Mr. BOND. Mr. President, I will be very brief. First, I want to express my deep appreciation to our esteemed leader of the Budget Committee, Senator DOMENICI of New Mexico, for doing an outstanding job. My appreciation also goes to Senator EXON for his steadfastness and to the members of the staff, who have done a remarkable job. It has been a pleasure and a real treat to work with them. It has been an extremely difficult measure, but they did it very well.

MORNING BUSINESS

Mr. DOMENICI. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

U.S./GERMAN OPEN SKIES AGREEMENT

Mr. PRESSLER. Mr. President, a truly historic moment occurred in Milwaukee today when the United States and the Federal Republic of Germany formally signed an open skies agreement which will liberalize air service between our two countries. To underscore the importance of this agreement, I was pleased both President Clinton and Chancellor KOHL were on hand to sign it.

As I have said before, the U.S./German open skies agreement is a great economic victory for both countries and a very welcome development for consumers. Under the agreement, airlines of both countries will be free to operate to any points in either country, as well as third countries, without limitation. It also liberalizes pricing, charter services and further liberalizes the open skies cargo regime already in place. In short, it allows market demand, not the heavy hands of governments, to decide air service between the United States and Germany.

In addition to direct benefits, I have long said such an agreement would serve as a catalyst for liberalizing air service markets throughout Europe. Recent news reports indicate the competitive impact of the U.S./German open skies agreement is already being felt. For instance, since last October the British government, which is highly protective of the restrictive U.S./U.K. bilateral aviation agreement, expressed no willingness to seek to improve air service opportunities between the United States and the United Kingdom. This week, however, British negotiators came to Washington whistling a very different tune.

The competitive impact of the U.S./German open skies agreement also is being felt in U.S./France aviation relations. Since the French renounced our bilateral aviation agreement in 1992, the French government had shown no interest in negotiating a new air service agreement with the United States. Like the British, the French too are whistling a different tune as a result of the U.S./German open skies agreement.

I welcome reports the Government of France finally has expressed an interest in discussing a liberal bilateral aviation agreement. No doubt this abrupt change in course is due to the competitive reality that France is now virtually surrounded by countries enjoying open skies agreements with the United States. Like a huge magnet, these countries with open skies regimes are drawing passenger traffic away from French airports.

For instance, last year combined traffic at the two major Paris airports, Orly and Charles de Gaulle, fell nearly 1 percent. What makes this statistic remarkable is elsewhere in Europe—particularly in countries with open skies relations with the United States—passenger traffic growth has been robust at major airports. For instance, passenger traffic rose 8.7 percent at Frankfurt Main Airport, 7.6 percent at Amsterdam Schiphol Airport, and 11 percent at Brussels Zaventem Airport.

Clearly, the French realize the U.S./German open skies agreement is only going to make the problem of passenger traffic diversion much worse. As I have said repeatedly, competition will be our best ally in opening the remaining restrictive air service markets in Europe. At great cost to its economy, the French are learning this lesson firsthand.

Mr. President, I commend to my colleagues an article describing the competitive impact of the U.S./German open skies agreement which appeared today in the Aviation Daily. I ask unanimous consent that a copy of that article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Let me conclude by saying the U.S./German open skies agreement is unquestionably our most important liberalized air service agreement to date. I again praise the bold and steadfast leadership of Secretary of Transportation Federico Pena and German Transport Minister Matthias Wissmann in securing this agreement. Both the United States and Germany will benefit greatly from their leadership which turned an excellent opportunity into a truly historic trade agreement between our two countries.

EXHIBIT 1

[From Aviation Daily, May 23, 1996]

NEW CARRIER ALLIANCES FUEL HOPES FOR U.S.-U.K., EUROPE OPEN SKIES

The emergence of powerful, antitrust-immunized alliances and increasingly open aviation regimes in fueling expectations of breakthroughs in U.S.-U.K. and U.S.-European Union relations. In a Senate floor speech Tuesday, Commerce Committee Chairman Larry Pressler (R–S.D.) said ''a truly historic opportunity may be at hand to finally force the British to join us on the field of free and fair air service competition.'' The chief catalyst for this opportunity is the potential alliance between American and British Airways. With published reports saying BA and American are close to announcing ''a major business alliance,'' British officials ''came to Washington [Monday] to assess the price tag for the regulatory relief the new alliance would require,'' said Pressler. ''I am pleased initial reports indicate [DOT] reaffirmed its long-standing position: Nothing short of full liberalization of the U.S./U.K. air service market would be acceptable,'' he said. ''If the administration stands firm, as I believe it must, the current restrictive U.S.–U.K. bilateral aviation agreement will be cast into the great trash heap of protectionist trade policy, where it belongs.''

Pressler traced the potential for a U.K. breakthrough to the U.S.-Germany open skies agreement, struck early this year. ''Simply put, the possible British Airways/American Airlines alliance is a competitive response to the U.S./Germany open skies agreement and the grant of antitrust immunity to the United Airlines/Lufthansa alliance,'' he said. Pressler was active in developing the U.S.-Germany pact, a point underscored on the Senate floor by Sen. Trent Lott (R–Miss.), who said Pressler's ''steadfast leadership was instrumental in securing'' the open skies agreement. Lott made public letters from DOT Secretary Federico Peña, who praised Pressler's ''bipartisan leadership role'' on the issue, and German Transport Minister Matthias Wissmann, who called Pressler ''a cornerstone in this development.''

In his speech, Pressler said, ''If the Delta alliance with three smaller European carriers is granted a final antitrust immunity order later this month, that alliance—in combination with the United and Northwest alliances—will mean nearly 50% of the passenger traffic between the United States and Europe will be carried on fully integrated alliances.'' This will leave BA ''with no choice but to respond. It now appears to be doing so by seeking to ally itself with the strongest U.S. carrier available and ultimately, to seek antitrust [immunity] for its new alliance.'' The price tag for the regulatory relief for such an alliance ''must be nothing less than immediate open skies,'' said Pressler.

