

National Taxpayer Advocate

2009 Annual Report to Congress

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**TAXPAYER ADVOCATE
SERVICE SURVEY OF FEDERAL
GOVERNMENT EXTERNAL
OMBUDSMEN**

Annual Report to Congress

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Taxpayer Advocate Service Survey of Federal Government External Ombudsmen¹

TABLE OF CONTENTS

Introduction	107
Overview of Ombudsman Function	108
ABA Ombudsman Categories	108
Ombudsman Standards	109
American Bar Association Standards	109
International Ombudsman Association Standards	110
United States Ombudsman Association Standards	111
Coalition of Federal Ombudsman	111
TAS Survey Results	112
Independence	112
Impartiality	113
Confidentiality	114
Legislative Proposal	114
Conclusion	115
Appendix 1: Participating Ombudsman Offices	117
Appendix 2: Non-Participating Offices	118
Appendix 3: Department of Energy Technology Transfer Ombudsmen	119
Appendix 4: Federal Ombudsman Survey Questions	120
Appendix 5: Survey Responses by Office	124

¹ The views expressed herein are solely those of the National Taxpayer Advocate. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget. The principal author of this report is Megan B. Kenney, Attorney Advisor to the National Taxpayer Advocate.

INTRODUCTION

In 2003, the Taxpayer Advocate Service (TAS) published a report titled: *Independent Advocacy Agencies Within Agencies: A Survey of Federal Agency External Ombudsmen*. The report examined the structure of the office of the National Taxpayer Advocate, as well as other federal ombudsmen offices, based on survey responses collected by TAS and publicly available information. The initial report surveyed the breadth of the structure of federal external ombudsmen offices in existence at the time and provided an overview of the function of those offices.

For the 2003 report, 26 ombudsmen offices were identified.² In 2007, the National Taxpayer Advocate initiated a new survey of federal external ombudsmen and identified 18 additional offices either created after the 2003 report or not identified in that report.³ The National Taxpayer Advocate sent a second round of surveys to both the newly identified offices and the ones discussed in the 2003 report.

Within the federal government, the ombudsman function is expanding. Legislation and individual agency initiatives serve to create new ombudsmen offices every year. The survey of federal external ombudsmen attempts to categorize the differences and similarities between the offices and to recognize strengths and weaknesses in the various shapes that these offices take. It also examines whether ombuds offices would be strengthened by the creation of a Federal Agency External Ombudsman Act. One clear trend emerged: external ombudsmen exist in many structures, sizes, authorities, and scopes, with minimal uniformity between offices.

² Lubbers, Jeffrey, *Independent Advocacy Agencies Within Agencies: A Survey of Federal Agency External Ombudsmen* (June 2003). The 26 previously identified offices include the National Taxpayer Advocate. While the Environmental Protection Agency Superfund Ombudsmen have 10 regional offices and one head office, for the purpose of this report the office is counted once.

³ See Appendices 1, 2, and 3, *infra*.

OVERVIEW OF OMBUDSMAN FUNCTION

Ombudsmen operate in many forms and encompass varying duties throughout the federal government. Some, such as the National Taxpayer Advocate⁴ and the Small Business Administration National Ombudsman for Regulatory Enforcement Fairness, exist as a result of congressional action.⁵ Others are established by agency initiative, including the Food and Drug Administration Center for Drug Evaluation and Research Ombudsman and the Office of International Affairs and Trade Relations Ombudsman.

*ABA Ombudsmen Categories*⁶

The American Bar Association (ABA) recognizes four types of ombudsmen: legislative, executive, organizational, and advocate. Organizational ombudsmen are not represented in the results of the Ombudsmen Survey as they are not external, that is, they serve a constituency internal to the organization whereas external ombudsmen serve a specific public population. A legislative ombudsman, in the context of federal external ombudsmen, results from an act of Congress and receives complaints from the public. Legislative ombudsmen may also advocate for change to agency policy or procedure. Executive ombudsmen, in the context of federal external ombudsmen, receive complaints from the public and may function to hold an agency or program accountable or to work jointly with the agency to improve specific programs. Advocate ombudsmen work on behalf of a specific population and may investigate complaints from that population in order to recommend proper remedies.

Ombudsmen from all three categories, and those who fit in more than one category, participated in the Ombudsmen Survey. The Survey also reached out to several ombudsmen who, at first glance, appeared to fall into the category of executive external ombudsmen. All five of these ombudsmen fall under the purview of the Department of Energy and serve as Technology Transfer Ombudsmen at various national laboratories. However, the technology transfer ombudsmen are employees of private companies and operate under federal contracts. One of these ombudsmen, from the Argonne National Laboratory, responded to the National Taxpayer Advocate's survey by providing a section of the federal contract establishing the ombudsman. The main purpose of the contract is to work with contractors to facilitate the transfer of intellectual property to private U.S. companies. The ombudsman function exists to investigate complaints from the companies about the transfer procedures and decisions.

⁴ IRC § 7803.

⁵ 15 U.S.C. § 657.

⁶ American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (Feb. 9, 2004), available at <http://meetings.abanet.org/webupload/commupload/AL322500/newsletterpubs/115.pdf> (last visited Dec. 15, 2009).

Ombudsmen Standards

American Bar Association Standards⁷

In 2004, the ABA refined its original list of 12 ombudsman essentials into its Standards for the Establishment and Operation of Ombudsman Offices.⁸ Three principles form the core of the new standards: independence, impartiality, and confidentiality. The ABA finds these principles essential to the effective operation of an ombudsman office. Lacking the core principles opens an ombudsman to potential control by the organization within which he or she serves.

