b. Issues Under Section 202 (Family and Medical Leave Act)

The Family and Medical Leave Act generally requires employers to permit covered employees to take up to 12 weeks of unpaid, job protected leave during a 12-month period for the birth of a child and to care for the newborn; placement of a child for adoption or foster care; care of a spouse; child, or parent with a serious health condition; or an employee's own serious health condition. The FMLA and the Secretary's regulations thereunder contain provisions concerning the maintenance of health benefits during leave, job restoration after leave, notice and medical certifications of the need for FMLA leave, and the relationship of FMLA leave to other employment laws including the Americans With Disabilities Act, Workers Compensation, and Title VII of the Civil Rights Act of 1964.

(i) Previous Application of the FMLA to Certain Employees.

The Board notes that Title V of the FMLA made specified rights and protections under the FMLA available to certain employees of the House of Representatives and of the Senate. On August 5, 1993, the House Committee on House Administration of the 103th Congress adopted regulations and forms to implement the FMLA in the House of Representatives.

Title V and such House regulations provided different FMLA rights and protections to employees of the House of Representatives and of the Senate than are provided under the CAA. For example, under Title V, ''any employee in an employment position'' of the House of Representatives and any employee of the Senate who has been employed for at least twelve months on other than a temporary or intermittent basis was eligible for FMLA leave. Thus, Title V provided FMLA leave to House employees immediately upon employment and to Senate employees who had worked at least twelve months on other than a temporary or intermittent basis.

Conversely, Section 202(a)(2)(B) of the CAA defines an ''eligible employee'' for the purpose of FMLA leave as any employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the 12 months immediately preceding the commencement of leave. Consequently, the CAA establishes different leave eligibility requirements than Title V of the FMLA established. The Board further notes that Section 504(b) of the CAA repeals Title V of the FMLA effective January 23, 1996.

Section 2612 of the FMLA as applied to the House of Representatives and to the Senate under the CAA entitles ''eligible employees'' to take up to 12 weeks of FMLA leave in a 12-month period. Section 825.200(b) of the regulations promulgated by the Secretary provides that the employer may elect to use the calendar year, a fixed twelve month leave or fiscal year, or a 12-month period prior to or after the commencement of leave to calculate the 12-month period within which eligible employees are entitled to take up to 12 weeks leave. The Board notes that the August 5, 1993 regulations of the House Committee on House Administration designated for all employing offices of the House of Representatives the period from January 3 of one year through January 2 of the following year as the FMLA leave year within which eligible employees are entitled to take up to 12 weeks of leave. The Board further notes that, pursuant to sections 504(b) and 506 of the CAA, Title V of the FMLA upon which such regulation was based is repealed effective January 23, 1996.

The Board invites comment on the following questions:

(1) Whether and, if so, how, the twelve month and 1,250 hours of work FMLA leave eligibility requirements should be calculated for employees employed by more than one employing office? See infra (ii) on ''Employment by More Than One Office''.

(2) Whether there is ''good cause'' to believe that a regulation designating a uniform FMLA leave year within which ''eligible employees'' are entitled to take FMLA leave would be ''more effective'' for the implementation of the rights and protections of the CAA than the regulations promulgated by the Secretary which would permit employers to designate the 12-month period appropriate to their office?

(3) Whether, assuming that there is not ''good cause'' to designate a uniform FMLA leave year for all employing offices, the existence of non-uniform leave years by employing offices would affect the FMLA leave rights of ''eligible employees'' who are employed by more than one employing office? See infra (ii) on ''Employment by More Than One Office''.

The Board further seeks information on whether and to what extent policies and practices of the House of Representatives, the Senate, the Instrumentalities or any covered employing office exist that provide different FMLA rights and protections than would be provided under the CAA if the regulations promulgated by the Secretary were made applicable to such employees.

(ii) Employment by More Than One Office

In the context of the FMLA, the term ''covered employer'' has not been construed as limited to a single employer; it may include two or more employers of the same employee. Sections 825.106, 825.104(c)(2) and 825.107 of the regulations promulgated by the Secretary set forth factors to be considered in making a determination of whether a ''joint employment'', ''integrated employer'', or ''successor in interest'', respectively, relationship exists for the purposes of FMLA leave eligibility, job restoration and maintenance of health benefits responsibilities of employers.