Industry observers are looking toward next week's European Transport Ministers Conference and a meeting of the European Union Council of Ministers in mid-June for possible progress in EU–U.S. aviation relations. Delta Chairman, President and Chief Executive Ronald Allen urged the EU to move ''boldly and swiftly'' toward an open skies relationship with the U.S. as ''the next necessary step forward for world aviation. It is important that we take the step soon.'' In a speech yesterday before the European Aviation Club in Brussels, Allen praised EU Transport Commissioner Neil Kinnock's proposal that the European Commission be given a mandate to negotiate EU-wide open skies with the U.S. ''He is trying to open the door to meaningful transatlantic competition and integration,'' Allen said. Some observers believe Kinnock will gain at least limited authority at the Council of Ministers Meeting.

Allen said Delta backed a number of proposals that may help the talks, including an increase in permissible foreign ownership of U.S. carriers from 25% to 49%. He said the carrier will work for changes in U.S. bankruptcy laws that allow airlines to continue operating while avoiding financial responsibilities, but the EU must also change its policy allowing state subsidies for troubled carriers. ''Both these assistance measures distort marketplace competition and penalize carriers that have made the difficult choices necessary to make their companies competitive and financially sound,'' said Allen. He added that the EU also must resist moves to hamper competition through ''safety net'' regulations.

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to Section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a Notice of Proposed Rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice relates to Federal Service Labor-Management Relations (Regulations under section 220(e) of the Congressional Accountability Act.)

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS, PROTECTIONS AND RESPONSIBILITIES UNDER CHAPTER 71 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS (REGULATIONS UNDER SECTION 220(e) OF THE CONGRESSIONAL ACCOUNTABILITY ACT)

NOTICE OF PROPOSED RULEMAKING

Summary: The Board of Directors of the Office of Compliance is publishing proposed regulations to implement section 220 of the Congressional Accountability Act of 1995 (''CAA'' or ''Act''), Pub. L. 104–1, 109 Stat. 3. Specifically, these proposed regulations are published pursuant to section 220(e) of the CAA.

The provisions of section 220 are generally effective October 1, 1996. 2 U.S.C. section 1351. However, as to covered employees of certain specified employing offices, the rights and protections of section 220 will be effective on the effective date of Board regulations authorized under section 220(e). 2 U.S.C. section 1351(f).

The proposed regulations set forth herein, which are published under section 220(e) of the Act, are to be applied to certain employing offices of the Senate, the House of Representatives, and the Congressional instrumentalities and employees of the Senate, the House of Representatives, and the Congressional instrumentalities. These regulations set forth the recommendations of the Deputy Executive Director for the Senate, the Deputy Executive Director for the House of Representatives and, the Executive Director, Office of Compliance, as approved by the Board of Directors, Office of Compliance. A Notice of Proposed Rulemaking under section 220(d) is being published separately.

Dates: Comments are due within 30 days after publication of this notice in the Congressional Record.

Addresses: Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, John Adams Building, 110 Second Street, S.E., Washington, DC 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (FAX) machine to (202) 426–1913. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, DC, Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance at (202) 724–9250. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 224–2705.

SUPPLEMENTARY INFORMATION

I. Introduction

The Congressional Accountability Act of 1995 (''CAA'' or ''Act'') was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered Congressional employees and employing offices. Section 220 of the CAA addresses the application of chapter 71 of title 5, United States Code (''chapter 71''), relating to Federal Service Labor-Management Relations. Section 220(a) of the CAA applies the rights, protections, and responsibilities established under sections 7102, 7106, 7111 through 7117, 7119 through 7122, and 7131 of chapter 71 to employing offices, covered employees, and representatives of covered employees. These provisions protect the legal right of certain covered employees to organize and bargain collectively with their employing offices within statutory and regulatory parameters.

Section 220(d) of the Act requires the Board of Directors of the Office of Compliance (''Board'') to issue regulations to implement section 220 and further states that, except as provided in subsection (e), such regulations ''shall be the same as substantive regulations promulgated by the Federal Labor Relations Authority (''FLRA'') to implement the statutory provisions referred to in subsection (a) except—

(A) to the extent that the Board may determine, for good cause shown and stated together with the regulations, that a modification of such regulations would be more effective for the implementation of rights and protections under this section, or

(B) as the Board deems necessary to avoid a conflict of interest or appearance of conflict of interest.''

The Board has separately published a Notice of Proposed Rulemaking with respect to the issuance of regulations pursuant to section 220(d).

Section 220(e)(1) of the CAA requires that the Board also issue regulations ''on the manner and extent to which the requirements and exemptions of chapter 71 [] should apply to covered employees who are employed in the offices listed in'' section 220(e)(2). The offices listed in section 220(e)(2) are:

(A) the personal office of any Member of the House of Representatives or of any Senator;

(B) a standing select, special, permanent, temporary, or other committee of the Senate or House of Representatives, or a joint committee of Congress;

(C) the Office of the Vice President (as President of the Senate), the Office of the President pro tempore of the Senate, the Office of the Majority Leader of the Senate, the Office of the Minority Leader of the Senate, the Office of the Majority Whip of the Senate, the Conference of the Majority of the Senate, the Conference of the Minority of the Senate, the Office of the Secretary of the Conference for the Majority of the Senate, the Office of the Secretary for the Minority of the Senate, the Majority Policy Committee of the Senate, the Minority Policy Committee of the Senate, and the following offices within the Office of the Secretary of the Senate: Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest, Printing Services, Captioning Services, and Senate Chief Counsel for Employment;