The ABA standards require an ombudsman to be independent in his or her “structure, function, and appearance.” No one subject to the ombudsman’s jurisdiction should limit the performance of the ombudsman’s duties or remove the ombudsman for retaliatory purposes. This protection should extend to indirect controls such as the ombudsman’s legal counsel or budget and resources.

An ombudsman must be free from bias or conflicts of interest while performing his or her duties to maintain impartiality. At a minimum, the ombudsman should be independent from management or other administrative obligations or functions because the more an ombudsman must rely on his or her parent organization, the more difficult it is to operate impartially. The ombudsman must have the ability to gather information in a manner that will allow him or her to impartially consider the interests of all parties within his or her jurisdiction.

Confidentiality must extend to all communications with and documents created by the ombudsman in the performance of his or her obligations. The ability to keep information confidential will promote disclosure to the ombudsman, elicit candid discussions, and reduce the chance for retaliation against complainants. Reliance on existing confidentiality protections in state or federal legislation may not be sufficient. The agency or legislation creating the ombudsman office should adopt written policies that provide for the highest level of confidentiality allowed by law.

In addition, the ABA also suggests limiting an ombudsman’s authority to ensure the accomplishment of the three core characteristics. An ombudsman should not change or directly compel the change of any “law, policy, or administrative/managerial decision.”⁹ The ombudsman, in order to avoid due process problems, should keep his or her review separate from, and not allow it to substitute for, existing administrative or judicial proceedings. Similarly, the ombudsman should not act as an appellate forum for formal proceedings and should avoid issues that are “pending in a legal forum.” External ombudsman should

⁷ *Id.*

⁸ American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices*, 54 Admin. L. Rev. 535 (2002).

⁹ American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (Feb. 9, 2004), at <http://meetings.abanet.org/webupload/commupload/AL322500/newsletterpubs/115.pdf> (last visited Dec. 15, 2009). However, an ombudsman may advocate for change where his or her investigation has determined a need for such change. *Id.* at 14.

not address labor or employment law issues, or issues subject to any collective bargaining agreement without specific authorization from the employer.

*International Ombudsman Association Standards*¹⁰

The International Ombudsman Association (IOA) promotes the IOA Standards of Practice, a set of guidelines designed to ensure an ombudsman office operates according to the IOA's Code of Ethics. The 2005 merger of the University and College Ombudsman Association with The Ombudsman Association established the IOA, which now claims to be the largest organizational ombudsman association in the world with over 500 members.¹¹

The IOA espouses four ethical principles as essential for maintaining the integrity of the ombudsman profession:

- Independence;
- Neutrality and impartiality;
- Confidentiality; and
- Informality.

An ombudsman office should be independent from other organizational entities. The ombudsman should hold no other position within the organization and should have the authority to select his or her staff and access “all information and all individuals in the organization as permitted by law.”

The ombudsman should also strive for “impartiality, fairness, and objectivity” while fulfilling his or her obligations. The ombudsman may achieve impartiality by remaining independent from normal staff structures and creating reporting requirements that allow him or her to communicate directly with the highest levels of the organization.

The IOA also imposes a duty upon the ombudsman to hold all communications confidential. Even if waived by the party dealing with the ombudsman, the privilege belongs to the ombudsman and the IOA provides the ombudsman with the sole discretion whether to disclose the information. The only exception to this duty of confidentiality is where there is an “imminent risk of serious harm” and “there is no other reasonable option.” The IOA also recommends that the ombudsman resist testifying in any formal proceeding outside of the organization, even if given permission to do so.

The final standard of the IOA is informality. The ombudsman should avoid making binding decisions and should instead operate as “an informal and off-the-record resource” to supplement any existing formal procedures.

¹⁰ IOA, *IOA Standards of Practice*, at http://www.ombudsassociation.org/standards/Std Practice_1-07.pdf (last visited Dec. 15, 2009).

¹¹ See <http://www.ombudsassociation.org/about/> (last visited Dec. 15, 2009).

*United States Ombudsman Association Standards*¹²

Founded in 1977, the United States Ombudsman Association (USOA) membership focuses on public sector ombuds.¹³ The USOA provides educational opportunities for ombuds and advocates for the creation of ombudsmen offices in local, state, and federal governments.¹⁴ Although founded in the U.S., the USOA membership is comprised of ombudsmen offices from many nations. Its membership is open to any incumbent public sector ombudsman as well as the staff of any public sector ombuds office.¹⁵

In addition to providing a guide on the ABA Standards for the Establishment and Operations of Ombuds Offices, the USOA has adopted its own set of Governmental Ombudsman Standards. The USOA divides its standards into the four categories of independence, impartiality, confidentiality, and credible review process.

The addition of “credible review process” as a standard for ombuds offices differs from the standards of the ABA and the IOA. Encompassed by the credible review process standard, the USOA includes tenets that address the transparency of the ombuds office, the qualifications of an ombuds, and the jurisdiction of the office of the ombuds. The USOA standards require the ombuds to offer reports to his or her appointing authority as well as the public to provide transparency in the activities of the office, regardless of whether the office is required by law or administrative convention to issue reports. Additionally, the credible review process standard calls for an ombuds to have the power to thoroughly investigate matters before his or her office by having clearly established authorities, including the ability to requisition relevant documents. Many of the tenets under the credible review process appear to fall into the categories of independence and impartiality addressed by both the ABA and the IOA standards.

