coverage, to simplify the administration of health insurance, and for other purposes;

H.R. 3139. An act to redesignate the United States Post Office building located at 245 Centereach Mall on Middle County Road in Centereach, New York, as the ''Rose Y. Caracappa United States Post Office Building'';

H.R. 3448. An act to provide tax relief for small business, to protect jobs, to create opportunities, to increase the take-home pay for workers, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles, and to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate and to prevent job loss by providing flexibility to employers in complying with minimum wage and overtime requirements under that Act;

H.R. 3680. An act to amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes;

H.R. 3734. An act to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997;

H.R. 3834. An act to redesignate the Dunning Post Office in Chicago, Illinois, as the ''Roger P. McAuliffe Post Office''; and

H.R. 3870. An act to authorize the Agency for International Development to offer voluntary separation incentive payments to employees of that agency.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title;

S. 1316. An act to reauthorize and amend title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act''), and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

On August 2, 1996:

H.R. 782. An act to amend title 18 of the United States Code to allow members of employee associations to represent their views before the United States Government.

On August 7, 1996:

H.R. 1975. An act to improve the management of royalties from Federal and Outer Continental Shelf oil and gas leases, and for other purposes.

On August 8, 1996:

H.R. 3448. An act to provide tax relief for small businesses, to protect jobs, to create opportunities, to increase the take-home pay of workers, to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles, and to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate and to prevent job loss by providing flexibility to employers in complying with minimum wage and overtime requirements under that Act.

On August 9, 1996:

H.R. 3834. An act to redesignate the Dunning Post Office in Chicago, Illinois, as the ''Roger P. McAuliffe Post Office'';

H.R. 3870. An act to authorize the Agency for International Development to offer voluntary separation incentive payments to employees of that agency;

H.R. 3680. An act to amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes;

H.R. 3139. An act to redesignate the United States Post Office Building located at 245 Centereach Mall on Middle County Road in Centereach, New York, as the ''Rose Y. Caracappa United States Post Office Building'';

H.R. 2739. An act to provide for a representational allowance for Members of the House of Representatives, to make technical and conforming changes to sundry provisions of the law in consequence of administrative reforms in the House of Representatives, and for other purposes; and

H.R. 3103. An act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.

On August 19, 1996:

H.R. 3734. An act to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for the fiscal year 1997.

ADJOURNMENT

Mr. WELDON of Pennsylvania. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 31 minutes p.m.), the House adjourned until Thursday, September 5, 1996, at 10 a.m.

NOTICE OF PROPOSED RULEMAKING

OFFICE OF COMPLIANCE,
Washington, DC, August 19, 1996.

Hon. NEWT GINGRICH,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. §1384(b)), I am transmitting on behalf of the Board of Directors the enclosed notice of adoption of regulations, together with a copy of the regulations for publication in the Congressional Record. The adopted regulations are being issued pursuant to Section 220(e).

The Congressional Accountability Act specifies that the enclosed notice be published on the first day on which both Houses are in session following this transmittal.

Sincerely,

GLEN D. NAGER,
Chair of the Board.

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 ADOPTION OF REGULATIONS AND SUBMISSION FOR APPROVAL

Summary: The Board of Directors of the Office of Compliance, after considering comments to both the Advance Notice of Proposed Rulemaking published on March 16, 1996 in the Congressional Record and the Notice of Proposed Rulemaking published on May 23, 1996 in the Congressional Record, has adopted, and is submitting for approval by Congress, final regulations implementing section 220(e) of the Congressional Accountability Act of 1995, Pub. L. 104–1, 109 Stat. 3.

For Further Information Contact: Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA 200, John Adams Building, Washington, D.C. 20540–1999, (202) 724–9250.

Supplementary Information:

I. Statutory Background

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.

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 the 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 adopted final regulations under section 220(d), and submitted them to Congress for approval on July 9, 1996.

Section 220(e)(1) of the CAA requires that the Board 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 Office of the Minority 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 of the Majority of the Senate, the Office of the Secretary of the Conference of the Minority of the Senate, the Office of the Secretary 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)(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 this section.''

Second, section 220(e)(1)(B) directs 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. Advance Notice of Proposed Rulemaking

In an Advance Notice of Proposed Rulemaking (''ANPR'') published on March 16, 1996, the Board provided interested parties and persons with the opportunity to submit comments, with supporting data, authorities and argument, concerning the content of and bases for any proposed regulations under section 220. Additionally, the Board sought comment on two specific 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? and (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 also 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? (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? and (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 these issues, the Board emphasized the need for 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).

The Board received two comments in response to the ANPR. These comments addressed only the issue of whether the Board should grant a blanket exclusion for all covered employees in certain section 220(e)(2) offices. Neither commenter addressed issues arising under section 220(e)(1)(A) or any other issues arising under 220(e)(1)(B).

III. The Notice of Proposed Rulemaking

On May 23, 1996, the Board published a Notice of Proposed Rulemaking (''NPR'') (142 Cong. R. S5552–56, H5563–68 (daily ed., May 23, 1996)) in the Congressional Record. Pursuant to section 304(b)(1) of the CAA, the NPR set forth the recommendations of the Executive Director and the Deputy Executive Directors for the House and the Senate.

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

In its proposed regulations, the Board noted that, under section 220(e)(1)(A), the Board is authorized to modify the FLRA's regulations only ''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)].'' The Board further noted that no commenter had taken the position that there was good cause to modify the FLRA's regulations for more effective implementation of section 220(e). Nor did the Board independently find any basis to exercise its authority to modify the FLRA regulations for more effective implementation of section 220(e). Thus, the Board proposed that, except as to employees whose exclusion from coverage was found to be required under section 220(e), the regulations adopted under section 220(d) would apply to employing offices, covered employees, and their representatives under section 220(e).

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

With regard to section 220(e)(1)(B), the Board concluded that the requested blanket exclusion of all of the employees in certain section 220(e)(2) offices was not required under the stated statutory criteria. However, the Board did propose a regulation that would have allowed the exclusion issue to be raised with respect to any particular employee in any particular case. In addition, the Board again urged commenters who supported any categorical exclusions, in commenting on the proposed regulations, to explain why particular jobs or job duties require exclusion of particular employees so that the Board could exclude them by regulation, where appropriate.

C. Section 220(e)(2)(H)

Finally, in response to a commenter's assertion and supporting information, the Board found that employees in four offices identified by the commenter performed functions ''comparable'' to those performed by employees in the other section 220(e)(2) offices. Accordingly, the Board proposed, pursuant to section 220(e)(2)(H), to identify those offices in its regulations as section 220(e)(2) offices.

IV. Analysis of Comments and Final Regulations

The Board received six comments on the NPR, five from congressional offices and one from a labor organization. Five commenters objected to the proposed regulations because all covered employees in the section 220(e)(2) offices were not excluded from coverage. These commenters further suggested that the Board has good cause, pursuant to section 220(e)(1)(A), to modify the FLRA's regulations by promulgating certain additional regulations. One of the commenters stated its approval of the proposed regulations.

The Board has carefully reexamined the statutory requirements embodied in 220(e), and evaluated the comments received, as well as the recommendations of the Office's statutory appointees. Additionally, the Board has looked to ''the principles and procedures'' set forth in the Administrative Procedure Act, 5 U.S.C. §553 (''APA''), which sections 220(e) and 304 of the CAA require the Board to follow in its rulemakings. *See* 2 U.S.C. §1384(b). Finally, the Board has carefully considered the constitutional provisions and historical practices that make Congress a distinct institution in American government.

Based on its analysis of the foregoing, on the present rulemaking record, the Board has determined that:

Under the terms of the CAA, the requirements and exemptions of chapter 71 shall apply to covered employees who are employed in section 220(e)(2) offices in the same manner and to the same extent as those requirements and exemptions are applied to covered employees in all other employing offices;

No additional exclusions from coverage of any covered employees of section 220(e) offices because of (i) a conflict of interest or appearance of conflict of interest or (ii) Congress' constitutional responsibilities are required; and

In accord with section 220(e)(2)(H) of the CAA, eight additional offices beyond those identified in the Board's NPR perform ''comparable functions'' to those offices identified in section 220(e)(2).

The Board is adopting final regulations that effectuate these conclusions. The Board's reasoning for its determinations, together with its analysis of the comments received, is as follows:

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

Section 220(e)(1) provides that the Board ''shall issue regulations pursuant to section 304 on the manner and extent to which the requirements and exemptions of chapter 71 should apply to covered employees'' in section 220(e)(2) offices. In response to the Board's ANPR, no commenter suggested that the Board's regulations should apply differently to section 220(e)(2) employees and employing offices than to other covered employees and employing offices. Several commenters have now suggested that the regulations should be modified in various respects for section 220(e)(2) employees who are not excluded pursuant to section 220(e)(1)(B). The Board, however, is not persuaded by any of these suggestions.

First, contrary to one suggestion, the Board is neither required nor permitted ''to issue regulations specifying in greater detail the application of [Chapter 71] to the specific offices listed in section 220(e)(2).'' Section

220(e)(1) provides that the Board's ''regulations shall, to the greatest extent practicable, be consistent with the provisions and purposes of chapter 71 and of this Act.'' Section 220(e)(1) further specifically states that the Board's ''regulations shall be *the same* as subjective regulations issued by the Federal Labor Relations Authority under'' chapter 71. (Emphasis added.) While section 220(e)(1)(B) makes an ''except[ion]'' to these statutory restrictions ''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,'' this exception neither authorizes nor compels the requested regulations.

As the Board has explained in other rulemakings, it is not possible to clarify by regulation the application of the pertinent statutory provisions and/or the pertinent executive branch agency's regulations (here, the FLRA's regulations) while at the same time complying with the statutory requirement that the Board's regulations be ''the same as substantive regulations'' of the pertinent executive branch agency. Moreover, modification of substantive law is legally distinct from clarification of it. In this context, to conclude otherwise would improperly defeat the CAA's intention that, except where strictly necessary, employing offices in the legislative branch should live with and under the same regulatory regime—with all of its attendant burdens and uncertainties—that private employers and/or executive branch agency employers live with and under. Much as the Chairman of the House Committee on Economic and Educational Opportunities stated at the time of passage of the CAA: ''The Congress should not be allowed to escape the problems created by its own failure to draft laws properly and, perhaps, through this approach [it] will be forced to revisit and clarify existing laws which, because of a lack of clarity, are creating confusion and litigation.'' 141 Cong. Rec. H264 (Jan. 17, 1995) (remarks of Rep. Goodling).

Indeed, in the Board's judgment, adding new regulatory language of the type requested here (*e.g.*, references to job titles) would be contrary to the effective implementation of the rights and protections of the CAA. Such new regulatory language would itself have to be interpreted, would not be the subject of prior interpretations by the FLRA, and would needlessly create new ground for litigation about additional interpretive differences.