(D) the Office of the Speaker of the House of Representatives, the Office of the Majority Leader of the House of Representatives, the Office of the Minority Leader of the House of Representatives, the Offices of the Chief Deputy Majority Whips, the Offices of the Chief Deputy Minority Whips, and the following offices within the Office of the Clerk of the House of Representatives: Offices of Legislative Operations, Official Reporters of Debate, Official Reporters to Committees, Printing Services, and Legislative Information;

(E) the Office of the Legislative Counsel of the Senate, the Office of the Senate Legal Counsel, the Office of the Legislative Counsel of the House of Representatives, the Office of the General Counsel of the House of Representatives, the Office of the Parliamentarian of the House of Representatives, and the Office of the Law Revision Counsel;

(F) the offices of any caucus or party organization;

(G) the Congressional Budget Office, the Office of Technology Assessment, and the Office of Compliance; and;

(H) such other offices that perform comparable functions which are identified under regulations of the Board.

These offices shall be collectively referred to as the ''section 220(e)(2) offices.''

Section 220(e)(1) provides that the regulations which the Board issues to apply chapter 71 to covered employees in section 220(e)(2) offices ''shall, to the greatest extent practicable, be consistent with the provisions and purposes of chapter 71 [] and of [the CAA].'' To this end, section 220(e)(1) mandates that such regulations ''shall be the same as substantive regulations issued by the Federal Labor Relations Authority under such chapter'' with two separate and distinct provisos:

First, section 220(e)(1), like every other CAA section requiring the Board to issue implementing regulations (*i.e.*, sections 202(d)(2), 203(c)(2), 204(c)(2), 205(c)(2), 206(c)(2), 215(d)(2)), authorizes the Board to modify the FLRA's regulations ''(A) to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Second, independent of section 220(e)(1), section 220(e)(2) requires the Board to issue regulations that ''exclude from coverage under this section any covered employees who are employed in offices listed in [section 220(e)(2)] if the Board determines that such exclusion is required because of—

(i) a conflict of interest or appearance of a conflict of interest; or

(ii) Congress' constitutional responsibilities.''

The provisions of section 220 are effective October 1, 1996, except that, ''[w]ith respect to the offices listed in subsection (e)(2), to the covered employees of such offices, and to representatives of such employees, [section 220] shall be effective on the effective date of regulations under subsection (e).''

II. The Advance Notice of Proposed Rulemaking

A. Issues for Comment that Relate to Section 220(e)

The Board sought comment on two issues related to section 220(e)(1)(A): (1) Whether and to what extent the Board should modify the regulations promulgated by the FLRA for application to employees in section 220(e)(2) offices? (2) Whether the Board should issue additional regulations concerning the manner and extent to which the requirements and exemptions of chapter 71

apply to employees in section 220(e)(2) offices?

The Board sought comment on four issues related to section 220(e)(1)(B): (1) What are the constitutional responsibilities and/or conflicts of interest (real or apparent) that would require exclusion of employees in section 220(e) offices from coverage under section 220 of the CAA? (2) Whether determinations as to such exclusions should be made on an office-wide basis or on the basis of job duties and functions? (3) Which job duties and functions in section 220(e) offices, if any, should be excluded from coverage, and what is the legal and factual basis for any such exclusion? (4) Are there any offices not listed in section 220(e)(2) that are candidates for the application of the section 220(e)(1)(B) exclusion and, if so, why?

In seeking comment on the issues related to section 220(e) regulations, the Board emphasized that it needed detailed legal and factual support for any proposed modifications in the FLRA's regulations and for any additional proposed regulations implementing sections 220(e)(1)(A) and (B).

B. Summary of Comments Received

The Board did not receive any comments on issues arising under section 220(e)(1)(A), and received only two comments on issues arising under section 220(e)(1)(B). These two comments addressed the issue of whether the Board should grant a blanket exclusion for *all* covered employees in the section 220(e)(2) offices. The Board summarizes those two comments here.

One commenter argued that nothing in the CAA warrants any categorical exclusions from coverage. The commenter argued that the CAA's instruction to the Board to issue regulations which ''to the greatest extent practicable'' are ''consistent with the provisions and purposes of chapter 71'' invites coverage as broad in scope as chapter 71 provides for Executive Branch employees. The commenter argued that section 220(e)(1)(B) is an exception to the general rule mandating coverage and that Congress did not purport to find that any covered employees necessarily qualified for application of such an exception. The commenter further argued that the legislative history of section 220(e) indicates that Congress simply authorized the Board to determine whether covered employees in section 220(e)(2) offices should be excluded without in any way suggesting that they should be excluded.

The commenter then pointed out that, like Congress, the President is charged with constitutional responsibilities and that executive branch employees (other than statutorily excepted employees) are nonetheless free to join and be represented by unions of their choice. The commenter urged that there is nothing in the functions of the legislative branch that suggests that union representation of legislative branch employees is any different than union representation of executive branch employees (or that it poses any unique concerns). From this argument, the commenter concluded that no blanket exemption of all of the employees in section 220(e)(2) offices is warranted; and the commenter urged that its conclusion is supported by the overall policy of the CAA to bind Congress to the same set of rules that other employers face.

The second commenter took the position that all of the covered employees in a number of the section 220(e)(2) offices should receive a blanket exemption from coverage under section 220. In support of this argument, the commenter first described the Senate's constitutional responsibilities to exercise the legislative authority of the United States; to ''make all laws which shall be necessary and proper for carrying into Execution'' its enumerated powers; to advise and consent to treaties and certain presidential nominations; and to try matters of impeachments. The commenter then stated that, in fulfilling these responsibilities, the Senate must be ''free from improper influence from outside sources so that Members can fairly represent the interests of the United States and its citizens.'' The commenter asserted that exclusion from coverage of all employees in Senators' personal offices is necessary to insulate the legislative process from improper influence by outside parties.