Coalition of Federal Ombudsman

The Coalition of Federal Ombudsmen (CFO), which organized in 1996, encompasses both internal and external federal ombudsmen.¹⁶ Members of the CFO meet to discuss their roles as ombuds in the federal government, exchanging ideas and experiences in an effort to help learn about the ombudsman function.¹⁷ Although it has not adopted its own official set of standards, the CFO promotes the belief that ombudsmen should possess the characteristics of independence, impartiality, and confidentiality.

¹² USOA, *Governmental Ombudsman Standards*, at http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf (last visited Dec. 15, 2009).

¹³ USOA, *About Us*, at http://www.usombudsman.org/en/About_Us/about_usoa.cfm (last visited Dec. 15, 2009).

¹⁴ *Id.*

¹⁵ USOA, *Membership Categories*, at http://www.usombudsman.org/en/membership/member_categories.cfm (last visited Dec. 15, 2009).

¹⁶ CFO, *Historical Perspective*, at <http://ombudsman.ed.gov/federalombuds/history.html> (last visited Dec. 15, 2009).

¹⁷ *Id.*

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

Common to all three ombudsmen organizations are the ABA's three core characteristics. This report will focus on an analysis of federal external ombudsman under the ABA definitions.

TAS Survey Results

In August 2007, TAS sent updated questionnaires to 23 of the 26¹⁸ ombudsman offices that were identified in our 2003 survey as well as the 18 newly identified federal external ombudsmen.¹⁹ Of the 41 surveys, 19 agencies responded (including TAS). Sixteen of the responses were from ombudsmen who were identified in the original survey.

Independence

Responses to TAS's recent survey indicate that most external ombudsmen lack the independence the ABA standards recommend, in structure, function and appearance.²⁰ One office, the Ombudsman for the Federal Reserve Board of Governors, indicated that she has access to independent counsel. The remaining participants rely on agency counsel and only a few have mechanisms in place to screen appointed counsel from issues within the ombudsman's jurisdiction. In the 2002 Annual Report to Congress, the National Taxpayer Advocate discussed the inherent conflict of interest created by requiring ombudsmen to rely on agency counsel.²¹ Agency counsel, which reports to and is evaluated by the parent organization, may need to provide advice to the ombuds that is "directly contrary" to the advice of counsel representing the parent organization.²² Such conflict directly impairs the successful performance of the ombudsman's duties.

The ABA standards recommend that no person subject to the jurisdiction of the ombuds have the authority to eliminate the office, remove the ombuds, or change the budget of the office.²³ Although most survey participants indicated they were not subject to removal by a superior within his or her jurisdiction, their responses to other questions indicate otherwise. At least 12 of the participating ombudsmen report directly to their parent agency, often to the same officer or group who appointed the ombudsman and may have the

¹⁸ Two ombudsmen, the Agency for Toxic Substances and Disease Registry (ASTFR), and the Environmental Protection Agency Hazardous Waste Ombudsman, contacted in the 2003 Report could not be located for the current report. The pages were removed from the ASTFR's and EPA's websites and only cached information is available. The previous contact information for the offices is not valid. The ombudsman for the former Immigration and Naturalization Service appears to have been removed in a governmental reorganization. One survey to the NASA Ombudsman for Acquisition was returned as undeliverable. Calls and emails to this office went unanswered.

¹⁹ One survey to the Ombudsman for the Department of the Interior Insular Affairs, Mariana Islands was returned as undeliverable. Calls and emails to this office went unanswered.

²⁰ ABA, *Standards for the Establishment and Operation of Ombuds Offices* (Feb. 9, 2004), at <http://meetings.abanet.org/webupload/commupload/AL322500/newsletterpubs/115.pdf> (last visited Dec. 15, 2009).

²¹ National Taxpayer Advocate 2002 Annual Report to Congress 202.

²² *Id.*

²³ ABA, *Standards for the Establishment and Operation of Ombuds Offices* (Feb. 9, 2004), at <http://meetings.abanet.org/webupload/commupload/AL322500/newsletterpubs/115.pdf> (last visited Dec. 15, 2009).

authority to remove the ombudsman.²⁴ One participant, the Ombudsman for the Center for Biologics Evaluation and Research, of the Food and Drug Administration (FDA), noted that it was theoretically possible for someone within her jurisdiction to remove her from office. The ability of the agency to appoint its own ombudsman may allow the agency to appoint only those employees deferential to the agency's interests.²⁵ These controls over the position of the ombudsman undermine the ombudsman's independence from his or her parent organization.

Five participants reported that they do not have independent budgets,²⁶ one office did not respond to that question,²⁷ and another office did not have an answer at the time of the survey.²⁸ The ABA guidelines state that parent organization control over the ombudsman's budget provides indirect control over the staffing and daily operations of the ombudsman office itself. Requiring the ombudsman to rely on a parent organization for funding severely restricts both functional and apparent independence. When the parent organization retains budgetary control over the ombudsman office, it creates the potential for the organization to simply eliminate the ombudsman with a budgetary change.

Impartiality

Five of the participating ombudsmen explicitly stated that they have administrative obligations in addition to their ombudsman functions.²⁹ More than 40 percent of the participants indicated they do not have the authority to obtain documents or information.³⁰ Reliance on the parent organization for the tools necessary to advocate effectively creates a conflict of interest that may require the ombuds office to give greater weight to the interests of its parent organization over the interests of its beneficiaries.