Second, the Board cannot accede to the request that it issue regulations providing that all employees of personal, committee, Leadership, General Counsel, and Employment Counsel offices are ''confidential employees'' within the meaning of 5 U.S.C. §7103(13). As noted above, to the extent that this commenter seeks a declaratory statement that clarifies the appropriate application of 5 U.S.C. §7103(13), the Board is not legally free to provide such clarifications through its statutorily limited rulemaking powers. Moreover, contrary to the proposal of a commenter, the Supreme Court has approved, and the NLRB and the FLRA have applied, a definition of ''confidential employee'' that is narrowly framed and that applies only to employees who, in the normal course of their specific job duties, properly and necessarily obtain in advance or have regular access to confidential information about management's positions concerning pending contract negotiations, the disposition of grievances, and other labor relations matters. *See NLRB* v. *Hendricks County, et al.*, 454 U.S. 170, 184 (1981); *In re Dept. of Labor, Office of the Solicitor, Arlington Field Office and AFGE Local 12*, 37 F.L.R.A. 1371, 1381–1383 (1990). In fact, in both the private and public sectors, it has been held that ''bargaining unit eligibility determinations [must be based] on testimony as to an employee's actual duties at the time of the hearing rather than on duties that may exist in the future;'' ''[b]argaining unit eligibility determinations are *not* based on evidence such as written position descriptions or testimony as to what duties had been or would be performed by an employee occupying a certain position, because such evidence might not reflect the employee's actual duties.'' *Id.* at 1377 (emphasis added). Since these rulings have not been addressed or distinguished by the commenter, the Board must conclude that the requisite ''good cause'' to modify the FLRA's regulations has not been established.

Third, the Board similarly must decline the request that it promulgate regulations: (a) excluding from bargaining units all employees of the Office of Compliance as employees ''engaged in administering the provisions of this chapter,'' within the meaning of 5 U.S.C. §7112(b)(4); and (b) excluding from bargaining units all employees of the Office of Inspector General as employees ''primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency,'' within the meaning of 5 U.S.C. §7112(b)(7). To the extent that these requests seek clarification concerning the application of existing statutory provisions, the Board is foreclosed by statute from providing such regulatory clarifications (especially for the Office of Inspector General, which does not appear to be a section 220(e)(2) office and which, in contrast to inspector general offices in the executive branch, appears primarily to audit or investigate employees of *other* employing offices, as opposed to auditing employees of its own agency). Moreover, to the extent that these requests seek to have the Board make eligibility determinations in advance of a specific unit determination and without a developed factual record, the commenters again seek a modification in the substantive law for which no ''good cause'' justification has been established.

Fourth, the Board similarly must decline the suggestion that it promulgate regulations: (a) limiting representation of employees of section 220(e)(2) offices to unions unaffiliated with noncongressional unions; (b) clarifying that a Member's legislative positions are not properly the subject of collective bargaining; (c) clarifying the ability of a Member to discharge or discipline an employee for disclosing confidential information or for taking legislative positions inconsistent with the Member's positions; and (d) authorizing section 220(e)(2) offices to forbid their employees from acting as representatives of the views of unions before Congress or from engaging in any other lobbying activity on behalf of unions. The issues raised by the suggested regulations are of significant public interest. But, to the extent that the suggested regulations are requested merely to clarify the application of existing statutory or regulatory provisions, the Board may not properly use its limited rulemaking authority to promulgate such regulatory clarifications. Moreover, there is not ''good cause'' to so ''modify'' the FLRA's regulations, as section 220(e) does not itself provide the Board with authority to modify statutory requirements such as those found in 5 U.S.C. §7112(c) (specifying limitations on whom a labor organization may represent), 5 U.S.C. §§7103(A)(12), 7106, 7117 (specifying subjects that are not negotiable), 5 U.S.C. §7116(a) (specifying prohibited employment actions), and 5 U.S.C. §7102 (specifying scope of protected employee rights).

Finally, for similar reasons, the Board must reject the request that it place regulatory limitations and prohibitions on the proper uses of union dues. Again, the Board cannot properly use its statutorily-limited regulatory powers either to clarify what commenters find ambiguous or to codify what commenters find unambiguous. Moreover, nothing in chapter 71 (or the CAA) authorizes a labor organization and an employing office to establish a closed shop, union shop, or even an agency shop; accordingly, under chapter 71 (and the CAA), employees cannot be compelled by their employers to join unions against their free will and, concomitantly, employees can resign from union membership and cease paying dues at any time without risk to the security of their employment. In these circumstances, there is no evident basis—legal or factual—for the Board to seek to regulate the proper uses of voluntarily-paid union dues.

In sum, the proposed modifications of the FLRA's regulations are not a proper exercise of the Board's section 220(e) and section 304 rulemaking powers. Accordingly, the Board may not adopt them.

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

Section 220(e)(1)(B) provides that, in devising its regulations, 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.'' Accordingly, the Board has, with the assistance of the Office's Executive Director and two Deputy Executive Directors, carefully examined the comments received, other publicly available materials about the workforces of the section 220(e)(2) offices, and the likely constitutional, ethical, and labor law issues that could arise from application of chapter 71 to these workforces. The Board has also carefully examined the adequacy of the requirements and exemptions of chapter 71 and section 220(d) of the CAA for: (a) addressing any actual or reasonably perceived conflicts of interests that may arise in the context of collective organization of employees of section 220(e)(2) offices; and (b) accommodating Congress' constitutional responsibilities. Having done so, on the present rulemaking record the Board concludes that additional exclusions from coverage beyond those contained in chapter 71 and section 220(d) are not required by either Congress' constitutional responsibilities or a real or apparent conflict of interest; and the Board now further concludes that an additional regulation specially authorizing consideration of these issues in any particular case is unnecessary in light of the authority available to the Board under chapter 71's implementing provisions and precedents and the Board's regulations under section 220(d).

1. Additional exclusions from coverage are justified under section 220(e)(1)(B) only where necessary to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest

In the preamble to its NPR, the Board expressed its view that additional exclusions of employees from coverage are justified under section 220(e)(1)(B) only where *necessary* to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest. Although several commenters have objected to the Board's construction of the statute, the Board is not persuaded by these objections.

First, the Board finds no basis for the suggestion that ''the Board has been instructed

by the statute to exclude *offices* from coverage based on any of the specified'' statutory criteria. (Emphasis added.) What is mandated is an inquiry by the Board concerning whether exclusion of an employee is justified by the statutory criteria; specifically, an exclusion of a covered employee is mandated only ''*if* [as a result of the Board's inquiry] the Board determines such exclusion is required.'' (Emphasis added). Thus, the exclusion provision is only conditional, and the exclusion inquiry is to be addressed on an employee-by-employee basis, not on an office-by-office basis, as the commenter erroneously suggests.

Second, contrary to another commenter's suggestion, the statutory language does not require exclusion of employees where such exclusions would merely be ''suitable'' or ''appropriate'' to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest. The statutory language cannot properly be read in this fashion.

The statute expressly states that an exclusion of an employee is appropriate only ''if the Board determines that such exclusion is *required* because of'' the stated-statutory criteria. (Emphasis added.) The term ''[r]equired implies something mandatory, not something permitted. . . .'' *Mississippi River Fuel Corporation* v. *Slayton*, 359 F.2d 106, 119 (8th Cir. 1966) (Blackmun, J.). Moreover, while the term ''required'' is capable of different usages, the usage equating with ''necessity'' or ''indispensability'' is the most common one. *See* Webster's Third New International Dictionary 1929 (1986). And, as part of an ''except[ion]'' to a statutory requirement that the Board's regulations be ''the same'' as the FLRA's regulations and be consistent with the ''provisions and purposes'' of chapter 71 to the ''greatest extent practicable,'' it is highly unlikely that Congress would mandate ''exclusion from coverage''—with loss of not only organization rights, but also rights against discipline or discharge because of engagement in otherwise protected activities—when less restrictive alternatives (*e.g.*, exclusion from a bargaining unit; limitation on the union that may represent the employee) would adequately safeguard Congress' constitutional responsibilities and resolve any real or apparent conflicts of interest.

In these circumstances, the term ''required'' cannot properly be read to require additional exclusions from coverage merely because they would be ''suitable'' or ''appropriate'' to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest. Such an interpretation would not be, ''to the greatest extent practicable,'' ''consistent with the provisions and purposes of chapter 71,'' as section 220(e) requires. Moreover, such an interpretation would be contrary to the CAA's promise that, except where strictly necessary, Congress will be subject to the same employment laws to which the private sector and the executive branch are subject. Indeed, contrary to the CAA's purpose, such an interpretation would rob Members of direct experience with traditional labor laws such as chapter 71, and leave them without the first-hand observations that would help them decide whether and to what extent labor law reform is needed and appropriate.

Third, for these reasons, the Board also rejects one commenter's suggestion that the omission of a ''good cause'' requirement from section 220(e)(1)(B) suggests that a lesser standard for exclusion from coverage was intended. The omission of a ''good cause'' requirement in section 220(e)(1)(B) is more naturally explained: The term ''required'' sets the statutory standard in section 220(e)(1)(B), and the ''good cause'' standard is simply not needed.

Finally, contrary to the objections, the legislative history does not support the commenters' view that additional exclusions from coverage are mandated even if not strictly necessary to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest. It appears that, at one point in the preceding Congress, some Members expressed: ''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 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). But the legislative sponsors did not respond to these concerns by excluding all legislative staff from coverage or by requiring exclusion of any section 220(e)(2) office's employees wherever it would be ''suitable'' or ''appropriate.''

Rather, the legislative sponsors responded by applying chapter 71 (rather than the NLRA) to the legislative branch. Senators John Glenn and Charles Grassley urged this course on the ground that chapter 71 ''includes provisions and precedents that address problems of conflict of interest in the governmental context and that prohibit strikes and slowdowns.'' *Id.* at 8; 141 cong. rec. S444–45 (daily ed., Jan. 5, 1995) (statement of Sen. Grassley).

To be sure, the legislative sponsors further provided that, ''as an extra measure of precaution, the reported bill would not apply labor-management law to Members' personal or committee offices or other political offices until the Board has conducted a special rulemaking to consider such problems as conflict of interest.'' *Id.* However, the legislative sponsors made clear that an appropriate solution to a real or apparent conflict of interest would include, for example, precluding certain classes of employees ''from being represented by unions affiliated with noncongressional or non-Federal unions.'' Contrary to the commenter's argument, exclusion of section 220(e)(2) office employees from coverage was not viewed as inevitably required, even where a conflict of interest is found to exist. 141 Cong. Rec. S626 (daily ed., Jan. 9, 1995). Moreover, the legislative sponsors expressly stated that the rulemaking so authorized ''is not a standardless license to roam far afield from such executive branch regulations. The Board cannot determine unilaterally that an insupportably broad view of Congress' constitutional responsibilities means that no unions of any kind can work in Congress.'' *Id.* That, of course, would be precisely the result of the commenters' proposed standard.