In so stating, the commenter recognized that a number of such employees would already be excluded under chapter 71, but argued that the participation of any employee of a Senator's office in a labor organization would ''interfere with the Senator's constitutional responsibilities, [] allow unions to obtain an undue advantage in the legislative process and to exercise improper influence over Members, and [] create conflicts of interest.'' The commenter asserted that allowing such employees to organize would ''provide labor unions with unprecedented access to and influence over the operations and legislative activities of Senators' personal offices'' and turn the collective bargaining process into ''a lobbying tool of organized labor.''

The commenter contended that union representation of employees in a Senator's personal office also could create significant conflicts of interest, both because legislation that affects union or management rights may have a direct impact on a Senator's bargaining position with an employee union, and because a Senator's voting position may be tainted by the appearance that he or she is affected by the position of the employee union. The commenter also claimed that payment of union dues by a Senator's employees could create the perception of a conflict of interest, because Senate employees may not make political contributions to their employer, but the employees may nonetheless pay dues to a union that, in turn, contributes to that employer. The commenter further argued that, if a Senator's employees are permitted to organize, they may develop conflicting loyalties that could render them politically incompatible with the Senator for whom they work. The commenter contended that it would be an unfair labor practice for an employer to discharge an employee because of union affiliation even if that union affiliation led to political incompatibility, thus allegedly eviscerating section 502 of the CAA (which is said to authorize an employing office to discharge an employee based on such incompatibility). Finally, the commenter asserted that, if employees of Senators' offices are granted the right to organize, they will be the only employees of federal elected officials who are organized.

The commenter also took the position that the concerns stated regarding union organization in Senators' personal offices are equally applicable to employees in Senate leadership and committee offices. The commenter further asserted that employees in offices under the jurisdiction of the Secretary of the Senate (Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest and Printing Services, Office of Senate Chief Counsel for Employment) should be excluded from coverage because they allegedly occupy confidential positions that are integral to the Senate's constitutional functions. The commenter also asserted that employees in the Office of Senate Chief Counsel for Employment should be excluded because attorneys in that office will engage in labor negotiations on behalf of management in Senate offices and because all employees in the office have access to privileged and confidential information. The commenter similarly stated that employees in the Office of the Legislative Counsel and the Office of the Senate Legal Counsel should be excluded because they have direct access to privileged and confidential information relating to the constitutional functions of the Senate.

Finally, the commenter contended that, pursuant to 220(e)(2)(H), employees in four other offices should be subject to a blanket exclusion: Employees in the Executive Office of the Secretary of the Senate, because they are privy to confidential information about both the legislative functions of the Senate and the labor management policies of the Office of the Secretary; employees in the Office of Senate Security, because they have access to highly sensitive and confidential information relating to the constitutional responsibilities of the Senate, as well as to matters of national security; employees in the Senate Disbursing Office, because they have access to confidential financial information that could enhance a union's bargaining position; and employees in the Administrative Office of the Sergeant at Arms, because they have access to confidential information about the office and the Senate.

III. Notice of proposed rulemaking

In developing its proposed regulations, the Board has carefully considered both its responsibilities under section 220(e) and the two directly contradictory comments that the Board received concerning the regulations that it must issue. For the reasons that follow, the Board's judgment is that a blanket exclusion of *all* of the employees in the section 220(e)(2) offices is not ''required'' under the stated statutory criteria. But the Board will propose regulations that *allow* the exclusion issue to be raised with respect to any particular employee in any particular case. The Board also urges commenters who support any categorical exclusions, in commenting on these proposed regulations, to explain why particular jobs or job duties require exclusion of particular employees so that the Board may exclude them by regulation, where appropriate. Through this initial regulation and any categorical exclusions that may appropriately be included in its final regulations, the Board intends to carry out its statutory responsibility under section 220(e) to exclude employees from coverage where required, and to make changes in the FLRAs regulations where necessary.

A. Section 220(e)(1)(A)

Section 220(e)(1)(A) authorizes the Board to modify the FLRA's regulations ''to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under [section 220(e)].'' No commenter took the position that there was good cause to modify the FLRA regulations for more effective implementation of section 220(e). Equally important, no commenter took the position that a blanket exclusion of *all* of the covered employees in any of the section 220(e) offices would be ''more effective for the implementation of the rights and protections under [section 220(e)].'' And, at present, the Board has not independently found any basis to exercise its authority to modify the FLRA regulations for more effective implementation of section 220(e). The Board therefore does not propose to issue separate regulations pursuant to section 220(e)(1)(A)—that is, except as to employees whose exclusion from coverage under section 220 is required, the Board proposes that the regulations that it issues under section 220(d) will apply to

employing offices, covered employees, and their representatives under section 220(e).

B. Section 220(e)(1)(B)

Section 220(e)(1)(B) provides that the Board ''shall exclude from coverage under [section 220] any covered employees in [section 220(e)(2) offices] if the Board determines that such exclusion is required because of—

(i) a conflict of interest or appearance of a conflict of interest; or

(ii) Congress' constitutional responsibilities.''

The question here for resolution, then, is to what extent the Board should exclude covered employees in the section 220(e)(2) offices from coverage.

1. The statutory language and legislative history indicate that exclusions are proper only where ''required'' by the stated statutory criteria

Section 220(e)(1)(B) states that the Board ''shall'' exclude any covered employee of a section 220(e)(2) office where such exclusion is ''required'' by the stated statutory criteria. The statutory specification that the exclusion be ''required'' by Congress' constitutional responsibilities or a conflict of interest is telling. In this context, the term ''required'' means ''insist[ed] upon usu[ally] with certainty and urgency.'' *See* Webster's Third New International Dictionary (1986); *see also* Black's Law Dictionary (4th ed. 1968) (''direct[ed], order[ed], demand[ed], instruct[ed], command[ed]''). Thus, merely being helpful to or in furtherance of the stated statutory criteria is insufficient; rather, the exclusion must be *necessary* to the conduct of Congress' constitutional responsibilities or to the avoidance of a conflict of interest (real or apparent).