The degree to which the ombudsman provides for transparency in his or her day-to-day activities contributes towards his or her perceived impartiality. Although the majority of

²⁴ Agency on Aging; FDA Office of the Ombudsman; Small Business Administration National Ombudsman for Regulatory Enforcement Fairness; FDA Center for Drug Evaluation and Research; FDA Center for Devices and Radiological Health; FDA Center for Biologics Evaluation and Research; Comptroller of the Currency; Department of Education Federal Student Aid Ombudsman; Agency for International Development, Acquisition and Assistance Ombudsman; Tennessee Valley Authority; Federal Reserve Board of Governors Ombudsman; National Credit Union Administration.

²⁵ At least one office, the National Taxpayer Advocate, has statutory procedures that protect against this type of hazard. The National Taxpayer Advocate must not have served as an employee of the IRS for two years previous to appointment and cannot serve as an IRS employee for five years after leaving office. IRC §7803(c)(1)(B)(iv). Another office, the Agency on Aging, has an employment restriction prohibiting the appointment of anyone to the Director position who has worked for a long-term care facility; a corporation that then owned or operated a long-term care facility; or an association of long-term care facilities. The Director and his or her family must also be free from conflicts of interest and the Director must not have an ownership interest in a long-term care facility or be entitled to any compensation from a long-term care facility. Older Americans Act of 1965, Pub. L. No. 109-365, § 201(d)(2)(B) (2006).

²⁶ Federal Reserve Board of Governors; National Science Foundation Acquisition Ombudsman; Agency for International Development, Acquisition and Assistance Ombudsman; FDA Center for Devices and Radiological Health; FDA Center for Drug Evaluation and Research.

²⁷ National Credit Union Administration.

²⁸ Office of International Affairs and Trade Relations.

²⁹ Office of International Affairs and Trade Relations; National Science Foundation Acquisition Ombudsman; National Credit Union Administration; FDA Center for Drug Evaluation and Research; FDA Center for Biologics Evaluation and Research.

³⁰ Agency on Aging; Citizenship and Immigration Services; Energy Employees Occupational Illness Compensation; FDA Center for Biologics Evaluation and Research; FDA Center for Devices and Radiological Health; FDA Office of Ombudsman; Federal Deposit Insurance Corporation; Federal Reserve Board of Governors.

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

the participants provide information to the public via their websites or other publications, only ten of the 19 ombudsmen have specific reporting requirements³¹ and only four of those report directly to Congress.³² Reports from the offices that do not report to Congress are generally available to the public only from the ombudsman's website, which is usually a single page within the agency's site, or through publications distributed by the parent organization. Dependence on the parent agency to publicize the work of the ombudsman can create the perception that the ombudsman and the agency are the same entity, frustrating the mission of the office of the ombuds.

Confidentiality

Almost all of the participating ombuds attempt to provide maximum confidentiality protections, and post written policies explaining this commitment on their websites. Most cite the Privacy Act,³³ the Administrative Dispute Resolution Act,³⁴ and FOIA³⁵ as the basis for their policies. However, most participants indicate that they rely on their parent agencies to handle FOIA requests or court orders requiring disclosure. Reliance on the parent organization requires the ombudsman to share customer information with the same organization with which the customer has an issue. No ombudsman mentioned abuse of this privilege, but the possibility of abuse, coupled with the apparent lack of confidentiality, may dissuade customers from utilizing the ombudsman's services.

Legislative Proposal

A Federal Agency Ombudsman Act would provide much-needed protection and structure to federal ombudsmen offices. If an act existed, Congress would not have to start from scratch each time it created an ombuds office and it would guide agencies as they create their own such offices. In October 2009, the Department of Commerce sought comments on a proposal for an Ombudsman Pilot Program in the United States Patent and Trademark Office.³⁶ The proposal demonstrated the need for agencies to have clear guidance when creating ombuds offices in order to avoid simply instituting what amounts to a complaints department with no actual authority, independence, impartiality protections, or confidentiality shields.

³¹ Citizenship and Immigration Service; National Taxpayer Advocate; Energy Employees Occupational Illness Compensation; Small Business Administration National Ombudsman for Regulatory Enforcement Fairness; Agency on Aging; Department of Education Federal Student Aid Ombudsman; FDA Center for Drug Evaluation and Research; Federal Deposit Insurance Corporation; National Science Foundation; Office of International Affairs and Trade Relations.

³² Citizenship and Immigration Service; National Taxpayer Advocate; Energy Employees Occupational Illness Compensation; Small Business Administration National Ombudsman for Regulatory Enforcement Fairness. Since sending the survey, a new legislative ombudsman, the Freedom of Information Act (FOIA) Ombudsman was created by the Open Government Act of 2007 with the requirement to recommend policy changes to Congress and the President relating to FOIA. The position remained unfilled until Sept. 2009 when Miriam Nisbet was selected. See <http://www.archives.gov/ogis/nisbet-bio.html> (last visited Dec. 17, 2009).

³³ 5 U.S.C.A. § 552a.

³⁴ 5 U.S.C.A. § 571 et seq.

³⁵ 5 U.S.C.A. § 552.

³⁶ Federal Register, Vol. 74, No. 206, Oct. 27, 2009 at 55212.

Congress could use the Inspector General Act of 1978 as a guide in crafting legislation.³⁷ The Act 1978 created Inspector General Offices in all government agencies and detailed their general responsibilities, authorities, and duties. Additionally, it detailed specific duties and requirements for individual offices such as the Inspector General of the Department of Defense and the Federal Deposit Insurance Corporation. A similar format would work for a Federal Agency External Ombudsman Act. However, rather than automatically create ombudsmen in every agency, a Federal Agency External Ombudsman Act would be a template for all future ombudsman offices created either by legislation or administrative actions. Each new office would be required to have all the elements of the Act and then Congress or the initiating agency would specifically detail the purpose and scope of the work of the new ombudsman. As such, any new ombuds office would be guaranteed, at a minimum, the protections of the Act.

