agreement;

(2) the employee's duties necessitate irregular hours of work;

(3) the fluctuation in the employee's hours is not entirely in the overtime range; and

(4) the contract guarantees a weekly overtime payment not to exceed 60 hours per week and the employee receives that payment regardless of the number of hours actually worked.

29 U.S.C. section 207(f); 29 C.F.R. sections 778.406, 778.407.

Section 7(f) of the FLSA is applicable to covered employees and employing offices under section 203(a) of the CAA. Therefore, an employing office may utilize a "Belo" contract where the above-referenced requirements of section 7(f) are satisfied.

b. Time off plans

An alternative approach that is less complex than a "Belo" contract is a time off plan. Under such a plan, an employer lays off the employee a sufficient number of hours during some other week or weeks of the pay period to offset the amount of overtime worked (i.e., at the one and one-half rate) so that the desired wage or salary for the pay period covers the total amount of compensation, including the overtime compensation, due the employee for each workweek taken separately.

A simple illustration of such a plan is as follows: An employee is paid on a biweekly basis of \$400 at the rate of \$200 per week for a 40 hour workweek. In the first week of the pay period, the employee works 44 hours and would be due 40 hours times \$5 plus 4 hours times \$7.50, for a total of \$230 for the week. Payment of \$400 at the end of the biweekly pay period satisfies the monetary requirements of the FLSA, if the employer permits the employee to work only 34 hours during the second week of the pay period.

The control of earnings by control of the number of hours that an employee is permitted to work is the essential principle of the time off plan. For this reason, such a plan cannot be applied to an employee whose pay period is weekly, nor to a salaried employee who is paid a fixed salary to cover all hours that the employee may work in any particular workweek or pay period. Further, the overtime hours cannot be accumulated and the time off given in another pay period.

Time off plans are authorized under section 7(a) of the FLSA. See, e.g., Wage and Hour Administrator Opinion Letter, issued

1950; Wage and Hour Opinion letter dated December 27, 1968. Thus, employing offices are authorized to use such plans under section 203 of the CAA.

c. Fixed salary for fluctuating hours

A third approach for dealing with fluctuating or irregular work schedules of a salaried employee is for an employer to have an understanding with the employee that the fixed salary amount is to be considered straight time pay for all hours, whatever the number, worked in a week. The FLSA permits such an arrangement where two conditions are satisfied: (1) the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours that the employee works is greatest; and (2) the employee receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half the employee's regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate under the salary arrangement.

As with time off plans, fixed salaries for fluctuating hours are permitted under section 7(a) of the FLSA. See generally 29 CFR section 778.114. Thus, employing offices are authorized to implement such schedules under the CAA, provided that they meet the requirements thereunder.

II. Adoption of Proposed Rules as Final Regulations under Section 304(b)(3) and as Interim Regulations

Having considered the public comments to the proposed rules, the Board pursuant to section 304(b) (3) and (4) of the CAA is adopting these final regulations and transmitting them to the House and the Senate with recommendations as to the method of approval by each body under section 304(c). However, the rapidly approaching effective date of the CAA's implementation necessitates that the Board take further action with respect to these regulations. For the reasons explained below, the Board is also today adopting and issuing these rules as *interim* regulations that will be effective as of January 23, 1996 or the time upon which appropriate resolutions of approval of these interim regulations are passed by the House and/or the Senate, whichever is later. These interim regulations will remain in effect until the earlier of April 15, 1996 or the dates upon which the House and Senate complete their respective consideration of the final regulations that the Board is herein adopting.

The Board finds that it is necessary and appropriate to adopt such interim regulations and that there is "good cause" for making them effective as of the later of January 23, 1996, or the time upon which appropriate resolutions of approval of them are passed by the House and the Senate. In the absence of the issuance of such interim regulations, covered employees, employing offices, and the Office of Compliance staff itself would be forced to operate in regulatory uncertainty. While section 411 of the CAA provides that, "if the Board has not issued a regulation on a matter for which this Act requires a regulation to be issued, the hearing officer, Board, or court, as the case may be, shall apply, to the extent nec-

essary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding," covered employees, employing offices and the Office of Compliance staff might not know what regulation, if any, would be found applicable in particular circumstances absent the procedures suggested here. The resulting confusion and uncertainty on the part of covered employees and employing offices would be contrary to the purposes and objectives of the CAA, as well as to the interests of those whom it protects and regulates. Moreover, since the House and the Senate will likely act on the Board's final regulations within a short period of time, covered employees and employing offices would have to devote considerable attention and resources to learning, understanding, and complying with a whole set of default regulations that would then have no future application. These interim regulations prevent such a waste of resources.