Although legislative history should always be consulted with due care and regard for its limitations, the scant legislative history directly attached to section 220(e)(1)(B) here appears to confirm that exclusions are proper only where necessary to achieve the stated statutory criteria. *See* 141 Cong. Rec. S626 (section-by-section analysis of CAA). What is now section 220(e) was added to a predecessor to the CAA in October 1994 in the Senate Governmental Affairs Committee. The Committee's Report explains that this provision was added in response to several Members' concerns that the application of labor laws to the legislative offices might interfere with Congress' ability to fulfill its constitutional functions:

''For example, there was a concern that, if legislative staff belonged to a union, that union might be able to exert undue influence over legislative activities or decisions. Even if such a conflict of interest between employees' official duties and union membership did not actually occur, the mere appearance of undue influence or access might be very troubling. Furthermore, there is a concern that labor actions could delay or disrupt vital legislative activities.'' [S. Rep. No. 397, 103d Cong., 2d Sess. 8 (1994).]

The Report went on to explain that the proposed bill addressed the Members' concerns in two ways: First, rather than applying the National Labor Relations Act (''NLRA'') to Congress, the bill would apply chapter 71 whose ''provisions and precedents . . . address problems of conflict of interest in the governmental context and . . . prohibit strikes and slowdowns.'' Second, ''as an extra measure of precaution,'' the bill would not apply to the section 220(e)(2) offices ''until the Board has conducted a special rulemaking to consider such problems as conflict of interest.'' *Id.* at 8.

The above-described Senate Report does not reveal—either expressly or implicitly—any congressional expectation that exclusions would necessarily result as a consequence of the Board's special rulemaking. Instead, the Report explains that the concerns of several Members were principally addressed by the incorporation of chapter 71 (rather than the NLRA) in the bill and that, ''as an extra measure of precaution,'' the Board should consider in a special rulemaking whether application of even chapter 71 to employees in section 220(e) would defeat Congress' responsibilities or cause insoluble conflicts of interest (real or apparent). *See* 141 Cong. Rec. S444-45 (remarks of Senator Grassley). Indeed, the section-by-section analysis of the bill that became the CAA states that section 220(e) should not be construed as ''a standardless license to roam far afield from [the] executive regulations.'' *See* 141 Cong. Rec. S626.

These legislative materials suggest that section 220(e) requires the Board to exclude employees in section 220(e)(2) offices only where ''required'' by the statutory criteria—*i.e.*, where exclusion is necessary to the accomplishment of the statutory criteria. The legislative materials leave no room for the exclusion of covered employees in the absence of a demonstrated and substantial need for doing so.

2. Exclusion of all employees in section 220(e) offices is not required by Congress' constitutional responsibilities or concerns about real or apparent conflicts of interest

On the basis of the comments received to date, the Board is unable to find a demonstrated and substantial need for the blanket exclusion of *all* employees in the section 220(e)(2) offices. Such a blanket exclusion of *all* covered employees does not appear to be required by either Congress' constitutional responsibilities or any real or apparent conflicts of interest.

a. Exclusion is not necessitated by Congress' constitutional responsibilities

The key premise of the commenter's argument that exclusion of *all* section 220(e)(2) office employees is required by Congress' constitutional responsibilities is the assertion that collective bargaining rights for section 220(e) employees are categorically inconsistent with the effective functioning of the Legislative Branch. But the legislative judgment embodied in chapter 71 is that collective bargaining rights are entirely consistent with—and, indeed, enhance—the efficient and effective functioning of the Executive Branch. *See* 5 U.S.C. §7101. More to the point, the legislative judgment in chapter 71 is that collective bargaining is consistent with—and, indeed, supportive of—the Executive Branch's fulfillment of the President's constitutional responsibility faithfully to execute the laws of the United States. The Board has not yet been presented with any facts or legal argument that would support a determination that, in contrast to the situation in the Executive Branch, *all* employees of the section 220(e)(2) offices must be excluded from collective bargaining in order for the Legislative Branch to be able to fulfill its constitutional charge.

For example, although the commenter asserts that, if a Senator is required to bargain with his or her employees' union, the employees' union will obtain an undue advantage in the legislative process by dint of its members' special access to the Senator and its members' influence over the Senator's legislative positions, the Board does not believe that a Senator can be brought to his constitutional knees so easily. The commitment of our Nation's elected representatives to the performance of their constitutional duties is great; and, access or no access by unions, it must be presumed that our elected representatives will carry out their constitutional responsibilities with fervor. Moreover, it must also be recognized that, in doing so, our elected representatives will be supported by many employees who simply do not have the right to organize. Supervisors—defined as individuals with authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, or to adjust their grievances, or to effectively recommend such action—are not even covered by chapter 71 as applied by the CAA. *See* sections 7103(a)(2)(iii) & 7103(a)(10). Likewise, management officials—defined as individuals in positions whose duties and responsibilities require or authorize the individual to formulate, determine, or influence the policies of their employer—are not covered. *See* sections 7103(a)(2)(iii) & 7103(a)(11). Furthermore, confidential employees—defined as employees who act in a confidential capacity with respect to individuals who formulate or effectuate management policies in the field of labor-management relations—and employees engaged in personnel work are not covered. *See* sections 7112(b)(2),(3) & 7103(a)(13). Finally, employees whose participation in the management of a labor organization or whose representation of a labor organization results in a conflict or apparent conflict of interest or is otherwise incompatible with law or with official job duties are not covered. *See* section 7120(e). Cumulatively, these exclusions undermine the claim that *all* employees of a section 220(e)(2) office—including secretaries and messengers—must be excluded from coverage in order for the Legislative Branch to fulfill its constitutional charge; to the extent that a union obtains access, it will be on behalf of employees who are *not* at the center of the Senator's management core.