2. No additional exclusion from coverage of any covered employee of a section 220(e)(2) office is necessary to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest

The question for the Board, then, is whether, on the present rulemaking record, the additional exclusion from coverage of any covered employee of a section 220(e)(2) office is necessary to the conduct of Congress' constitutional responsibilities or to the resolution of a real or apparent conflict of interest. The Board concludes that no such additional exclusions from coverage are required.

a. No additional exclusion from coverage is necessitated by Congress' constitutional responsibilities

The CAA does not expressly define the ''constitutional responsibilities'' with which section 220(e)(1)(B) is concerned. But, as one commenter has suggested, it may safely be presumed that this statutory phrase encompasses at least the responsibility to exercise the legislative authority of the United States; to advise and consent to treaties and certain presidential nominations; and to try matters of impeachment. Even so defined, however, the Board has no factual or legal basis for concluding that any additional employees of the section 220(e)(2) offices must be excluded from coverage in order for Congress to be able to carry out these constitutional responsibilities or any others assigned to Congress by the Constitution.

Chapter 71 was itself ''designed to meet the special requirements and needs of the Government.'' 5 U.S.C. §7101(b). Thus, chapter 71 authorizes the exclusion of any agency or subdivision thereof where necessary to the ''national security,'' and completely excludes from coverage aliens and noncitizens who occupy positions outside of the United States, members of the uniformed services, and ''supervisors'' and ''management officials.'' *Id.* at §§7103(a)(2), 7103(b). In addition, chapter 71 requires that bargaining units not include ''confidential'' employees, employees ''engaged in personnel work,'' employees ''engaged in administering'' chapter 71, both ''professional employees and other employees,'' employees whose work ''directly affects national security,'' and employees ''primarily engaged in investigation or audit functions relating to the work of individuals'' whose duties ''affect the internal security of the agency.'' *Id.* at §7112(b). Likewise, chapter 71 provides that a labor organization that represents (or is affiliated with a union that represents) employees to whom ''any provision of law relating to labor-management relations'' applies may not represent any employee who administers any such provision of law; and, chapter 71 prohibits according exclusive recognition to any labor organization that ''is subject to corrupt influences or influences opposed to democratic principles,'' *id.* at §§7112(c), 7111(f), and precludes an employee from acting in the management of (or as a representative for) a labor organization where doing so would ''result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.'' *Id.* at §7120(e). Furthermore, chapter 71 broadly preserves ''Management rights,'' limits collective bargaining to ''conditions of employment,'' and, in that regard, among other things, specifically excludes matters that ''are specifically provided for by Federal statute.'' *Id.* at 7106, 7103(12)(a), (14). Finally, chapter 71 makes it unlawful for employees and their labor organizations to engage in strikes, slowdowns, or picketing that interferes with the work of the agency. *Id.* at 7116(b)(7).

Just as the provisions and precedents of chapter 71 are sufficient to allow the Executive Branch to carry out its constitutional responsibilities, the provisions and precedents of chapter 71 are fully sufficient to allow the Legislative Branch to carry out its constitutional responsibilities. Congress is, of course, a constitutionally separate branch of government with distinct functions and responsibilities. But, by completely excluding ''supervisors'' and ''management officials'' from coverage, and by preserving ''Management rights,'' chapter 71 ensures that Congress is not limited in the exercise of its constitutional powers. Furthermore, by denying ''exclusive recognition'' to any labor organization that ''is subject to corrupt influences or influences opposed to democratic principles,'' chapter 71 ensures that labor organizations will not become a foothold for those who might seek to undermine or overthrow our nation's republican

form of government. In addition, by outlawing strikes and other work stoppages, chapter 71 ensures that employee rights to collective organization and bargaining may not be used improperly to interfere with Congress' lawmaking and other functions. Indeed, by specifying that its provisions, ''should be interpreted in a manner consistent with the requirement of an effective and efficient Government,'' 5 U.S.C. §7101(b), chapter 71 makes certain that its provisions will expand and contract to accommodate the legitimate needs of Government, which no doubt in this context include the fulfillment of Congress' constitutional responsibilities.

The Board cannot legally accept the suggestion of some commenters that collective organization and bargaining rights for section 220(e)(2) office employees are ''inherently inconsistent'' with the conduct of Congress' constitutional responsibilities. These commenters' position may be understood in political and administrative terms. But, under the CAA, such a claim must legally be viewed with great skepticism, for the CAA adopts the premise of our nation's Founders, as reflected in the Federalist papers and other contemporary writings, that government work better and is more responsible when it is accountable to the same laws as are the people and is not above those laws. Such interpretive skepticism is particularly warranted in this context, for the claim that collective bargaining and organization rights for section 220(e)(2) office employees are ''inherently inconsistent'' with Congress' constitutional responsibilities is in considerable tension with the CAA's express requirement that the Board examine the exclusion issue on an employee-by-employee basis. Indeed, section 220(e) of the CAA expressly requires the Board to accept, ''to the greatest extent practicable,'' the findings of Congress in chapter 71 that ''statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—(A) safeguards the public interest, (B) contributes to the effective conduct of public business, and (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment.'' 5 U.S.C. §7101(a). The statutory instruction to honor these findings to ''the greatest extent practicable'' is directly at odds with the commenters' ''inherent inconsistency'' argument.

Moreover, contrary to the commenters' suggestion, neither the allegedly close working relationships between the principals of section 220(e)(2) offices and their staffs nor the allegedly close physical quarters in which section 220(e)(2) office employees work can legally justify the additional exclusions from coverage that the commenters seek. Chapter 71 already excludes from coverage all ''management officials'' and ''supervisors''—*i.e.*, those employees who are in positions ''to formulate, determine, or influence the policies of the agency,'' and those employees who have the authority to hire, fire, and direct the work of the office. Moreover, chapter 71 excludes from bargaining units ''confidential employees,'' ''employees engaged in personnel work,'' and various other categories of employees who, by the nature of their job duties, might actually have or might reasonably be perceived as having irreconcilably divided loyalties and interests if they were to organize. Beyond these carefully crafted exclusions, however, chapter 71 rejects both the notion that ''unionized employees would be more disposed than unrepresented employees to breach their obligation of confidentiality,'' and the notion that representation by a labor organization or ''membership in a labor organization is in itself incompatible with the obligations of fidelity owed to an employer by its employee.'' *In re Dept. of Labor, Office of the Solicitor, Arlington Field Office and AFGE Local 12*, 37 F.L.R.A. at 1380 (citations omitted; internal quotations omitted). Rather, as the Supreme Court recently reiterated, the law in the private and public sectors requires that acts of disloyalty or misuse of confidential information be dealt with by the employer through, *e.g.*, non-discriminatory work rules, discharge and/or discipline. *See NLRB* v. *Town & Country Electric, Inc.*, 116 S. Ct. 450, 457 (1995). These rulings are especially applicable and appropriate in the context of politically appointed employees in political offices of the Legislative Branch, since such employees generally are likely to be uniquely loyal and faithful to their employing offices.

In this same vein, the Board cannot legally accept the suggestion that additional exclusions from coverage of section 220(e)(2) office employees are justified by reference to Members' understandable interest in hiring and firing on the basis of ''political compatibility.'' While a long and forceful tradition in this country, hiring and firing on the basis of ''political compatibility'' is not a constitutional right, much less a constitutional responsibility, of the Congress or its Members. Moreover, while section 502 of the CAA provides that it ''shall not be a violation of any provision of section 201 to consider the . . . political compatibility with the employing office of an employee,'' 2 U.S.C. §1432, section 502 noticeably omits section 220 from its reach. Thus, the Board has no legal basis for construing section 220(e)(1)(B) to require additional exclusions from coverage in order to protect the interest of Members in ensuring the ''political compatibility'' of section 220(e)(2) office employees.

Furthermore, the Board cannot legally accept the suggestion that exclusion of all employees in personal, committee, leadership or legislative support offices is justified to prevent labor organizations from obtaining undue influence over Members' legislative activities. The issue of organized labor's influence on the nation's political and legislative processes is one of substantial public interest. But commenters have not explained how organized labor's effort to advance its political and legislative agenda legally may be found to constitute an interference with Congress' constitutional responsibilities. Moreover, chapter 71 only authorizes a labor organization to compel a meeting concerning employees' ''conditions of employment'' that are not specifically provided for by Federal statute. Thus, a labor organization may not lawfully use chapter 71 either to demand a meeting about a Member's legislative positions or to seek to negotiate with the Member about those legislative positions.

Finally, the Board cannot legally accept the suggestion that additional exclusions from coverage of section 220(e)(2) office employees are necessary to ensure that Members are neither inhibited in nor distracted from the performance of their constitutional duties. The Board does not doubt that, if employees choose to organize, compliance with section 220 may impose substantial administrative burdens on Members (just as compliance with the other laws made applicable by the CAA surely does). Such administrative burdens might have been a ground for Congress to elect in the CAA to exempt Members and their immediate offices from the scope of section 220 (just as the Executive Office of the President is exempt from chapter 71 and from many of the other employment laws incorporated in the CAA). But Congress did not do so. Instead, Congress imposed section 220 on all employing offices and provided an ''except[ion]'' for employees of section 220(e)(2) offices only where exclusion from coverage is required by Congress' constitutional responsibilities (or a real or apparent conflict of interest). The Board cannot now lawfully find that the administrative burdens of compliance with section 220 are the constitutional grounds that justify the additional exclusion from coverage of any section 220(e)(2) office employees; on the contrary, the Board is bound to apply the CAA's premise that Members of Congress will better and more responsibly carry out their constitutional responsibilities if they are in fact subject to the same administrative burdens as the laws impose upon our nation's people.

b. No additional exclusion is necessitated by any real or apparent conflict of interest

Nor can the Board lawfully find on this rulemaking record that additional exclusions from coverage of employees of section 220(e)(2) offices are required by a real or apparent conflict of interest. Since the phrase ''conflict of interest or appearance of conflict of interest'' is not defined in the CAA, it must be construed ''in accordance with its ordinary and natural meaning.'' *FDIC* v. *Meyer*, 114 S. Ct. 996, 1001 (1994). The ''ordinary and natural meaning'' of ''conflict of interest or appearance of conflict of interest'' is a real or reasonably apparent improper or unethical ''conflict between the private interests and the official responsibilities of a person in a position of trust (such as a government official).'' Webster's Ninth New Collegiate Dictionary 276 (1990). *Accord*, Black's Law Dictionary 271 (5th ed. 1979). Specifically, as Senate and House ethics rules make clear, under Federal law the phrase ''conflict of interest or appearance of conflict of interest'' refers to ''a situation in which an official's conduct of his office conflicts with his private economic affairs.'' House Ethics Manual 87 (1992); Senate Rule XXXVII. After thorough examination of the matter, the Board has found no tenable legal basis for concluding that additional exclusions from coverage of any employees of section 220(e)(2) offices are necessary to address any real or reasonably perceived incompatibility between employees' private financial interests and their public job responsibilities.