The Board invites comment on whether and, if so, how the definitions of ''joint employer'', ''integrated employer'' or ''successor employer'' set forth in the regulations promulgated by the Secretary should be applied and/or modified to implement FMLA rights and protections under the CAA with respect to covered employees employed simultaneously or seriatim by more than one employing office during any relevant 12-month period.

Signed at Washington, D.C., on this 27th day of September, 1995.

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

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice relates to the Employee Polygraph Protection Act of 1988 and its applicability to the Capitol Police under the Congressional Accountability Act.

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

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

OFFICE OF COMPLIANCE

(The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Employee Polygraph Protection Act of 1988)

NOTICE OF PROPOSED RULEMAKING

Summary

This document contains proposed regulations authorizing the Capitol Police to use lie detector tests under Section 204(a)(3) and (c) of the Congressional Accountability Act of 1995 (''CAA''), P.L. 104–1. The proposed regulations set forth the recommendations of the Executive Director, Office of Compliance as approved by the Board of Directors, Office of Compliance.

The CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 204 extends the rights and protections of the Employee Polygraph Protection Act of 1988 [29 U.S.C. §§2001, et seq.] to covered employees and employing offices. The provisions of section 204 are effective January 23, 1996, one year after the effective date of the CAA.

The purpose of this proposed regulation is to authorize the Capitol Police to use lie detector tests with respect to its own employees.

Dates.—Comments are due on or before 30 days after the date of publication of this notice in the Congressional Record.

Addresses.—Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For Further Information Contact.—Executive Director, Office of Compliance at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 244–2705.

Supplementary Information

Background and Summary

The Congressional Accountability Act of 1995 (''CAA'') 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 employees offices within the legislative branch. Section 204(a) and (b) of the CAA applies the rights and protections of the Employee Polygraph Protection Act of 1988, 29 U.S.C. §2001, et seq. (''EPPA'') to covered employees and employing offices. Section 204(c) authorizes the Board of Directors of the Office of Compliance (''Board'') established under the CAA to issue regulations implementing the section. Section 204(c) further states that such regulations ''shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b)

except insofar as 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.'' Section 204(a)(3) provides that nothing in this section shall preclude the Capitol Police from using lie detector tests in accordance with regulations issued under section 204(c) of the CAA.

The Capitol Police is the primary law enforcement agency of the legislative branch. The proposed regulations would provide the Capitol Police with specific authorization to use lie detector tests. The limitations on the exclusion of the proposed regulation are derived from the Secretary of Labor's regulation implementing the exclusion for public sector employers under Section 7(a) of the EPPA (29 C.F.R. §801.10(d)), which limits the exclusion to the entity's own employees.

The Board issues concurrently with this proposed regulation a separate Advance Notice of Proposed Rulemaking which invites comment regarding a number of other regulatory issues, including what regulations, if any, the Board should issue to implement the remainder of Section 204.

Proposed Regulation—Exclusion for employees of the Capitol Police

None of the limitations on the use of lie detector tests by employing offices set forth in Section 204 of the CAA apply to the Capitol Police. This exclusion from the limitations of Section 204 of the CAA applies only with respect to Capitol Police employees. Except as otherwise provided by law or these regulations, this exclusion does not extend to contractors or nongovernmental agents of the Capitol Police, nor does it extend to the Capitol Police with respect to employees of a private employer or an otherwise covered employing office with which the Capitol Police has a contractual or other business relationship.

Recommended Method of Approval

The Board recommends that this regulation be approved by concurrent resolution in light of the nature of the work performed by the Capitol Police and the fact that neither the House of Representatives nor the Senate has exclusive responsibility for the Capitol Police.

Signed at Washington, D.C., on this 27th day of September 1995.

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

RATIFICATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Mr. PELL. Mr. President, I offer my congratulations to the conveners and participants of the Fourth World Conference on Women, held in Beijing this September, and the parallel NGO Forum on Women for promoting the human rights of women around the world. I would especially commend the members of the U.S. delegation to the Women's Conference, particularly First Lady Hillary Clinton and Ambassador Madeleine Albright, as well as the many others who contributed to its success.