The commenter supporting blanket exclusion for all employees in certain section 220(e)(2) offices also argued that, absent such an exclusion, a Senator's employees would be able to influence a Senator's legislative position in exchange for concessions at the bargaining table. This argument, however, ignores the fact that, for those employees not exempted (such as certain secretaries and messengers), chapter 71 provides only a limited set of labor relations rights. Once organized, employees may bargain about their conditions of employment. But they may not bargain about matters ''specifically provided for by Federal statute,'' a category which includes *inter alia* a number of restrictions on pay, health insurance, and retirement benefits for legislative employees. *See* sections 7102(2), 7103(a)(12), 7103(a)(14)(C). Moreover, they may only bargain about their ''terms and conditions of employment''; *their Senator's legislative positions are not properly on the table.* And in the event that nonexempt employees in section 220(e)(2) offices fail to come to terms with an employing office about their terms and conditions of employment, the employees do not have the principle coercive weapons that organized labor uses to further its employment goals, *see Allis Chalmers v. NLRB*, 388 U.S. 175 (1967), because they lack the right to strike or slow down. *See* sections 7103(a)(2)(v), 7311. These limitations make it clear that exclusion of *all* additional employees in a section 220(e)(2) office (such as certain secretaries and messengers) is not necessary to prevent the allegedly improper influence that concerns the commenter; and they make self-evident that such a blanket exclusion of *all* section 220(e)(2) office employees is not required by Congress constitutional responsibilities.

The commenter supporting blanket exclusion of *all* employees in section 220(e)(2) offices further argued that all members of a Senator's staff—no matter how routine their job duties—are privy to inside information about the Senator, including information about the Senator's legislative positions.

The commenter expressed a concern that a Senator's organized employees might reveal this confidential information to their union and that a union might then use the confidential information to exert improper influence on the Senator and thus on the legislative process. The commenter also feared that a Senator's organized employees would not wholeheartedly perform their duties if the Senator were to take a position inimical to the interests of unions. But, again, these concerns are not sufficient to justify blanket exclusions, if only because they can be addressed by other means.

The confidentiality of information and loyal performance of duties can be ensured without exclusion of *all* section 220(e)(2) office employees. Nothing in federal law, and certainly nothing in chapter 71 or the CAA, limits a Member's right to establish neutral work rules designed to assure productivity, discipline, and confidentiality and to discipline and/or discharge any employee who violates those rules. An employee who violates one of these work rules may be discharged *for that reason*.

This point answers the commenter's argument that categorical exclusion is necessary because a Senator would not be able to discharge or discipline an employee who leaks confidential information, or one who openly and actively supports legislation that the Senator opposes. If the Senator had in place and enforced a work rule neutrally forbidding such conduct, then he or she could discipline or discharge an employee who engaged in the forbidden conduct without regard to the employee's union membership or activity (so long as the employee's constitutional rights were not violated). The Senator would only violate section 220 of the CAA if he or she simply forbid inconsistent conduct that related to union membership or activities or enforced a facially neutral rule in a discriminatory manner. Exclusion of *all* covered employees is thus not ''required'' to address the confidentiality and loyalty concerns that have been advanced here.

b. Exclusion of all employees in section 220(e)(2) offices is not ''required'' by any real or apparent conflicts of interest

Nor is the Board prepared at this point to accept the argument that blanket exclusion of all employees in section 220(e)(2) offices is ''required'' to avoid conflicts of interest, real or apparent. The exclusions in chapter 71 for supervisory, confidential and other such employees are sufficient to take care of most potential conflict of interest questions created by employee organization; indeed, chapter 71 itself allows exclusion of employees with additional insoluble conflicts of interest. While the Board is prepared to exclude appropriate categories of employees where required by conflicts of interest, the suggestion that *all* employees in section 220(e)(2) offices must be excluded because of such alleged conflicts does not appear well-founded.

The commenter expressed a fear that organized employees would necessarily have a loyalty to the union and to union goals that would be inconsistent with loyal service to a Member and to his or her legislative positions. There may indeed be such tensions and potential conflicts that arise from union membership of covered employees. But such tensions and conflicts also arise in connection with a covered employee's membership and participation in other special interest groups, such as the Sierra Club, the National Rifle Association, the National Right to Work Foundation, or the National Organization of Women. Indeed, an employee's outside associations—whatever they may be—all give rise to a possible tension between the employee's interests and loyalties (as expressed by outside associations) and the Member's legislative positions. Nonetheless, Congress has not imposed a blanket prohibition on employee membership and participation in outside associations; and, under chapter 71, the tensions and potential conflicts that arise in connection with union membership have not been enough to justify a blanket exclusion of all employees from organization in the Executive Branch. While the Board is prepared to consider whether such associations might preclude organization rights for particular employees in particularly sensitive positions, it cannot accept the suggestion that the possible tensions between employee interests and loyalties and Member positions ''requires'' the blanket exclusion of *all* employees in section 220(e)(2) offices; there are surely less restrictive means for mitigating these potential conflicts for many, if not all, of the employees of section 220(e)(2) offices.