As noted above, by excluding ''management officials'' and ''supervisors'' from coverage, and by requiring that bargaining units not include ''confidential employees'' and ''employees engaged in personnel work,'' chapter 71 already categorically resolves the real or apparent conflicts of interest that may be faced by employees whose jobs involve setting, administering or representing their employer in connection with labor-management policy or practices. Similarly, by requiring that bargaining unit not include employees ''engaged in administering'' chapter 71, chapter 71 already resolves real or apparent conflicts of interest that might arise for employees of, for example, the Office of Compliance. Furthermore, by precluding an employee from acting in the management of (or as a representative for) a labor organization, where doing so would ''result in a conflict of interest or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee,'' chapter 71 already directly precludes an employee from assuming a position with the union (or from acting on behalf of the union) where he or she could confer a personal economic benefit on him or herself. And, as an added precaution, the Board has adopted a regulation under section 220(d) that authorizes adjustment of the substantive requirements of section 220 where ''necessary to avoid a conflict of interest or appearance of conflict of interest.'' Therefore, all conceivable real and apparent conflicts of interests are resolvable without the need for additional exclusion from coverage.

The Board finds legally untenable the suggestion of several commenters that, by directing the Board to consider these real or apparent conflict of interest issues in its rulemaking process, section 220(e)(1)(B) entirely displaces and supersedes the conflict of interest provisions and precedents of chapter 71 and section 220(d) where employees of section 220(e)(2) offices are concerned. Section 220(e) specifically provides that the Board's regulations for section 220(e)(2) offices ''shall, to the greatest extent practicable, be consistent with the provisions and purposes of chapter 71'' and ''shall be the same as substantive regulations issued by'' the FLRA. As pertinent here, it makes an ''except[ion]'' only 'if the Board determines that * * * exclusion [of a section 220(e)(2) office employee] is required because of * * * a conflict of interest or appearance of a conflict of interest.'' This conditional exception—applicable only ''if'' the Board determines that an exclusion from coverage is ''required'' by a real or apparent conflict of interest—plainly does not displace or supersede the provisions and precedents of chapter 71 and section 220(d) that section 220(e) expressly applies to section 220(e)(2) offices. Indeed, as the statutory language and legislative history discussed above confirm, section 220(e)(1)(B) requires this rulemaking merely as a ''special precaution'' to ensure that chapter 71 and section 220(d) appropriately and adequately deal with conflict of interest issues in this context.

The Board similarly cannot legally accept the suggestion that exclusion of employees in personal, committee, leadership and party caucus offices in necessary to address ''the most important legislative conflict of interest issue—the appearance or reality of influencing legislation.'' While understandable in political terms, this suggest has no foundation in the law which the Board is bound to apply.

To begin with, the Board has no basis for concluding that the provisions and precedents of chapter 71 and section 220(d) are inadequate to resolve any such conflict of interest issues. Although commenters correctly point out that the Executive Office of the President is not covered by Chapter 71, they provide no evidence that this exclusion resulted from conflict of interest concerns. Moreover, though commenters suggest that employees of the Executive Branch engage in only administrative functions, the Executive Branch in fact has substantial political functions relating to the legislative process—including *e.g.*, recommending bills for consideration, providing Congress with information about the state of the Union, and vetoing bills that pass the Congress over the President's objection. Furthermore, almost every executive agency covered by chapter 71 has legislative offices with both appointed and career employees who, like section 220(e)(2) office employees, are responsible for meeting with special interest groups, evaluating and developing potential legislation, and making recommendations to their employers about whether to sponsor, support or oppose that or other legislation. Chapter 71 does not exclude from its coverage Executive Branch employees performing such policy and legislative-related functions (much less the secretaries and clerical personnel in their offices); and, contrary to one commenter's suggestion, chapter 71 does not exclude from its coverage schedule ''C'' employees who are outside of the civil service and who are appointed to perform policy-related functions and to work closely with the heads of Executive Branch departments. *See U.S. Dept. of HUD and AFGE Local 476*, 41 F.L.R.A. 1226, 1236–37 (1991). Since the Board has no evidence that the conflict of interest issues for section 220(e)(2) office employees materially differ from the conflict of interest issues that these Executive Branch employees face, the Board has no proper basis for finding that additional section 220(e)(2) office employees must be excluded from coverage simply because they too are outside of the civil service and perform legislative-related functions.

Second, the Board is not persuaded that the concern expressed by the commenters—*i.e.*, that labor organizations will attempt to influence the legislative activities of employees who they are seeking to organize and represent—even constitutes a ''conflict of interest or appearance of conflict of interest'' within the meaning of that statutory term. As noted above, under both common usage and House and Senate ethics rules (as well as under federal civil service rules and other federal laws), the statutory phrase ''conflict of interest or appearance of conflict of interest'' refers to a situation in which an official's conflict of his office actually or reasonably appears unethically to provide him or her with a private economic benefit. While the Board understands that accepting gifts from labor organizations might actually or apparently constitute receipt of such an improper pecuniary benefit, the Board fails to see how working with labor organizations concerning their legislative interests confers or appears to confer any improper private economic benefit on legislative employees—just as the Board does not see how working on legislative matters with other interest groups to which the employee might belong (such as the American Tax Reduction Movement, the Sierra Club, the National Rifle Association, the National Right to Work Foundation, the NAACP, and/or the National Organization of Women) would do so. On the contrary, it is the employees' job to meet with special interest groups of this type, to communicate the preferences and demands of these special interest groups to the Members of committees for which they work, and, where allowed or instructed to do so, to assist or opposed these special interest groups in pursuing their legislative interests.

It is true, as one commenter notes, that, in contrast to other interest groups, a labor organization could, in addition to its legislation activities, seek to negotiate with an employing office about the employees ''conditions of employment.'' But each of the employees would have to negotiate individually with the employing office if the union did not do so collectively for them. Moreover, since those who negotiate for the employing office and decide whether or not to provide or modify any such ''conditions of employment'' may by law not be part of the unit that the union represents, section 220(e)(2) office employees could not through the collective negotiation of their ''conditions of employment'' unethically provide themselves or appear to provide themselves with an improper pecuniary benefit for the way that they perform their official duties for the employing office. Thus, collective organization of section 220(e)(2) office employees would not create a real or apparent conflict of interest—just as it does not for appointed and career employees in the Executive Branch who perform comparable policy or legislative-related functions.

To be sure, because of an employee's sympathy with or support for the union (or any other interest group), the employee could urge the Member or office for which he or she works to take a course that is not in the employer's ultimate best political or legislative interest. Indeed, it is even conceivable that, because of the employee's sympathy with or support for a particular interest group such as organized labor, the employee could act disloyally and purposefully betray the Member's or the employing office's interests. But employees could could have such misguided sympathies, provide such inadequate support, and/or act disloyally whether or not they are members of or represented by a union. Thus, just as was true in the context of Congress' constitutional responsibilities (and as is true for Executive Branch employees), the legally relevant issues in such circumstances are ones of acceptable job performance and appropriate bargaining units, work rules, and discipline—not issues of real or apparent conflicts of interest. See *NLRB* v. *Town and Country Electric, Inc*, 116 S. Ct, at 456–57.

It is also true that organized labor has a particular interest in legislative issues relating to employment and that, if enacted, some of the resulting laws could work to the personal economic benefit of employees in section 220(e)(2) offices and, indeed, sometimes even to the economic benefit of Members (*e.g.* federal pay statutes). But whenever Members or their staffs work on legislation there is reason for concern that they will seek to promote causes that will personally benefit themselves or groups to which they belong—whether it be with respect to, *e.g.*, their income tax rates, their statutory pay and benefits, the grounds upon which they can be denied consumer credit, or the ease with which they can obtain air transportation to their home states. These concerns, however, will arise whether or not employees in section 220(e)(2) offices are allowed to organize and bargain collectively concerning their ''conditions of employment,'' and cannot conceivably ''require'' the exclusion of additional section 220(e)(2) office employees from coverage under section 220. As a Bipartisan Task Force on Ethics has so well stated:

''A conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest. Some conflicts of interest are inherent in a representative system of government, and are not in themselves necessarily improper or unethical. Members of Congress frequently maintain economic interests that merge or correspond with the interests of their constituents. This community of interest is in the nature of representative government, and is therefore inevitable and unavoidable.''

House Bipartisan Task Force on Ethics, Report on H.R. 3660, 101st Cong, 1st Sess. 22 (Comm. Print, Comm, on Rules 1989), reprinted in 135 Cong. Rec. H9253, H9259 (daily ed. Nov. 21, 1989).

The Board does not mean to suggest that the public does not have a legitimate interest in knowing about the efforts that interest groups (such as organized labor) make to influence Members and their legislative staffs or the financial benefits that Members and their legislative staffs receive. But, as the recently enacted Lobbying Disclosure Act evidences, and as the Bipartisan Task Force on Ethics long ago concluded, lobbying contact disclosure and ''public financial disclosure, coupled with the discipline of the electrical process, remain[s] the best safeguard[s] and the most appropriate method[s] to deter and monitor potential conflicts of interest in the legislative branch.'' House Bipartisan Task Force on Ethics. 135 Cong. Rec. at H9259.

For these reasons, the Board also declines to adopt the suggestions that it exclude from coverage by regulation, on the ground of ''conflict of interest or appearance of conflict or interest,'' all employees of section 220(e)(2) offices who are shown in an appropriate case to be ''exempt'' employees within the meaning of the Fair Labor Standards Act (''FLSA''). This suggestion would improperly

allow unions and/or the General Counsel to challenge an employing office's compliance with section 203 of the CAA in the context of a section 220 proceeding. Moreover, under both private sector law and chapter 71, employees are not uniformly excluded from coverage by viture of their ''exempt'' status, even though such employees may exercise considerable discretion and independent judgment in performing their duties, serve in sensitive positions requiring unquestionable loyalty to their employers, and/or have access to privileged information. Thus, doctors who are responsible for the counseling and care of millions of ill persons are allowed to organize; engineers who are responsible for ensuring the safety of nuclear power plants are allowed to organize; lawyers who are responsible for providing privileged advice and for prosecuting actions on behalf of the Government (such as attorney at the Department of Labor and at the NLRB) are allowed to organize; and schedule ''C'' employees who are outside of the civil service, work closely with the heads of Executive Branch department, and assist in the formulation of Executive Branch policy are not excluded from coverage under chapter 71. Nothing about those employees' ''exempt'' status itself establishes a real or apparent incompatibility between an employee's conduct of his office and his private economic affairs. Not tenable legal basis has been offered for reaching a different conclusion about the ''exempt'' employees of section 220(e)(2) offices.