Several legislative ombudsmen, such as the National Taxpayer Advocate and the Citizenship and Immigration Ombudsman, enjoy protections carefully crafted by Congress to allow an ombuds office to function with independence, impartiality, and confidentiality.³⁸ Such offices and their enabling legislation provide a blueprint for a Federal Agency External Ombudsman Act as Congress can examine what has and has not worked in these offices over their tenures to strengthen and protect the role of ombudsmen.

CONCLUSION

Ombudsmen functions and authorities vary widely from agency to agency. Many lack the protections they need to fully function as impartial, independent, and confidential offices. Between legislatively created and agency-initiated ombudsmen, the differences in protections are even greater. Lacking the basic protections necessary to the ombudsman function, ombudsmen offices have the potential to be removed, unfunded, and viewed as extensions of the parent organizations.

Such concerns are not merely academic. The case of an ombudsman defying its parent agency and then fading into obscurity is familiar to anyone who has studied the case of the EPA Hazardous Waste Ombudsman. The previous report indentified the Hazardous Waste Ombudsman as a federal external ombudsman.³⁹ At this time, all information regarding the Hazardous Waste Ombudsman has been removed from the EPA website and only cached information remains available. The contact information for the ombudsman is not valid. The office suffered problems prior to the 2002 resignation of Robert Martin, who had served in the position since 1992.⁴⁰ Martin charges that during this period, the agency transferred his position to the simple function of answering phones, moved his office into the EPA Office of the Inspector General, and at one point changed the locks on his office

³⁷ Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (1978).

³⁸ See IRC § 7803 and 6 U.S.C. § 272.

³⁹ Lubbers, Jeffrey, *Independent Advocacy Agencies Within Agencies: A Survey of Federal Agency External Ombudsmen* 18 (June 2003).

⁴⁰ Edward Walsh, *EPA's Quiet Man in the Middle*, Wash. Post, Dec. 8, 1998.

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

and took his computer and files while he was traveling on official EPA business.⁴¹ Shortly thereafter, Martin resigned, and the function of the Hazardous Waste Ombudsman moved to Region 4 of the EPA Office of the Inspector General.⁴² No information about the current status of the Hazardous Waste Ombudsman is available on the EPA website.⁴³

Similar situations could arise in other ombudsmen offices that are not protected by legislation or given independent budgets to guarantee their continued existence. The essential requirement for an ombudsman to be protected from such agency discretion points to the potential need for an ombudsman act. An ombudsman act could provide a basic roadmap for any agency or Congress when creating a new ombudsman office, ensuring the new office has characteristics of a successful ombuds office.

An overarching ombudsman act, providing for minimum standards in the creation of any federal external ombudsman, could relieve many concerns that arise when an ombudsman office is closely tied to a parent agency. Not only would an act serve to protect ombudsmen, but it could also work to assure customers that the ombudsman is independent from the parent agency and operates without interference, thus strengthening the ombudsman role.

⁴¹ FPMI's FedNews OnLine, April 25, 2002.

⁴² *Recent Developments in the EPA Office of the Ombudsman, Hearing before the H. Comm. on Energy and Commerce Subcomm. on Environment and Hazardous Materials*, 107th Cong., 2nd Sess. (July 16, 2002) (Testimony of Mark Bialek, Counsel to the EPA Inspector General).

⁴³ See <http://epa.gov/> (last visited Dec. 15, 2009).

Appendix 1: Participating Ombudsman Offices

Administration on Aging

Long Term Care Ombudsman
Sue Wheaton, Program Director
www.aoa.gov

Agency for International Development

Acquisition and Assistance Ombudsman
Jean Horton, Ombudsman
www.usaid.gov/business/ombudsman.html

Office of the Comptroller of the Currency

Samuel P. Golden, Ombudsman
www.occ.treas.gov

Consumer Product Safety Commission

Patricia Bittner, Ombudsman
www.cpsc.gov/BUSINFO/ombud.html

Customs and Border Protection

Office of International Affairs and Trade Relations
Michael C. Mullen, Acting Ombudsman

Department of Education

Federal Student Aid Office
Debra Wiley, Ombudsman
www.ombudsman.ed.gov

Federal Deposit Insurance Corporation

Cottrell Webster, Ombudsman
www.fdic.gov/regulations/resources/ombudsman/index.html

Federal Reserve Board of Governors

Margaret McCloskey Shanks, Ombudsman
www.federalreserve.gov/generalinfo/ombudsman/default.htm

Food and Drug Administration

Office of the Ombudsman
Laurie Lenkel, Ombudsman
www.fda.gov/oc/ombudsman/homepage.htm

Food and Drug Administration

Center for Biologics Evaluation and Research
Sheryl Lard-Whiteford, PhD, Ombudsman
www.fda.gov/cber/inside/ombudsman.htm

Food and Drug Administration

Center for Devices and Radiological Health
Les Weinstein, Ombudsman
www.fda.gov/cdrh/ombudsman/index.html

Food and Drug Administration

Center for Drug Evaluation and Research
Virginia L. Behr, Ombudsman
www.fda.gov/cder/ombud

Department of Homeland Security

Citizenship and Immigration Services Ombudsman
Michael Dougherty, Ombudsman
www.dhs.gov/cisombudsman

Department of Labor

Energy Employees Occupational Illness Compensation Program
Malcolm Nelson, Ombudsman
www.dol.gov/eeombd