The goal of this conference was to promote the advancement of women by identifying and overcoming the obstacles still facing women. In many parts of the world today, discrimination against women results in forced abortions, in the trafficking or forced prostitution of young girls, and in the denial of nutrition or health care, even to the point of infanticide. Women are also the primary victims of domestic violence or rape, and rape is increasingly being used as a tool of war in conflicts such as Bosnia, Cambodia, Liberia, Peru, Somalia, and Rwanda.

In many parts of the world, women are denied education, job training, or employment opportunities. Today, 64 percent of the world's illiterate and 70 percent of the world's population that lives in absolute poverty are women. Even when employed, women frequently face pay discrimination in the workplace. In too many countries, women are excluded from participating in policy-making or prevented by law from voting in elections.

Mr. President, the Women's Conference addressed all of these issues and called upon governments to commit to specific actions that would advance the status of women. The United States delegation made commitments that continue the long-standing tradition of U.S. leadership in the fight for equality for women and men. American commitments include: the creation of a White House Council on Women to coordinate the implementation of the Platform for Action within the U.S.; a new Justice Department initiative to fight domestic violence; increased resources for improving women's health; improved access for women to financial credit; and continued support for the human rights of all people.

Mr. President, I commend the Clinton administration for its continued efforts to promote the status of women at home and abroad. This year marks a historic point in the fight for women's equality. 1995 is the 75th anniversary of women's suffrage in the United States. It is also the fiftieth anniversary of the United Nations, whose Charter recognizes the equal rights of women and men. And of course, the success of this year's Fourth World Conference on Women has set a new agenda for the advancement of women. In this spirit, Mr. President, I believe it is time for the United States Senate to give its advice and consent to the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

The Women's Convention is the most comprehensive and detailed international agreement that promotes the equality of women and men. The Convention legally defines discrimination against women for the first time and establishes rights for women in areas not previously covered by international law. Today, 147 countries have ratified the Convention. The United States is the only industrialized democracy in the world that has failed to ratify the Convention.

Under my chairmanship, the Senate Foreign Relations Committee held three hearings on this important convention. On September 29, 1994, with my whole-hearted support, the Committee voted 13 to 5 to report favorably the Convention with a resolution of ratification to the Senate for its advice and consent. Despite support for ratification from many Members of Congress on both sides of the aisle, from the Clinton administration, and from the American public, opponents of ratification succeeded in blocking the Convention from reaching a vote in the Senate last year.

Mr. President, I believe the U.S. ratification of this Convention is important to demonstrate American commitment to eliminating all forms of discrimination against women both at home and abroad. Equally important, the United States should ratify the Convention in order to underscore the importance we assign to international efforts to promote and protect human rights. By failing to ratify the Women's Convention, the United States has rightfully encouraged criticism from allies who cannot understand our refusal to uphold rights that are already found within the provisions of our great Constitution. The United States cannot criticize other countries' violations of women's rights if we have not recognized those rights as international legal standards. The Women's Convention is an important human rights document that is consistent with the existing laws of the United States. Senate advice and consent to this Convention will demonstrate U.S. leadership in the fight for women's equality.

Finally, Mr. President, as we consider the appropriations bill for the State Department budget, I would emphasize the difficulties that funding cuts will produce in the work to promote human rights. Without adequate funding, the U.S. will be unable to continue to play a leadership role in the international effort to promote women's equality. The ability of the State Department to monitor human rights abuses, to participate in the work of the U.N. Human Rights Commission, to support NGOs in their human rights work, and to gather information on human rights violations would be severely threatened. Clearly, it is in the best interests of the United States to promote human rights and democracy in every country. Let us not lose our leadership role in the protection of human rights.

NATIONAL ENDOWMENT FOR THE HUMANITIES

Mr. PELL. Mr. President, I rise today to discuss the extraordinary impact of the National Endowment for the Humanities on my home state of Rhode Island. Rhode Island has long had a special relationship with the Endowments—ever since the President of Brown University, my old friend Barnaby Keeney, formed a Commission to investigate the possibility of a national support for study in the humanities.