For similar reasons, the Board declines to adopt the suggestion that it exclude from coverage by regulation, on the ground of ''conflict of interest or appearance of conflict of interest,'' all employees in section 220(e)(2) offices who hold particular job titles—e.g., Administrative Assistants, Staff Directors, and Legislative Directors. The Board has no doubt that many section 220(e)(2) office employees in such job classifications will, because of the actual duties that these employees perform, be excluded from coverage as ''management officials'' or ''supervisors''. And the Board similarly has no doubt that many section 220(e)(2) office employees in these or other job classifications will, because of the actual duties that these employees perform, be excluded from particular bargaining units as ''confidential employees,'' ''employees engaged in personnel work,'' ''professional employees,'' etc. But, as decades of experience in myriad areas of employment law have taught, these legal judgments must turn on the actual job duties that the employees individually perform, and not on their job titles or job classifications. It is the actual job duties of the employees that dictate whether the concern of the particular law in issue is actually implicated (*e.g.*, whether there is a real or apparent conflict of interest); and the use of job titles in a regulation would unwisely have legal conclusions turn on formalisms that are easily subject to manipulation and error (*e.g.*, different employing offices may assign the same job title or job classification to employees who perform quite distinct job responsibilities and functions).

In sum, the six month period during which the job titles and job classifications applicable to section 220(e)(2) office employees have been thoroughly investigated and studied by the Board, neither the statutory appointees nor the Board—or, for that matter, any commenter—has identified any job duty or job function that, in the context of collective organization, would categorically create a real or apparent conflict of interest that is not adequately addressed by the provisions and precedents of chapter 71 and the Board's section 220(d) regulations. Accordingly, on this record, the Board has no legal basis for excluding any additional section 220(e)(2) office employees from coverage by regulation; and, for the reasons here stated, it would be contrary to the effective implementation of the CAA for the Board to reframe existing regulatory exclusions in terms of the job titles or job classifications presently used by certain section 220(e)(2) offices.

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

For these reasons, the Board will not exclude any additional section 220(e)(2) office employees from coverage in its final section 220(e) regulations. Moreover, the Board will not adopt a regulation that specially authorizes consideration of these exclusion issues in any particular case. Although the Board proposed to do so in its NPR (as a precautionary measure to ensure that employing offices were not prejudiced by the paucity of comments provided in response to the ANPR), commenters have vigorously objected to any such regulation. Having carefully considered this matter and determined both that no exclusions are required on this rulemaking record and that all foreseeable constitutional responsibility and conflict of interest issues may be appropriately accommodated under section 220(d) and chapter 71, the Board now concludes that no such regulation is necessary.

We now turn to the partial dissent. With all due respect to our colleagues, we strongly disagree that the CAA envisions a different rulemaking process for the Board's section 220(e)(1)(B) inquiry than the one that the Board has followed in this rulemaking and in all of its other substantive rulemakings. The section 220(e)(1)(B) inquiry is unique only in terms of the substantive criteria which the statute directs the Board to apply and the effective date of its provisions. In terms of the Board's process, section 220(e) expressly requires—just as the other substantive sections of the CAA expressly require—the Board to adopt its implementing regulations ''pursuant to section 304'' of the CAA, 2 U.S.C. §1351(e), which in turn requires that the Board conduct its rulemakings ''in accordance with the principles and procedures set forth'' in the APA. 2 U.S.C. §1384(b). The partial dissent's argument that a different and distinct process is required under section 220(e)(1)(B) is at odds with these express statutory requirements.

Nor is there any basis for the partial dissent's charge that the Board's section 220(e)(1)(B) inquiry was ''passive,'' ''constrained solely by written submissions,'' and undertaken without ''sufficient knowledge of Congressional staff functions, responsibilities and relationships. . . .'' In the ANPR and the NPR, the Board afforded all interested parties two opportunities to address these issues. The Board carefully considered the comments received from employing offices and their administrative aids—*i.e.*, those who are most knowledgeable about the job duties and functions of congressional staff and who should have had the most interest in informing the Board about the relevant issues in this rulemaking. Moreover, over the past six months, the Board has received extensive recommendations from the Executive Director and the Deputy Executive Directors of the House and Senate—recommendations that were based upon the statutory appointees' own legislative branch experiences, their substantial knowledge of these laws, their appropriate discussions with involved parties and those knowledgeable about job duties and responsibilities in section 220(e)(2) offices, and their own independent investigation of the pertinent factual and legal issues. In addition, the General Counsel has provided interested Board members with extensive legal advice about these issues. Indeed, during the past six months, members of the Board were able to review vast quantities of publicly available materials that, among other things, describe in detail the job functions, job responsibilities, and office work requirements and restrictions for employees of the section 220(e)(2) offices. The claim of the partial dissent that this material still needs to be found is thus completely mystifying to the Board; and, since neither the dissenters nor the commenters have pointed to any other information that would be of assistance in deciding the section 220(e)(1)(B) issues, it seems clear that the dissenting members' objection is not with the sufficiency of the information available to themselves or to the Board, but rather is with the result that the Board has reached.

In advocating a different result about the appropriateness of additional exclusions from coverage, however, the partial dissent simply ignores the statutory language and legislative history of section 220 of the CAA. For all of its repeated exhortations about the need to implement the will of Congress, the partial dissent does not identify the constitutional responsibilities or conflicts of interests that supposedly require the additional exclusions from coverage that the dissenters raise for consideration. Indeed, the partial dissent does not even conclude which of its various suggested possible exclusions from coverage are ''required'' by section 220(e)(1)(B) or why.

The partial dissent's critique of the Board's analysis is similarly bereft of legal authority. While criticizing the Board for relying on precedents under chapter 71, the partial dissent ignores section 220(e)'s express command that the Board's implementing regulations under section 220(e)(1)(B) be consistent ''to the greatest extent practicable'' with the ''provisions and purposes'' of chapter 71. Moreover, while noting that legislative branch employees of state governments have not been granted the legal right to organize, the partial dissent fails to acknowledge that this gap in state law coverage results from state laws having generally been modelled after federal sector law (which, until the CAA's enactment, did not cover congressional employees); and, in all events, the partial dissent fails to acknowledge that section 220 itself rejects this state law experience by covering without qualification non-section 220(e)(2) office employees and by allowing exclusion of section 220(e)(2) office employees only *if* required by the stated statutory criteria. Finally, while asserting that employees in the section 220(e)(2) offices perform functions that are not comparable to functions employed by any covered employees in the Executive Branch, the partial dissent never specifically identifies these supposedly unique job duties and functions and, even more importantly, never explains why the provisions of chapter 71 and section 220(d) are inadequate to address constitutional responsibility or conflict of interest issues arising from them. In short, with all respect, the partial dissent does not provide any acceptable legal basis for concluding that additional regulatory exclusions from coverage are required to address any constitutional responsibility or conflict of interest issues.

The partial dissent similarly errs in suggesting that the Board has ''apparent reluctance or disdain'' for regulatory resolutions and instead prefers adjudicative resolutions. Like our dissenting colleagues, the Board applauds the NLRB's innovative effort—undertaken under the leadership of then-NLRB Chairman Jim Stephens, who is now Deputy Executive Director for the House—to use rulemaking to address certain bargaining unit issues that have arisen in the health care industry. But the issue here is not

whether the NLRB should be praised for having done so or, for that matter, whether regulatory resolutions are generally or even sometimes superior to adjudicative resolutions in that or other contexts. Nor is the issue whether Congress has stated a preference for regulatory resolutions in the CAA. Rather, the issue here is whether additional exclusions from coverage are required to address any constitutional responsibility or conflict of interest issues that may arise in connection with collective organization of section 220(e)(2) office employees. For the reasons earlier stated, the Board has concluded that no such additional exclusions from coverage are required to do so. Thus, to the extent that any constitutional responsibility or conflict of interest issue is left to be resolved adjudicatively, it is only because, where complete exclusion from coverage is not required, the CAA instructs the Board to follow chapter 71's preference for addressing matters of this type in the context of a particular case, and because any constitutional responsibility or conflict of interest issue may be satisfactorily addressed by approaches that are less restrictive than complete exclusion from coverage of section 220(e)(2) office employees. The Board regrets that the partial dissent confuses the Board's respect for the commands of the CAA with a ''disdain'' for rulemaking that the Board does not have.

With all respect to our colleagues, the partial dissent's own lack of attention to the commands of the CAA is strikingly revealed by its discussion of the uncertainty and delay that allegedly will result from not resolving all constitutional responsibility and conflict of interest issues through additional exclusions from coverage. Regulatory uncertainty and delay should be reduced where legally possible and appropriate. But inclusion of the constitutional responsibility and conflict of interest issues in the mix of issues that inevitably must be addressed in a unit determination will not have the unique practical significance that the dissent claims, since employment in the legislative branch is in fact not substantially more transient than is employment in many parts of the private and federal sectors (*e.g.,* construction, retail sales, canneries in Alaska), since private and Executive Branch employers also work under ''time pressures'' that ''are intense and uneven,'' and since the Board has designed its section 220(d) procedures to deal with all unit determination issues as promptly as or more promptly than comparable issues are dealt with in the private and federal sectors. And, in all events, it is clear that administrative burdens of the type discussed by the partial dissent cannot legally justify additional exclusions from coverage, because these administrative burdens legally have nothing to do with the constitutional responsibility and conflict of interests inquiries to which the Board is limited under the statute; indeed, as noted above, the premise of the CAA is that Congress will better exercise its constitutional responsibilities if it is subject to the same kinds of administrative burdens as private sector and Executive Branch employers are subject to under these laws.

The Board appreciates its dissenting colleagues' concern that, if employees of section 220(e)(2) offices should choose to organize, elected officials in Congress may have to negotiate about their employees' ''conditions of employment'' with political friends or foes. But the Board cannot agree that these political concerns require or allow the additional possible exclusions from coverage that are mentioned in the partial dissent. Such political concerns do not legally establish an interference with Congress' constitutional responsibilities or a real or apparent conflict of interest; and the CAA by its express terms only allows additional exclusions from coverage that are required by such constitutional responsibilities or conflicts of interest. If the CAA is to achieve its objectives and the Board is to fulfill its responsibilities, the Board must adhere to the terms of the law that the Congress enacted and that the President signed; the Board may not properly relax the law so as to address non-statutory concerns of this type.

C. Section 220(e)(2)(H) Offices

Section 220(e)(2)(H) of the CAA authorizes the Board to issue regulations identifying ''other offices that perform comparable functions'' to those employing offices specifically listed in paragraph (A) through (G) of section 220. In response to a comment on the ANPR, the Board proposed in the NPR to so identify four offices—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 of the Senate. No comments were received regarding this proposal, and the final regulation will specifically identify these offices, pursuant to section 220(e)(2)(H), as section 220(e)(2) offices.

In response to comments received by the Board, the final regulation will also identify and include the following employing offices in the House of Representatives as performing ''comparable functions'' to those offices specified in section 220(e)(2)) of the CAA: the House Majority Whip; the House Minority Whip; the Office of House Employment Counsel; the Immediate Office of the Clerk; the Office of Legisaltive Computer Systems; the Immediate Office of the Chief Administrative Officer; the Immediate Office of the Sergeant at Amrs; and the Office of Finance.