National Credit Union Association

Michael McNeill, Ombudsman
www.ncua.gov/ombudsman

National Science Foundation

Acquisition Ombudsman Office of Budget, Finance, and Award
Management
Joanna Rom, Deputy Director of BFA
www.nsf.gov/bfa/dcca/ombuds.jsp

Small Business Administration

National Ombudsman
Esther H. Vassar, Ombudsman
www.sba.gov/ombudsman

Taxpayer Advocate Service

National Taxpayer Advocate
Nina Olson, National Taxpayer Advocate
<http://www.irs.gov/advocate/>

Tennessee Valley Authority

Peyton T. Hairston, Ombudsman
www.tva.gov

Appendix 2: Non-Participating Offices*

American Red Cross

Beverly Babers, Ombudsman
http://www.redcross.org/services/governance/0,1082,0_358__00.html

Census Bureau

Small Business Ombudsman
 Eli Serrano
<http://www.census.gov/eos/www/osbone/osbo.html>

Department of Defense

Acquisition Ombudsman
 Susan Hildner, Ombudsman
<http://www.acq.osd.mil/dpap/paic/DoDOmbudsman.htm>

Environmental Protection Agency

Asbestos and Small Business Ombudsman
 Angela Suber, Acting Ombudsman
<http://www.epa.gov/sbo/>

Environmental Protection Agency

Superfund Public Liaison
 Victoria Van Roden
<http://www.epa.gov/reg3hwmd/super/ombudsman.htm>

Federal Aviation Administration

Aviation Noise Ombudsman
 Patricia Fliesenbahn, Ombudsman
http://www.faa.gov/about/office_org/headquarters_offices/aep/aircraft_noise

Food and Drug Administration

Center for Veterinary Medicine
 Marcia Larkins, Ombudsman
<http://www.fda.gov/cvm/ombudsman1.htm>

Department of Health and Human Services

Medicare Beneficiary Ombudsman
 Daniel Shriner
<http://www.cms.hhs.gov/center/ombudsman.asp>

Department of Housing and Urban Development

Competition Advocate and Task/Delivery Order Ombudsman
 Jacquelyn Harris, Ombudsman
<http://www.hud.gov/offices/cpo/about/ombuds.cfm>

Department of the Interior

Office of Insular Affairs
 James Benedetto, Ombudsman
<http://www.doi.gov/oia/Firstpginfo/Ombudsman.htm>

Department of Justice

Victim's Rights Ombudsman
 Marie A. O'Rourke, Ombudsman
<http://www.usdoj.gov/usao/eousa/vr/index.html>

National Aeronautics and Space Administration

Ombudsman for Acquisition
 James A Balinskas, Ombudsman
<http://ec.msfc.nasa.gov/hq/library/Omb.html>

National Oceanic and Atmospheric Administration

Fisheries Ombudsman
 Sebastian O'Kelly, Ombudsman

Securities and Exchange Commission

Small Business Ombudsman
<http://www.sec.gov/info/smallbus/reachsec.htm>

Small Business Administration

Office of Advocacy
 Thomas Sullivan, Chief Counsel
<http://www.sba.gov/advo/>

Department of the Treasury

Office of Thrift Supervision
 Frederick R. Casteel, Ombudsman
<http://www.ots.treas.gov/pagehtml.cfm?catnumber=82>

Veterans Affairs

Board of Veterans' Appeals Ombudsman
 Kevin Taugher, Ombudsman
<http://www.va.gov/vbs/bva/contactbva.htm>

* Information is current as of September 30, 2008, based on publically available information.

Appendix 3: Department of Energy Technology Transfer Ombudsmen

National Energy Technology

Donald Bonk

<http://www.netl.doe.gov/business/ombudsman.html>

Argonne National Laboratory

William Schertz

<http://www.anl.gov/techtransfer/Ombudsman.html>

Bookhaven National Laboratory

Technology Transfer Ombudsman

http://www.bnl.gov/techxfer/SponsoredResearch/ombudsman_role.asp

Savannah River Site

Procurement Ombudsman

<http://www.srs.gov/general/busiops/PMMD/ombudsman.htm>

Y-12 National Security Complex

Willie J. Wilson

<http://www.y12.doe.gov/business/techtransfer/ombudsman.php>

Appendix 4: Federal Ombudsman Survey Questions

FEDERAL OMBUDSMAN SURVEY 2007

1. Please identify the name of your office and the agency (or department), if any, that it resides in.
2. Please give the name of the ombudsman in (or other head of) your office.
3. Does your office have a website? If so, please provide the internet address.
4. Please provide the date that your office was established and any name change that has occurred since its establishment.
 - a. If you are providing an update, please list any name change that has occurred since the 2002 survey.
5. Who established your office, for example, the Congress or an agency official?
6. What is the statutory or regulatory basis for your office? Please give the citation to the Public Law, C.F.R., Federal Register, internal delegation, or other administrative document that created your office.
7. Was there any particular reason your office was established? In other words, was there a triggering event, report, or controversy that led to the creation of your office, or was it established due to a sense of general need?
8. Please provide the “statement of mission” for your office, if any.
 - a. If you are providing an update, has the mission statement of your office changed at all since the previous survey? If so, please provide the new statement.
9. Please describe the role of your office in addressing customer complaints.
 - a. What is your “jurisdiction?”
 - b. Does the ombudsman have the direct authority to resolve problems?
 - c. Does the ombudsman primarily mediate or otherwise facilitate resolution between the customer and other components of your department/agency?
 - d. Does your office play other resolution roles?
 - e. If you are providing an update, please address any changes that have occurred in the role of your office in addressing customer complaints.
10. To whom does the ombudsman report within the agency (or elsewhere)?
 - a. If you are providing an update, has the reporting structure in your office changed since the 2002 survey?