The Board's authority to issue such interim regulations derives from sections 411 and 304 of the CAA. Section 411 gives the Board authority to determine whether, in the absence of the issuance of a final regulation by the Board, it is necessary and appropriate to apply the substantive regulations of the executive branch in implementing the provisions of the CAA. Section 304(a) of the CAA in turn authorizes the Board to issue substantive regulations to implement the Act. Moreover, section 304(b) of the CAA instructs that the Board shall adopt substantive regulations "in accordance with the principles and procedures set forth in section 553 of title 5, United States Code," which have in turn traditionally been construed by courts to allow an agency to issue "interim" rules where the failure to have rules in place in a timely manner would frustrate the effective operation of a federal statute. See, e.g., *Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877 (3d Cir. 1982). As noted above, in the absence of the Board's adoption and issuance of these interim rules, such a frustration of the effective operation of the CAA would occur here.

In so interpreting its authority, the Board recognizes that in section 304 of the CAA, Congress specified certain procedures that the Board must follow in issuing substantive regulations. In section 304(b), Congress said that, except as specified in section 304(e), the Board must follow certain notice and comment and other procedures. The interim regulations in fact have been subject to such notice and comment and such other procedures of section 304(b).

In issuing these interim regulations, the Board also recognizes that section 304(c) specifies certain procedures that the House and the Senate are to follow in approving the Board's regulations. The Board is of the view that the essence of section 304(c)'s requirements are satisfied by making the effectiveness of these interim regulations conditional on the passage of appropriate resolutions of approval by the House and/or the Senate. Moreover, section 304(c) appears to be designed primarily for (and applicable to) final regulations of the Board, which these interim regulations are not. In short, section 304(c)'s procedures should not be understood to prevent the issuance of interim regulations that are necessary for the effective implementation of the CAA.

Indeed, the promulgation of these interim regulations clearly conforms to the spirit of section 304(c) and, in fact promotes its proper operation. As noted above, the interim regulations shall become effective only upon the passage of appropriate resolutions of approval, which is what section 304(c) contemplates. Moreover, these interim regulations allow more considered deliberation by

the House and the Senate of the Board's final regulations under section 304(c).

The House has in fact already signalled its approval of such interim regulations both for itself and for the instrumentalities. On December 19, 1995, the House adopted H. Res. 311 and H. Con. Res. 123, which approve "on a provisional basis" regulations "issued by the Office of Compliance before January 23, 1996." The Board believes these resolutions are sufficient to make these interim regulations effective for the House on January 23, 1996, though the House might want to pass new resolutions of approval in response to this pronouncement of the Board.

To the Board's knowledge, the Senate has not yet acted on H. Con. Res. 123, nor has it passed a counterpart to H. Res. 311 that would cover employing offices and employees of the Senate. As stated herein, it must do so if these interim regulations are to apply to the Senate and the other employing offices of the instrumentalities (and to prevent the default rules of the executive branch from applying as of January 23, 1996).

III. METHOD OF APPROVAL

The Board received no comments on the method of approval for these regulations. Therefore, the Board continues to recommend that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate should be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives should be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices should be approved by the Congress by concurrent resolution.

With respect to the interim version of these regulations, the Board recommends that the Senate approve them by resolution insofar as they apply to the Senate and employees of the Senate. In addition, the Board recommends that the Senate approve them by concurrent resolution insofar as they apply to other covered employees and employing offices. It is noted that the House has expressed its approval of the regulations insofar as they apply to the House and its employees through its passage of H. Res. 311 on December 19, 1995. The House also expressed its approval of the regulations insofar as they apply to other employing offices through passage of H. Con. Res. 123 on the same date; this concurrent resolution is pending before the Senate.

Accordingly, the Board of Directors of the Office of Compliance hereby adopts and submits for approval by the Congress and issues on an interim basis the following regulations:

ADOPTED REGULATIONS—AS INTERIM REGULATIONS AND AS FINAL REGULATIONS

Regulation defining "Interns" (implementing section 203(a)(3) of the CAA)

Section 1. An intern is an individual who: (a) is performing services in an employing office as part of a demonstrated educational plan, and

(b) is appointed on a temporary basis for a period not to exceed 12 months; provided that if an intern is appointed for a period shorter than 12 months, the intern may be reappointed for additional periods as long as the total length of the internship does not exceed 12 months.

Section 2. The definition of intern does not include volunteers, fellows or pages.

[Senate version:] Section 2. An intern for the purposes of section 203(a)(2) of the Act also includes an individual who is a senior citizen intern appointed under S. Res. 219

(May 5, 1978, as amended by S. Res. 96, April 9, 1991), but does not include volunteers, fellows or pages.