As explained by one of the commenters, these offices have responsibilities and perform functions that are commensurate with those offices specifically listed in section 22)(e)(2) or those offices identified in the proposed regulations. Thus, the duties and functions of the House Majority and Minority Whips are similar to the Offices of the Chief Deputy Majority Whips and the Offices of the Chief Deputy Minority Whips, which are expressly included in section 220(e)(2)(D). The Office of House Employment Counsel was created, following the enactment of the CAA, to provide legal advice and representation to House employing offices on labor and employment matters; this office performs functions similar to those of the Office of the House General Counsel, which is included in section 220(e)(2)(E), and those of the Senate Chief Counsel for Employment, which is identified in section 220(e)(2)(C).

Similarly, the Immediate Office of the Clerk of the House performs functions parellel to those performed by the Executive Office of the Secretary of the Senate, which is treated as a section 220(e)(2) office under these final regulations. Both offices are responsible for supervising activities that have a direct connection to the legislative process. Likewise, the Immediate Office of the House Sergeant at Arms has duties that correspond to those of the Administrative Office of the Senate Sergeant at Arms. Both offices are charged with maintaining security and decorum in each legislative chamber.

The House Office of Legislative Computer Systems runs the electronic voting system and handles the electronic transcription of official hearings and of various legislative documents; these functions are similar to those functions performed by the Office of Legislative Operations and Official Reporters, both of which are listed in section 220(e)(2)(D).

The Immediate Office of the Chief Administrative Officer has responsibilities and performs functions that are comparable to those performed by the Executive Office of the Secretary of the Senate and the Administrative Office of the Senate Sergeant at Arms, which are treated as section 220(e)(2) offices under these final regulations. Similarly, the House Office of Finance, like the Senate Disbursing Office, is responsible for the disbursement of payrolls and other funds, together with related budget and appropriation activities, and therefore will be treated, pursuant to section 220(e)(2)(H), as a section 220(e)(2) office.

VI. 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 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 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 regulations that apply to other covered employees and employing offices should be approved by concurrent resolution.

Accordingly, the Board of Directors of the Office of Compliance hereby adopts and submits for approval by the Congress the following regulations.

Signed at Washington, D.C., on this 19 day of August, 1996.

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

Member Seitz, concurring: In section 220 of the Congressional Accountability Act (''CAA'' or ''Act''), Congress instructed the Board of Directors of the Office of Compliance (''the Board'') to issue regulations that provide Congressional employees with certain rights and protections of chapter 71 of Title 5 of the United States Code. Most significantly, Congress commanded that the regulations issued be ''the same as substantive regulations issued by the Federal Labor Relations Authority'' unless the Board determines either that modified regulations would more effectively implement the rights and protections of chapter 71 (section 220(e)(1)(A)) or that exclusion from coverage of employees in the so-called political offices is ''required'' because of a conflict of interest or appearance of conflict of interest or because of Congress' constitutional responsibilities 220(e)(1)(B)). The Board faithfully fulfilled its statutory duty: We conducted the rulemaking required under section 304 of the Act, adhering to the principles and procedures embodied in the Administrative Procedure Act, as Congress instructed us to do. We examined and carefully considered the comments received and—with the assistance of the experienced and knowledgeable Executive Director and Deputy Executive Directors of the Office—we independently collected and analyzed the relevant factual and legal materials. Ultimately, the Board determined that there was no legal or factual justification for deviation from Congress' principal command—that the regulations issued to implement chapter 71 be the same as the regulations issued by the Federal Labor Relations Authority. The regulations we issue today reflect that considered determination.

The dissent unfairly attacks both the Board's processes and its conclusion.

The dissent attacks the Board's processes by stating both that section 220(e)(1)(B) of the Act requires some kind of a different ''proactive'' rulemaking process and that ''the Board did not undertake to make an

independent inquiry'' regarding the regulatory issues. As the preamble details, this attack is baseless. The Board conducted the statutorily-required rulemaking, a process which included substantial supplementation of the comments received with independent inquiry and investigation and the application of its own—and its appointees'—expertise.

The dissent's suggestion that the Board majority and the Board's appointees did not, in fact, do the spadework necessary to make the judgments made in both ungenerous and untrue, as it impugns the hard work and careful thought devoted to a sensitive issue by all concerned. And, indeed, the dissenters, like the Board majority, had access both to the publicly available materials that might have been relevant to the Board inquiry—such as job descriptions for various positions in Congress—and to legal and factual analyses generated by Board appointees.

To be sure, the Board would not approve *ex parte* factfinding contacts between Board members and interested persons in Congress during the rulemaking period in order to preserve the integrity of its rulemaking process. But neither the commenters nor the dissenting Board members have suggested *even one* additional fact that should have been considered by the Board. Accordingly, the dissent's attack on the Board's processes merely reflects the dissent's unhappiness with the Board's substantive determination. But, it is both wrong and unjust to accuse the Board of failing to engage in an appropriate *process* simply because the Board ultimately *disagreed* with those advocating substantial exclusions from coverage under section 220(e)(1)(B).

The dissent's attack on the substance of the Board's conclusion is similarly misguided. It makes no attempt to ground itself in law, and, in fact, ignores fundamental principles of statutory interpretation: First, in interpreting a statute one looks initially and principally to its language; here the statute authorizes exclusions from coverage only when ''*required*'' by the statutory criteria. Second, in interpreting a statute, the most relevant legislative history is that addressing the particular provision at issue; here what legislative history there is acknowledges that the substitution of chapter 71 for the National Labor Relations Act ensured the elimination of perceived problems with permitting employee organization in Congress and reveals that section 220(e)(1)(B) was inserted only to make that assurance doubly sure and not as a ''standardless license to roam far afield from . . . executive branch regulations.'' Third, in interpreting a statute, the broad purposes of legislation illuminate the meaning of particular provisions; here the Act in question was designed to bring Congress under the same laws that it has imposed upon private citizens. That purpose has already been diluted by Congress' application to itself of only the limited rights and protections of chapter 71, rather than the broader provisions of the National Labor Relations Act; it would be eviscerated altogether by broad exclusions from coverage of the sort the dissent would endorse.

Nothing in the comments received or in the independent investigation done by the Board suggests that broad exclusions of employees from the coverage of chapter 71 are ''required'' by conflicts of interest (real or apparent) or by Congress' constitutional responsibilities. As noted in the preamble, chapter 71, by application through the Act, broadly excludes numerous employees from coverage, narrowly confines the permissible arena of collective bargaining, and eliminates most of labor's leverage by barring strikes and slowdowns. There is nothing to fear here, unless one fears the (minimal) requirement that a Congressional employer and its employees communicate about terms and conditions of employment (or, at least those not set by statute) before the employer sets them. And the substantial limits that chapter 71 places on employee organization and collective bargaining fully protect Congress' ability to carry out its constitutional responsibilities and entirely prevent any employee conflicts of interest (real or apparent). While we agree with the dissent that Congress is an exceptional institution, that exceptionalism does not warrant a broad exception from the coverage of chapter 71; neither the dissent nor the Board has identified any constitutional reasonability or conflict of interest that chapter 71's provisions do not adequately address.

The Board's determination that no further regulations are ''required'' under section 220(e)(1)(B) does not render that section a nullity, as the dissent states. Nor does it indicate a ''disdain'' for regulatory resolutions. Section 220(e)(1)(B) does not require either regulations or exclusions; it requires a Board inquiry into whether any such exclusions by regulation are necessary. The Board has conducted such an inquiry and has made the statutorily-required determination. That determination is the result of principled statutory interpretation, factual investigation, and legal analysis.

It is, in fact, the dissent's position that would render a portion of the CAA a nullity, because it would insulate Members of Congress from direct experience with employees dignified by labor-relations rights and protections. The Board's position keeps the promise of the Congressional Accountability Act. If the language, legislative history, and fundamental purpose of that Act are to be directly contradicted, that decision is for Congress alone. Such a result cannot lawfully be achieved by Board regulation.

Member Lorber, joined by Member Hunter, dissenting in part: The Congressional Accountability Act (''CAA'') is one of the most significant legislative achievements of the Congress in many years. While its reach is peculiarly insular, covering only the employees of the Congress and designated instrumentalities of the Congress, its import is global. As the bipartisan leadership of the Congress stated upon the CAA's enactment, this law brings home the promise first offered by Madison in the Federalist Papers that the Congress would experience itself the impact of the [employment] laws it passes and requires of all [employers].

The CAA established an Office of Compliance within the Congress to operationally carry out the functions of the CAA. The CAA established an independent Board of Directors appointed by the Bi-Partisan Congressional leadership to supervise the operation of the Office, prepare regulations for Congressional approval and act in an appellate capacity for cases adjudicated within the Office of Compliance procedures. As noted by Senator Byrd when the CAA was debated, this tri-partite responsibility of the Board is somewhat unique. In the present rulemaking, the Board is acting in its role as regulator, not adjudicator.

Pursuant to the CAA, the Board was charged with conducting a detailed review of all existing Executive Branch regulations implementing eight labor laws, deciding which of those regulations were appropriate to be adapted for implementation under the CAA and then drafting them to conform with the requirements of the CAA. For the regulations issued and adopted to date and for *most* future regulations, the Board engaged or will engage in a notice and comment process which was modeled after similar procedures followed by the Executive Branch. For the regulations adopted prior to the current rulemaking, after the conclusion of the comment period and after its analysis of the comments, the Board promulgated final regulations formally recommended by its statutory appointees and submitted them for the consideration of Congress.

We believe that this background discussion is appropriate since we are here publishing our dissenting opinion regarding the preamble and recommendation regarding regulations to implement section 220(e)(1)(B) of the Congressional Accountability Act. We note that these proposed regulations also address the statutory inquiry required by section 220(e)(1)(A) of the Act which require the Board to modify applicable regulations issued by the Federal Labor Relations Authority for good cause shown, to determine whether the regulations adopted pursuant to section 220(d) will apply to the political offices listed in section 220(e) and regulations required by section 220(e)(2)(H) of the Act which requires the Board to determine if there are other offices which meet the standards of section 220(e)(2) so as to be included in the consideration required by section 220(e)(1)(B). We do not dissent from the Board's final resolution of these regulatory issues.

We do not undertake to issue this first dissent in the Board's regulatory function lightly. At the outset, the Board appropriately decided that would endeavor to avoid dissents on regulatory matters. We felt then, and indeed do so now, that the public interest and the Congressional interest in a responsible implementation of the CAA required that the Board work out, in its own deliberative process, differences in policy or procedure. While the issues there addressed were are some of the most contentious employment issues in the public debates, the Board and staff worked through the issues with a remarkable degree of unity and comity.

However, in enacting the Congressional Accountability Act, the Congress included one section that differs from all others in requirements of the Board and in its process of adoption. Indeed, unlike any other substantive provision of the CAA, this section finds no parallel in the published regulations of the Executive Branch. Section 220 of the CAA, which adopts for Congressional application the relevant sections of the Federal Labor Relations Act contains within it subsections 220(e)(1)(B) and (e)(2), which deal with the application of the FLRA to the staff of Congressional personal offices, committee offices and the other offices listed in section 220(e)(2), (''the political offices'').