11. What, if anything (laws, rules, guidelines, norms, customs, reporting mechanisms, etc), assures that your office is independent?
 - a. If you are providing an update, have the mechanisms for assuring that your office is independent changed since the previous report?
12. Please describe the staffing and structure of your office.
 - a. What is the employment status of the Ombudsman (or head of your office)? (Presidential appointee, career SES, non-Career SES, GS-15, other?). Note if the Ombudsman serves for a fixed term.
 - b. Are there specific job qualifications for the position of Ombudsman? Are these qualifications statutory or administrative?
 - c. Can anyone subject to the Ombudsman's jurisdiction discipline or remove the ombudsman or his or staff?
 - d. How may employees report to the Ombudsman? If possible, provide a breakdown between clerical and professional employees.
 - e. Does the Ombudsman have independent legal counsel, or must he/she rely on counsel provided by the agency? Are there any safeguards to protect contacts with counsel?
 - f. What is the overall budget of the Ombudsman's office for the most recent fiscal year? Please identify the fiscal year.
13. Please describe the level of confidentiality between the Ombudsman Office, the customer, and the department/agency. Does the ombudsman have the authority to prevent disclosure outside his or her office of information provided in confidence by the customer? Can he/she be required under any circumstances to share the communications/info with the agency or anyone else? If you can share examples of this being tested, please do so.
 - a. If you are providing an update, please describe any changes in the level of confidentiality between the Ombudsman Office, the customer, and the agency/department.
14. If there is some level of confidentiality, what is that based on (legislation, departmental policy, other)? Please be as specific as you can.
15. Does your office have standard procedures or any plan for legal action for handling information disclosure requests?
16. Does your office have specific authority to seek and obtain documents and information? If so please describe what that authority is based on?
17. Does your office have specific reporting requirements (annual or periodic reports, etc.)? If so, to whom?

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

18. Please describe the extent of Congressional or other oversight? Is there a specific Congressional committee or other outside group that monitors your activities in an active way?
 - a. If you are providing an update, please describe any changes in the extent of Congressional or other oversight of your office since the 2002 survey.
19. Is the ombudsman a member of any local or national ombudsman organizations? If so, please provide the names of the organizations.
20. How does your office publicize its service to your target customers?
21. How do your intended customers or beneficiaries contact your office and lodge a case? Please provide the contact information or a web address where this information is located.
22. Are employees of your agency/department (not of the Ombudsman's office) informed of the services your office provides? If so, please describe how you provide this information.
23. Is there a process within your agency whereby issues your office addresses are routed to you? Please describe this process.
24. Is there any other information about the structure or function of your office that is not covered in this survey or in the 2002 Report that you think should be included?
25. Please provide the name and phone number of a contact person for follow up if there are any further questions about your office's activities.
26. Please attach or mail any documents that may aid in the understanding the above answers (annual reports, copies of regulatory documents, delegations, legislative histories, etc.).

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

Ombudsmen

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Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

Appendix 5

Office	Ombudsman	Website	Date Est.	Established By	Basis for	Reason for Establishment	Authority to Resolve Problems	Primary Role	Reports to
Administration on Aging Long-Term Care Ombudsman	Sue Wheaton (program director)	www.aoa.gov	1978	Congress	Public Law 89-73	Poor conditions in long-term care facilities	Yes	Mediate/systemic advocacy	Director, Office of consumer Choice and Protection
Agency for International Development, Acquisition and Assistance Ombudsman	Ms. Jean Horton	www.usaid.gov/business/ombudsman.html	1994	Congress	Federal Acquisition Streamlining Act of 1994 USC 2304c	No Response	Yes	Mediation, consultant	Agency Procurement Exec
Citizenship and Immigration Services Ombudsman, Dep. Homeland Security	Michael Dougherty	www.dhs.gov/cisombudsman	2003	Congress	Homeland Security Act 2002 sec 452; 6 USC 272	Assist USCIS focus on immigration system	No	Mediator/systemic recommendations	Deputy Secretary of Homeland Security
Department of Education, Federal Student Aid Office	Debra Wiley	www.ombudsman.ed.gov	1999	Congress	1998 amendments to Higher Education Act of 1965	Informal assistance for problems w/ student aid	No	Mediation/facilitation, reporting	Federal Student Aid Chief Operating Officer
Energy Employees Occupational Illness Compensation program, Department of Labor	Malcolm D. Nelson	www.dol.gov/eeombd	2004	Congress	Sec. 3686 of FY 2005 Def. Authorization Act	To improve new payment program	No	Advise/mediate/report	Deputy Secretary
FDA, Center for biologics Evaluation and Research	Sheryl Lard-Whiteford, PhD	www.fda.gov/cber/inside/ombudsman.htm	1993	CBER center director	Managerial Action	To assist FDA Ombudsman	No	Mediator	FDA director
FDA, Center for Devices and Radiological Health, Food, and Drug Administration	Les Weinstein	www.fda.gov/cdrh/ombudsman/index.html	1999	Director of agency	N/A	In "spirit of legislation"	Sometimes	Mediator/other resolution roles	Director of CDRH
FDA, Center for Drug Evaluation and Research (CDER)	Virginia L. Behr	www.fda.gov/cder/ombud	1995	Agency official	MaPP, CFR p3, 21 CFR 312.48,314.103	Unknown	Yes	Mediator/formal dispute resolution/advisor	Center director
FDA, Office of Ombudsman	Laurie Lenkel	www.fda.gov/oc/ombudsman/homepage.htm	1990	Commissioner of FDA	Managerial Action	Response to "generic drug scandal"	No response	Mediation/liaison takes over when specific ombuds fails	No response
Federal Deposit Insurance Corporation	Cottrell Webster	www.fdic.gov/regulations/resources/ombudsman/index.html	1994	Congress	Community Development and Regulatory Imp. Act of 1994, sec 309(d)	Banking difficulties and closures of early 90's	No	Mediate/advocate for change	FDIC COO, who reports to Chairman