Duration of interim regulations

These interim regulations for the House, the Senate and the employing offices of the instrumentalities are effective on January 23, 1996 or on the dates upon which appropriate resolutions are passed, whichever is later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate.

ADOPTED REGULATIONS—AS INTERIM REGULATIONS AND AS FINAL REGULATIONS

Regulation concerning employees whose work schedules directly depend on the schedule of the House of Representatives or the Senate (implementing section 203(c)(3) of the CAA)

Section 1. For the purposes of this Part, a covered employee's work schedule "directly depends" on the schedule of the House of Representatives [the Senate] only if the eligible employee performs work that directly supports the conduct of legislative or other business in the chamber and works hours that regularly change in response to the schedule of the House and the Senate.

Section 2. No employing office shall be deemed to have violated section 203(a)(1) of the CAA, which applies the protections of section 7(a) of the Fair Labor Standards Act ("FLSA") to covered employees and employing office, by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under section 7(a) of the FLSA where the employee's work schedule directly depends on the schedule of the House of Representatives [Senate] within the meaning of section 1, and: (a) the employee is compensated at the rate of time-and-a-half in pay for all hours in excess of 40 and up to 60 hours in a workweek, and (b) the employee is compensated at the rate of time-and-a-half in either pay or in time off for all hours in excess of 60 hours in a workweek.

Section 3. An employee who has accrued compensatory time off under section 2, upon his or her request, shall be permitted by the employing office to use such time within a reasonable period after making the request, unless the employing office makes a bona fide determination that the needs of the operations of the office do not allow the taking of compensatory time off at the time of the request. An employee may renew the request at a subsequent time. An employing office may also, upon reasonable notice, require an employee to use accrued compensatory time-off.

Section 4. An employee who has accrued compensatory time authorized by this regulation shall, upon termination of employment, be paid for the unused compensatory time at the rate earned by the employee at the time the employee receives such payment.

Duration of interim regulations

These interim regulations for the House, the Senate and the employing offices of the instrumentalities are effective on January 23, 1996 or on the dates upon which appropriate resolutions are passed, whichever is later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate.

NOTICE OF ADOPTION OF PROCEDURAL RULES

Mr. THURMOND. Mr. President, pursuant to the Congressional Account-

ability Act of 1995, a Notice of Adoption of Regulations and Submission for Approval and Issuance of Interim Regulations, together with a copy of the adopted regulations, was submitted by the Office of Compliance, U.S. Congress. These final rules implement the rights and protections of the following statutes made applicable by the Congressional Accountability Act: Family and Medical Leave Act, Worker Adjustment and Retraining Notification Act, Fair Labor Standards Act, Employee Polygraph Protection Act. The final rules also implement regulations regarding the use of the lie detector tests by the Capitol Police.

The notice announces the adoption of the final regulation as an interim regulation on the same matters. Additionally, these notices include the Board's recommendation as to the method of House and Senate approval of the final regulations.

The Congressional Accountability Act specifies that the notice and regulations be printed in the CONGRESSIONAL RECORD. Therefore, I ask unanimous consent that the notice and adopted regulations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

NOTICE OF ADOPTION OF REGULATIONS AND SUBMISSION FOR APPROVAL AND ISSUANCE OF INTERIM REGULATIONS

Summary: The Board of Directors of the Office of Compliance, after considering comments to its general Notice of Proposed Rulemaking published on November 28, 1995 in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations to implement section 202 of the Congressional Accountability Act of 1995 ("CAA") (2 U.S.C. §§1301 et seq.), which applies certain rights and protections of the Family and Medical Leave Act of 1993. The Board is also adopting and issuing such regulations as interim regulations for the House of Representatives, the Senate, and the employing offices of the instrumentalities effective on January 23, 1996 or on the dates upon which appropriate resolutions are passed, whichever is later. The interim regulations shall expire on April 15, 1996 or on the dates on which appropriate resolutions concerning the Board's final regulations are passed by the House and the Senate, respectively, whichever is earlier.

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, D.C. 20540-1999. Telephone (202) 724-9250.

Background and summary

Supplementary Information: The Congressional Accountability Act of 1995 ("CAA"), Pub. L. 104-1, 109 Stat. 3 (2 U.S.C. §§1301 et seq.), was enacted January 23, 1995. In general the CAA applies the rights and protections of eleven federal labor and employment laws to covered employees and employing offices within the legislative branch. In addition, the statute establishes the Office of Compliance ("Office") with a Board of Directors ("Board") as "an independent office within the legislative branch of the Federal Government." 2 U.S.C. §1381(a).