Section 220(e)(1)(B) of the Act requires the Board to undertake its own study and investigation of the impact of covering the employees in the political offices and determine itself, as a matter of first impression and after its own inquiry, whether such coverage of some of all of those employees would create either a constitutional impediment or a real or apparent conflict of interest such as to require the Board to exempt from coverage, by regulation, some or all of those employees or some or all of the positions employed in the political offices. Due to the speed of enactment, and apparently because the CAA culminated a protracted period of prior debate by previous Congresses on this issue, neither the statute nor any accompanying explanations provided specific guidance as to the method and procedure the Board was to follow in reaching its 220(e)(1)(B) recommendations.

The section in question contains two separate requirements for the Board. Section 220(e)(1)(A) repeats the standard for all other Executive Branch Regulations that the Board may, for good cause shown, amend the

applicable FLRA regulations as applied to the Congress. As previously noted, we join the Board's resolution of this section. However, unique to the CAA, section 220(e)(1)(B) requires of the Board that it independently review the coverage question for the political offices enumerated in section 220(e)(2) in order to determine if the Board should, by regulation, recommend that some or all of the employees of those offices be excluded from coverage. This exclusion from coverage merely means that the Board has determined that certain positions be exempted from inclusion in bargaining units for the statutory reasons set forth in section 220(e)(1)(B). The other applicable exemptions found in the FLRA and noted by the majority are unaffected by section 220(e)(1)(B). Thus, reference to the applicability of those exemptions may have been necessary to respond to certain commenters but are irrelevant for these purposes. Again, unlike any other regulation proposed by the Board, the 220(e) regulations will not take effect until affirmatively voted on by each House of Congress. It should be noted that 220(d) regulations governing application of the FLRA to Congressional employees not working in the 220(e)(2) political offices are not affected by this enactment requirement. This requirement was necessary in part because there are no comparable Executive Branch regulations which will come into effect in the absence of Congressional action. Thus, the Congress must exercise greater oversight in reviewing these regulations because there is no preexisting regulatory model against which to compare the Board's decision. By requiring this independent analysis, the Congress clearly intended for the Board to investigate these issues a manner different from the passive or limited review as defined by the majority.

Faced with this novel requirement, the Board attempted to fashion a means of addressing this issue which would continue its practice of ensuring fair, prompt and informed consideration of regulatory issues. The majority adopted as its guide the process heretofore followed by the Board in its previous regulatory actions in the standard notice and comment manner. Its methodology was apparently modeled after its belief that the Administrative Procedure Act (''APA'') is either directly incorporated into the CAA or that the reference to the APA in section 304 binds the Board in a way so as to preclude it functioning in a normal and accepted regulatory manner. Of course, if the majority does not now assert that its analysis is constrained by its restrictive interpretation of the APA, then we are in some doubt about the majority's stated reason for its passive review of written comments and failure to undertake any examination on its own of the issues here before us.

The Board attempted to frame the 220(e)(1)(B) issue broadly enough to encourage informed comment by the regulated groups. It responded to the comments received by proposing a regulatory scheme (in this case a decision not to issue any 220(e)(1)(B) elicited comments on the proposed regulations after which it reached the decision published today. The undersigned members believe, however, that section 220(e)(1)(B) charged the Board with a different role. We believe that the Board had the obligation to direct its staff and that the staff itself with independent obligations to each respective House of Congress had to undertake a more involved role. We believe that the uniqueness of this statutory provision required the Board to be proactive in its approach and analysis. Indeed by its very inclusion in the statute, and the requirement that the Congress affirmatively approve of its resolution, section 220(e)(1)(B) indicated a concern on behalf of the entire Congress that potential unionization of the political employees of the political offices in the Congress might pose a constitutional or operational burden (as defined by a conflict or apparent conflict or interest) on the effective operations of the legislative branch. Whatever the individual views of any Board member regarding this section, we believe that our responsibility is to effectuate the intent of the Congress as reflected in the Statute.

Response to the Board's initial invitation for informed input was not substantial. However, after the Notice of Proposed Rulemaking was published, substantial comments were received. In fact, the Board made special efforts to elicit comments and even briefly extended the comment period to accommodate interested parties who could offer assistance. By the end of the process, the Board did receive comments from most of the interested Congressional organizations. It received only one comment from a labor organization during the ANPR period and a separate letter during the NPR period in which the labor organization indicated that it reaffirmed its opposition to a total exemption of the political offices employees. The quality and informative content of the comments received are subject to differing views. The majority of the Board apparently believes that the comments were not particularly helpful or informative. We can only reach this conclusion by noting that the Board took pains to disclaim the substance and import of the comments received except apparently to credit substantive weight to the sole comment urging that the Board refuse to exercise its authority under 220(e)(1)(B). We believe, on the other hand, that the substantive comments did articulate a cogently expressed concern about the coverage of the employees in question and the disruptive effect a case by case adjudicatory process would have on the activities of the Congress. In any event, the section of the statute here in question *requires* the Board to move its inquiry beyond the written submissions.

Unfortunately, the Board did not undertake to make independent inquiry regarding these questions or to engage in inquiry of Congressional employees or informed outside experts. Rather, the Board continued its nearly judicial practice by which it analyzed the comments as submitted and neither requested follow up submissions nor conducted any independent review. Contrary to the majority's opinion, the undersigned believed that the submitted comments were helpful in indicating areas of concern and setting forth possible methods of addressing this issue. And in any event, under the majority's own standards, the lack of *any* substantive comments supporting the majority's ultimate conclusion is telling.

In the type of insulated analysis undertaken by the Board, where it relies so heavily upon submitted comments, we find it curious that the majority apparently adopted a position that it was only the obligation of those supporting a full or partial exclusion under section 220(e)(1)(B) to persuade the Board and that those opposing such exclusion can rely upon the Board's own analysis. We believe that the Board was charged with a different task and that it had to reach its own conclusions unanchored to the quality or inclusiveness of the comments. The undersigned relied, in addition, on our own understanding of the responsibilities of the Congress and the various offices designated for consideration, the criteria set forth for decision in the Statute, and our own experience. We believe that the Board's deliberations were hampered by its constricted view of its role and by not undertaking its own investigative process so as to better understand the tasks generic to the various Congressional job titles in the political offices.

The Board's discussions were detailed and frank. They were carried out in a professional and collegial manner. Various formulations of resolution were put forth by various commenters and the dissenters, including regulatory exemption of all employees, regulatory exemption of employees with designated job titles, regulatory exemption of all employees deemed to be exempt as professional employees under section 203 of the Act (the FLSA) and other regulatory formulations. We believed that the statute did not give the Board the discretion to set its analytical standards so high as to make a nullity of section 220(e)(1)(B). Indeed, we believe that the statute legally compelled the Board to undertake efforts to give meaning to the exemptions. The majority has been resistant to any formulation which would apply the 220(e)(1)(B) regulatory exemption. The result of the Board's deliberations are found in the proposed 220(e)(1)(B) regulations (or lack thereof) and the explanatory preamble.

We dissent from this resolution for several reasons. As set forth above, we believe that the Board was charged with a different and unique role. In this case, the credibility of the Board's response to section 220(e)(1)(B) demanded a proactive, investigatory effort under the authority of the Board which we believe simply did not occur. The majority, as expressed in the preamble, relied instead upon past precedents and concepts which we believe inapplicable or at least not determinative of the complex issue raised by 220(e)(1)(B). Indeed, as discussed below, its limited view of the leeway regulators have to interpret their statutes so as to give meaning and substance to Congressional enactment mars this entire process. We note, for example, the majority's reliance on *In re Department of Labor, Office of the Solicitor and AFGE Local 12*, 37 F.L.R.A. 1371 (1990), for its discussion of ''confidential employees'' and for other purposes. While this case may be pertinent if that issue comes before the Board in an adjudicatory context, we fail to see its relevance when the statute commands the Board to view the issue of unionization of *politically appointed* employees who work in *political offices* in the legislative body under separate and novel standards. Indeed, as we noted above, the standard statutory exemptions for professional or confidential employees are simply irrelevant to this discussion. Thus, in the case relied upon so heavily by the majority, we would simply note that Labor Department attorneys are, like the vast majority of federal employees covered by the FLRA, career civil servants who must conduct their professional activities in a nonpartisan environment. We believe that the conflict or apparent conflict of interest implicated by each workplace environment and type of employee is different. Politically appointed employees in political offices are under different constraints.

We note as well that the majority looked to private precedent decided under the National Labor Relations Act for guidance. If the majority believes that NLRB precedent is of assistance to our deliberations, we too would look to applicable NLRB precedent for guidance. Apparently faced with a growing caseload and inconsistent decisions by the appellate courts, the NLRB undertook in 1989 to decide by formal rulemaking the appropriate number of bargaining units for covered health care institutions. At the conclusion of this rulemaking process, the NLRB decided that in the absence of exceptional circumstances defined in the regulation, see 29 CFR §130.30 (1990), eight bargaining units would be appropriate. This rulemaking was challenged on several grounds including citation to §159(b) of the NLRA

which appears to state that the NLRB should establish appropriate bargaining units in *each case* (emphasis added). However, in *American Hospital Association* v *NLRB* 499 US 606(1991), a unanimous Supreme Court rejected the view that the NLRB was constrained from deciding any matter on the basis of rulemaking and was compelled to decide every matter on a case by case basis. The Court cited its precedents in other statutory cases for the proposition that a regulatory decision maker ''has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.'' 499 US 606, 612. (citations omitted.) In our statute, the Congress has clearly stated its preference *for* a regulatory resolution. Indeed, the Court cited with approval the following from Kenneth C. Davis, described by the Court as ''a noted scholar'' on administrative law:

''[T]he mandate to decide 'in each case' does not prevent the Board from supplanting the original discretionary chaos with some degree of order, and the principal instruments for regularizing the system of deciding 'in each case' are classifications, rules, principles, and precedents. *Sensible men could not refuse to use such instruments and a sensible Congress would not expect them to* (emphasis added.) 499 US at 612.''

We see absolutely nothing in the CAA which nullifies this observation. The majority finds statutory constraints where we find statutory encouragement to act in the manner of ''the sensible man'' as defined by Davis and relied upon by the Supreme Court. To the extent other similar experience is relevant, we would look to the fact that the Board was informed that no state legislative employees are included in unions even in states which otherwise encourage full union participation for their own public employees. Unfortunately, the majority neglected to analyze the relevance of this fact.