The commenter also asserted that exclusion of all employees is required by an apparent conflict of interest for Members voting on legislation that affects unions: according to the commenter, if the Members support the legislation, they may be perceived as caving to union pressure; if they oppose it, they may be perceived as attempting to enhance their bargaining positions with the union; in either instance, they would *not* be perceived as serving their constituents. But this situation does not appear to differ from that faced by the President when he or Executive Branch officials acting on his behalf take a position on pending labor legislation. That apparent conflict is inherent to employee organization in the public sector; and yet chapter 71 reflects a judgment that this apparent conflict does not require the categorical exclusion of all employees from collective organization. The judgment in chapter 71, which Congress incorporated by reference in the CAA, prevents the Board from accepting any argument that this apparent conflict *requires* exclusion of all employees in a section 220(e)(2) office.

Indeed, with respect to both alleged conflicts of interest, the Board finds it significant that, in chapter 71's statement of congressional findings and purpose, Congress expressly found that ''labor organizations and collective bargaining in the civil service are in the public interest'' because they ''safeguard[] the public interest,'' ''contribute[] to the effective conduct of public business,'' and ''facilitate[] and encourage[] the amicable settlements of disputes between employees and their employers involving conditions of employment.'' *See* Section 7101. Section 220(e)(1) of the CAA instructs the Board to hew as closely as possible to ''the provisions and purposes of chapter 71.'' In doing so, the Board has no choice but to reject the proposition that *all* employees in a section 220(e)(2) office must be excluded from coverage because of a real or apparent conflict that their organization would create for their Member of Congress. The premise of chapter 71, and thus the CAA, is that employees in unions may loyally serve government employers and that the public will not view government acts in response to union demands as illegitimate responses to union pressure.

3. Proposed regulations under section 220(e)(1)(B)

For these reasons, the Board does not propose to issue regulations that grant blanket exclusion of all employees in any of the section 220(e)(2) offices. In the Board's judgment, the issuance of blanket exclusions from the application of section 220 for *all* employees in section 220(e)(2) offices would represent a significant departure from the overall purposes and policies of the CAA. The Board would promptly take that step if it were necessary because of a conflict of interest (real or apparent) or Congress' constitutional responsibilities. But no necessity has been shown or yet been found for the exclusion of all employees in section 220(e)(2) offices.

The Board further notes that no commenter took the position that there were job duties of employees within section 220(e)(2) offices that required application of section 220(e)(1)(B)'s exception to coverage; *a fortiori*, no commenter provided the Board with any facts or legal argument in support of the issuance of regulations providing that employees in section 220(e)(2) offices who perform certain job duties are not covered by section 220. For this reason, the Board does not propose to issue any such regulations at this time. Of course, the Board stands ready to use its rulemaking authority to propose and issue such regulations when and if the Board is presented with facts and legal argument demonstrating that the application of section 220(e)(1)(B) to employees performing particular job duties is ''required.'' The Board again urges commenters to provide the Board with such information and authorities.

The commenter supporting blanket exclusion of all employees in section 220(e)(2) offices argued that, pursuant to its power under section 220(e)(2)(H), the Board should propose regulations (i) adding the Executive Office of the Secretary of the Senate, the Office of Senate Security, the Senate Disbursing Office, and the Administrative Office of the Sergeant at Arms to the statutory list of section 220(e)(2) offices, and (ii) granting a blanket exclusion of all covered employees in these offices. By its analysis above, the Board has effectively rejected the argument that any offices, including these four, are entitled to blanket exclusion of all of their employees from application of section 220. The Board agrees, however, with the commenter's assertion that employees in these offices perform functions ''comparable'' to those performed by employees in the other section 220(e)(2) offices, and thus the Board proposes, pursuant to section 220(e)(2)(H), to treat these offices as section 220(e)(2) offices for all purposes, including the determination of the effective date of sections 220(a) and (b). For all other offices—that is, all offices that are not either listed in section 220(e)(2) or defined as section 220(e)(2) offices here—the effective date of sections 220(a) and (b) is October 1, 1996.

No commenter took the position that the Board should adopt a regulation authorizing parties and/or employees in appropriate proceedings to assert, and the Board to decide, where appropriate and relevant, that a covered employee employed in a section 220(e)(2) office is required to be excluded from coverage under section 220(e) because of a conflict of interest (real or apparent) or because of Congress' constitutional responsibilities. The Board, however, proposes to issue such a regulation. By doing so, the Board intends to ensure that an exclusion may be provided where the law and the facts require it. The proposed regulation of the Board allows the issue of exclusions under section 220(e)(1)(B) to be raised and decided on a case-by-case basis.

IV. Method of approval

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate 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 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 be approved by the Congress by concurrent resolution.

Signed at Washington, D.C., on this 22nd day of May, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

§ 2472 Specific regulations regarding certain offices of Congress

§ 2472.1 Purpose and Scope

The regulations contained in this section implement the provisions of chapter 71 as applied by section 220 of the CAA to covered employees in the following employing offices:

(A) the personal office of any Member of the House of Representatives or of any Senator;

(B) a standing select, special, permanent, temporary, or other committee of the Senate or House of Representatives, or a joint committee of Congress;

(C) the Office of the Vice President (as President of the Senate), the Office of the President pro tempore of the Senate, the Office of the Majority Leader of the Senate, the Office of the Minority Leader of the Senate, the Office of the Majority Whip of the Senate, the Conference of the Majority of the Senate, the Conference of the Minority of the Senate, the Office of the Secretary of the Conference for the Majority of the Senate, the Office of the Secretary for the Minority of the Senate, the Majority Policy Committee of the Senate, the Minority Policy Committee of the Senate, and the following offices within the Office of the Secretary of the Senate: Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest, Printing Services, Captioning Services, and Senate Chief Counsel for Employment;

(D) the Office of the Speaker of the House of Representatives, the Office of the Majority Leader of the House of Representatives, the Office of the Minority Leader of the House of Representatives, the Offices of the Chief Deputy Majority Whips, the Offices of the Chief Deputy Minority Whips, and the following offices within the Office of the Clerk of the House of Representatives: Offices of Legislative Operations, Official Reporters of Debate, Official Reporters to Committees, Printing Services, and Legislative Information;

(E) the Office of the Legislative Counsel of the Senate, the Office of the Senate Legal Counsel, the Office of the Legislative Counsel of the House of Representatives, the Office of the General Counsel of the House of Representatives, the Office of the Parliamentarian of the House of Representatives, and the Office of the Law Revision Counsel;

(F) the offices of any caucus or party organization;

(G) the Congressional Budget Office, the Office of Technology Assessment, and the Office of Compliance; and;

(H) the Executive Office of the Secretary of the Senate, the Office of Senate Security, the Senate Disbursing Office and the Administrative Office of the Sergeant at Arms.