The preamble reflects the majority's belief that it was constrained to act only upon the public rulemaking record. We believe that this analytical model is flawed. The Board cites the reference to the Administrative Procedure Act in section 304 of the Act as implicity signaling that the Congress somehow incorporated that Act's procedural requirements into the CAA. The majority's view overstates the statutory reality. Most simply, the statutory reference does not command slavish adherence to a formalistic APA inquiry. While APA procedures are certainly good starting points for any rulemaking process, its intricacies and judicial interpretations cannot be deemed binding on the CAA process. Indeed, with respect to most of our regulatory activities, the statute places additional limitations on the Board's discretion and inquiry far more limited than that permitted by the APA. Particularly with regard to section 220(e)(1)(B), the statute clearly places different responsibilities and procedural requirements on the Board. The majority erred in adopting its passive analytical role.

But perhaps more importantly, we believe that the Board's understanding of the appropriate response by regulators to Rulemaking obligations is seriously constricted. Rulemaking never required a hermetically sealed process in which the decision makers sit in a judicial like cocoon responding only to the documents and case before them. Since this Board has disparate functions, it must adapt itself to the specific role rather than bind itself to a singular method of operation, particularly when the issue in question calls for a unified decision and guidance rather than the laborious and time consuming process inherent in case by case resolution. And in any event, as it has evolved, modern rulemaking encourages active participation by regulatory decision makers in the regulatory process, including staff fact finding and recommendation, contacts with involved parties so that all information is obtained and other independent means of acquiring the information necessary to reach the best policy decision. There is no requirement that regulatory decision makers be constrained solely by written submissions which are subject to the expository ability of the commenters rather than the actual facts and ideas they wish to convey. Indeed, while every other regulatory responsibility of this Board is limited to merely reviewing existing federal regulations, in this one area the statute demands that the Board act proactively on a clean slate. This the Board did not do.

We note as well the majority's equation of the Executive Branch functions with the legislative process of the Congress in its citations to past FLRA cases and in its general analysis. We frankly find this comparison to be without any legal or constitutional support. The two branches have wholly different functions. While the Executive Branch has officials who obviously interact with the Congress, their role is not the same as legislative employees who directly support the legislative process in the political offices and institutions of the Congress. Perhaps it should be noted with some emphasis that *advocacy before the Congress is not the same as working in the Congress.* Thus, it is simply wrong to suggest, as the majority does, that Executive Branch employees perform legislative functions. Or that the Board is somehow bound, in this instance, to mutely follow the holding of one FLRA case which addressed the bargaining unit status of government attorneys employed to interpret and enforce a host of laws directed at employment issues, the vast majority of which have absolutely nothing to do with labor management issues. The issue before us requires a sufficient knowledge of Congressional staff functions, responsibilities and relationships so that the statutorily required determination will be meaningful.

We wish to comment on the majority's apparent reluctance or disdain for at least a partial regulatory resolution of this issue. Case by case adjudication of individual factual issues may well be the best means of assuring procedural due process as well as fundamental fairness to the parties involved. The history (until recently) of labor management enforcement had shown a reluctance for regulatory resolution of labor management issues and opted instead for case by case resolution. However, the decisions by the NLRB and the Supreme Court in the *American Hospital Assocation* case and more recent efforts by the NLRB to engage in more extensive rulemaking indicates that even in the labor-management arena, in which we find ourselves, there is a recognition that regulatory resolution of global issues requiring resolution is often preferable to time consuming and expensive case by case litigation. We share the concern of some of the commenters that a process of adjudicatory resolution, regardless of the efficient manner in which it may be conducted by the Office of Compliance, is time consuming and subject to delay. To add to this, we note that the Board is a part time body whose members must pursue their professional activities as well as serve in the capacity of Board Member. The Board has justified its refusal to issue advisory opinions on other interpretative matters in part on its resource limitations. We agreed with that decision. We merely think it appropriate that the implications and rationale of that decision be applied to the matter before us.

Cognizance must also be taken of the fact that the offices and employees at issue here are transient. In some instances, the entire composition of an employing office may change every two years. We understand that employment in the positions at issue is often not considered a career opportunity but rather represents a period in the professional life of such an employee where they devote their energy and ability to a public pursuit before embarking on their private careers. We point out that case by case adjudication of the eligibility of various employees of various employing offices to be included within collective bargaining units may not be resolved until the employee or the office itself is no longer part of Congress. Thus, while the coverage issue is litigated on a case-by-case, employee-by-employee basis, final resolution of the underlying representational issue is delayed. In a body such as Congress where time pressures are intense and uneven, the inherent disruption and confusion attendant to such uncertainty is highly unfortunate. We believe that the Congress recognized this dilemma by including section 220(e)(1)(B) in the statute. In addition, we look to the impact on employees in those offices who may nevertheless be eligible to join a union if their positions are otherwise not deemed exempt under whatever formulation and note that their statutory rights will be denied because of the insistence on treating this issue as merely another adjudication.

We finally must address one argument put forward by the Board that suggests that since Congressional employees are apparently free to join, in their private capacity, whatever organizations they wish such as the Sierra Club, the National Right to Work Committee, or NOW, (but see section 502(a) of the CAA), distinguishing between these activities and union membership or ceding authority to the collective bargaining representative represents an unfair discrimination against unions in violation of the FLRA. While of some obvious surface appeal, this argument is entirely frivolous. We must observe that there is one salient difference between those organizations and the labor representation we are here discussing. The organizations cited by the majority *do not* represent the employees for the purpose of their employment and working conditions. They have no official status regarding the working relationships and responsibilities of their members. In contrast, the major purpose of labor organizations, aside from their historical and active participation in the political process, is to represent bargaining unit employees with respect to the terms and conditions of their employment as permitted by law. In the case of the FLRA, once a union is the certified bargaining representative, it represents the employee regardless of whether the employee is a member of the union or not. Thus, the reference to other organizations is of absolutely no relevance to issues being decided today and, in fact, raises issues not before us now and not even within the scope of the CAA.

For at least the reasons set forth above, we must dissent from the Board's decision regarding Section 220(e)(1)(B) regulations and the explanation for that decision set forth in the Preamble to the final regulation. We emphasize that this dissent should not be deemed as precedent for future divisions of the Board. We cannot emphasize enough the unique requirements of section 220(e)(1)(B). Indeed, the statute itself recognizes this distinction by treating employees of the instrumentalities in a wholly different manner than employees of the 220(e)(2) offices. The Board has spent extensive time reviewing this issue. The majority comes to its conclusions backed by its view of the historical treatment of labor management issues and its belief that its scope of review is limited. In short, the Board adopted an unjustified

stance regarding its legal authority and self-perceived constraints in the statute. We believe, however, that precedent and our statute command a different treatment. We also believe that the majority ignores the modern developments in regulatory issues. Thus, in view of the explanations offered in the preamble and the decisions reached by the majority, we regretfully believe those decisions to be wrongly considered and wrongly decided.

We add a brief coda to our dissent to simply respond to our colleagues who apparently feel that their lengthy preamble insufficiently set forth their views. We begin by apologizing to the Congress by burdening it at this extraordinary time in the second session of the 104th Congress with these arcane arguments regarding the meaning of the CAA, or PL 104–1. Indeed it is precisely this time constraint which partially drives our concern over the majority's action. We have no doubt that cannery workers, construction workers or sales persons have time constraints. So do health care workers. The Congress will have less than thirty days to complete this session. Critical public business must be completed. These are the time pressures inherent in the Congress which find little parallel in other workplace environments. We respectfully question whether section 220(e)(2) employees are the same as the aforementioned employees, or indeed Executive Branch employees who must perform their critical public business of administering or enforcing the laws Congress passes over a normal full year time span. To underscore our comments in the dissent, our colleagues surely understand the constitutional difference between Article I employees and Article II employees and the constitutionally different responsibilities assigned to each.

Our colleagues suggest that we did not read or misunderstood the wealth of materials gathered during the six month period this issue has been before us. While we applaud the majority's acknowledgement now expressed that it must go beyond the submitted comments, we confess not having had the privilege of knowing that these materials existed. But of much more importance, if these materials existed and were of such weight in the majority's consideration, then its own articulately stated view of the statutory obligations of notice and comment should have required that this information be described and listed in the various notices so that the commenters could fairly respond and argue how this information impacted their comments. It wasn't.

We respectfully submit that our colleagues misconstrue the discussion regarding the *American Hospital Association* case. Our point was not to laud the NLRB or even our Deputy Executive Director, which we surely do. Rather it was to suggest that the Supreme Court precedent involving both labor-management laws and regulatory flexibility did provide the guidance and legal authority we understand our colleagues to be searching for. We particularly note that the Court there apparently considered the observations of an administrative law scholar regarding the need to impute into every statute establishing regulatory authority the obligation of sensible interpretation as being as of much or even more precedential weight as the prior decisions of that Court.

Too much has been written on this issue. We hope that the Congress does devote some time to considering the recommendation being sent to it by the Board of the Office of Compliance. If this dissent has some resonance, perhaps the Congress might consider returning it to the Board with some guidance as to its intentions regarding the factors to be considered and methodology to be followed by the Board in reaching its recommendations.

ADOPTED REGULATIONS

§ 2472 Specific regulations regarding certain office 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 Office of the Minority 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 of the Majority of the Senate, the Office of the Secretary of the Conference of the Minority of the Senate, the Office of the Secretary 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, the Administrative Office of the Sergeant at Arms of the Senate, the Office of the Majority Whip of the House of Representatives, the Office of the Minority Whip of the House of Representatives, the Office of House Employment Counsel, the Immediate Office of the Clerk of the House of Representatives, the Immediate Office of the Chief Administrative Officer of the House of Representatives, the Office of Legislative Computer Systems of the House of Representatives, the Office of Finance of the House of Representatives and the Immediate Office of the Sergeant at Arms of the House of Representatives.

§ 2472.2 Applicant 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 section 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.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4531. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Fresh Prunes Grown in Washington and Oregon; Handling Requirement Revision; Fruits; Import Regulations; Fresh Prune Import Requirements [Docket No. FV95–924–1FR] received August 7, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4532. A letter from the Agricultural Marketing Service, transmitting the Service's final rule—Apricots and Cherries Grown in Designated Counties in Washington and Prunes Grown in Designated Counties in Washington and in Umatilla County, Oregon; Assessment Rates [Docket No. FV95–922–1FR] received August 7, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4533. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Spearmint Oil Produced in the Far West; Assessment Rate [Docket No. FV96–985–2 FIR] received August 7, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4534. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Kiwifruit Grown in California; Assessment Rate [Docket No. FV96–920–1 IFR] received August 5, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4535. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Olives Grown in California and Imported Olives; Establishment of Limited-Use Style Olive Grade and Size Requirements [Docket No. FV96–932–3 FIR] received August 5, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4536. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Milk in the Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville Marketing Areas; Interim Amendment of Rules [Docket No. AO0388–A9, et al.; DA–96–08] received August 9, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4537. A letter from the Administrator, Agricultural Marketing Service, transmitting the Service's final rule—Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Assessment Rate [Docket No. FV96–929–3 IFR] received August 14, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

4538. A letter from the Administrator, Agricultural Marketing Service, transmitting