§ 2472.2 Application of Chapter 71

(a) The requirements and exemptions of chapter 71 of title 5, United States Code, as made applicable by section 220 of the CAA, shall apply to covered employees who are employed in the offices listed in section 2472.1 in the same manner and to the same extent as those requirements and exemptions are applied to other covered employees.

(b) The regulations of the Office, as set forth at sections 2420–29 and 2470–71, shall apply to the employing offices listed in section 2472.1, covered employees who are employed in those offices and representatives of those employees.

§ 2472.3 Exclusion from coverage

Notwithstanding any other provision of these regulations, any covered employee who is employed in an office listed in section 2472.1 shall be excluded from coverage under section 220 if it is determined in an appropriate proceeding that such exclusion is required because of (a) a conflict of interest or appearance of a conflict of interest, or (b) Congress constitutional responsibilities.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, too many Americans have not the foggiest notion about the enormity of the Federal debt. Every so often, I ask various groups, how millions of dollars are there in a trillion? They think about it, voice some estimates, most of them not even close.

They are stunned when they learn the facts, such as the case today. To be exact, as of the close of business yesterday, May 22, 1996, the exact Federal debt—down to the penny—stood at $5,117,440,103,398.93.

Another astonishing statistic is that on a per capita basis, every man, woman, and child in America owes $19,318.08 as his or her share of the Federal debt.

As for how many millions of dollars there are in a trillion, there are a million million in a trillion, which means that the Federal Government owes more than 5 million million dollars.

MINTZ LEVIN'S SUCCESSFUL DOMESTIC VIOLENCE PROJECT

Mr. KENNEDY. Mr. President, domestic and other acts of violence against women have reached epidemic proportions. Figures from 1994 show that, on the average in the United States, a woman was murdered every two days, and a woman was beaten every 15 seconds as a result of domestic violence.

The Violence Against Women Act was passed in 1994 to address this problem and ensure the safety and peace of mind of millions of women and their families. Congress took an approach that requires a partnership between the private sector and the public sector at every level—Federal, State, and local.

The Domestic Violence Project being carried out by the law firm of Mintz Levin Cohn Ferris Glovsky and Popeo is an excellent example of a successful partnership. In testimony before the Senate Judiciary Committee, Kenneth J. Novak, chairman of the firm's Community Service Program, described its Domestic Violence Project and its efforts to reduce domestic violence.

The Domestic Violence Project that Mr. Novak described can be an effective model for many others in helping the Nation meet and master the challenge of domestic violence. I believe that Mr. Novak's testimony will be of interest to all of us in Congress, and I ask unanimous consent that it be printed in the RECORD.

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

Mr. Chairman, and members of the Judiciary Committee, my name is Kenneth J. Novack of the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., with offices in Boston and Washington, D.C. As a member of the Firm's Executive Committee, previous President and CEO, and Chairman of the Mintz Levin Community Service Program, I am pleased to be here today to provide testimony regarding the commitment of one law firm to make a significant and continuing difference in the fight against domestic violence.

BACKGROUND

Mintz Levin has strived for over 60 years to create and maintain a workplace of diversity and tolerance, and to serve the community as well as our clients.

In 1990, at the initiative of two first-year associates, the Firm created the Mintz Levin Domestic Violence Project to provide free legal representation to victims of domestic violence. In 1994, the Firm decided to expand and focus its community service commitment, and we chose the area of domestic violence as the principal focus of all our future community service. We hired a full-time Director of Community Service and established a Community Service Fund to complement our domestic violence pro bono practice and to encourage Firm-wide participation.

DOMESTIC VIOLENCE INITIATIVES

Mintz Levin chose a three-pronged approach for our efforts against domestic violence: public policy issues on a national level; state and local efforts; and an internal focus within the Firm.

Internal Focus. As the foundation of our domestic violence initiatives, we began at home by working to give all our employees access to the support needed to free themselves from abusive situations. Mintz Levin provides its employees with free legal assistance including, when necessary, helping them to obtain restraining orders. Each new employee is given an information packet including a resource card entitled *Where to Get Help if Domestic Violence is a Problem*, which identifies three Mintz Levin attorneys and one attorney from another law firm who will provide free and confidential assistance. In addition, a booklet entitled *Domestic Violence: The Facts* is provided to each employee and lists local resources. Our Human Resources Department has developed a policy for managing family violence situations, and all management staff have been trained to recognize and respond to such situations. A speaker's bureau provides regularly scheduled seminars to increase employee awareness. We have also offered Model Mugging safety-defense classes in both our Boston and Washington offices. As a result of our efforts, our employees feel free to come forward for assistance and do so on a regular basis.

Mintz Levin also creates opportunities for broad-based participation by our employees in community service activities. A Domestic Violence Task Force, consisting of attorneys, senior professionals and other employees, regularly reviews and advises with respect to the Firm's public policy and program development initiatives. A Community Service Advisory Committee, consisting primarily of administrative and support staff, initiates volunteer projects and Firmwide events on behalf of local domestic violence organizations. The Firm encourages interested employees to assist shelters, advocacy groups and other organizations on Firm time.