Office information continued on next page (as spread)

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

Independence Protections	Employment Status	Removal by Person in Reporting Chain?	Independent Counsel Access	Independent Budget	Confidentiality Protections?	Confidentiality Basis	Information Disclosure Protection	Authority to Obtain Documents	Reporting Requirements	Congressional Oversight
OAA and state implementations	Program director: Govt. employee	Yes, head of state agency sponsoring program	State provides "in various modes"	Yes	Yes	OAA sec 712(d)	None	Not at federal level, OAA has access provisions	Yes, states to AoA community	None
Statute 10 us 2304c(f)	Appointed by head of agency	Yes, procurement executive	No: Agency Counsel	None	Yes	Policy, Position Description, IOA standards of practice	No response	Policy, position description	None	None
Statute 452(a)	Appointed by Secretary of Homeland Security	No	No: Homeland Security General Counsel	Yes	Share only to extent necessary to resolve problem	Privacy Act	DHS Privacy Act and DHS Privacy office guidelines	No, relies on voluntary submissions from customers	Annually to Congress	Yes, several committees
Organizationally distinct b/c of statute	Appointed by Department COO	Only by COO or higher	No: Agency Counsel	Yes	Yes, to extent of law	ABA, USOA standards, CFO	Policy manual	Implicitly through COO	Yes, to COO	None
Statute	SES position, on detail from Benefit review board	No	No: Agency Counsel is screened though	Yes	All Govt. privileges/protections	PA	Forwarded to agency	No, Agency powers only	Congress, yearly	Yes, several committees
Norms of informal dispute resolution	Career Govt. employee w/ other responsibilities	Theoretically	No	Depends on other duties	Statutory	FOIA, PA, ADRA	FOIA guidelines	No	None	None
None	Career Govt. employee	No	No: Agency Counsel	None	Limited: must disclose for litigation in which FDA is a party, request by Congress	Ombudsman principles	Agency procedures	No	Annual to public/agency voluntarily	None
No response	Career Govt. employee w/ other responsibilities	Not known	No: Agency Counsel	None: uses agency	Confidential but for Congressional/court order	Pledge of confidentiality	Division of Information disclosure policy	Yes, to most documents	Yes, CDER newsletter	None
No response	Career Govt. employee w/ other responsibilities	No response	No: Agency Counsel	Yes	Norms of informal dispute resolution	No response	No response	No	Unknown	None
None	Open-ended at will	Yes	No: Agency Counsel	No response	Some, except for court orders, OIG investigation, and potentially agency management	The Ombudsman Association standards,	Rejects informal requests, formal requests handled by legal division (which rejected the "ombudsman privilege")	No	Monthly to COO, contributes to several Congressional reports	None

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Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

Office	Ombudsman	Website	Date Est.	Established By	Basis for	Reason for Establishment	Authority to Resolve Problems	Primary Role	Reports to
Federal Reserve Board of Governors	Margaret McCloskey Shanks	www.federalreserve.gov/generalinfo/ombudsman/default.htm	1995	Congress	309(d) of Riegle Act, 12 USC 4806(d)	Riegle Act attempted to reduce administrative requirements	No	Mediator	Board of Governors of Federal Reserve
National Credit Union Association Ombudsman	Michael McNeill	www.ncua.gov/ombudsman	1994	Congress	Community Development and Regulatory Imp. Act of 1994	No Response	No	Mediate	Commission
NSF Acquisition Ombudsman in Office of Budget, Finance, and Award Management	Ms. Joanna Rom, Deputy director of BFA	www.nsf.gov/bfa/dcca/ombuds.jsp	2003	NSF Director	Federal Acquisition Regulation §16.505	FAR 16.505	No	Mediator	NSF Director/senior NSF management personnel
Office of the Comptroller of the Currency	Samuel P. Golden	www.occ.treas.gov	1993	Administrative action	Administrative Authority	To provide independent means for banks to settle disagreements	Independent supervisory appeals process, may stay appealable agency decision subject to override by comptroller	Arbitration, some mediation	Comptroller of Currency
Small Business Administration	Esther H. Vassar	www.sba.gov/ombudsman	1996	Congress	SBREFA 15 USC 631 et seq	White House conference on small business	No: may request high level review	Facilitates review of unfair enforcement	SBA administrator; congress
Tennessee Valley Authority	Peyton T. Hairston	www.tva.gov	2007	Chief Executive Officer	Delegation	To provide independent channel for reporting concerns from stakeholders (not customers)	No	Mediate	Chief Executive Officer
Trade Relations, Office of International Affairs and Trade Relations w/in Customs and Border Protection	(temp) Michael C. Mullen	none (contributes to www.cbp.gov)	1990	Customs and Border Protection	Administrative Authority	Avoid creation by legislation	No	Mediator	Agency commissioner/Asst. Commissioner
Consumer Product Safety Commission	Patricia Bittner	www.cpsc.gov/BUSINFO/ombud.html	Unknown	Unknown	No response	Enhance relations between small businesses and agency	Doesn't appear to	Liaison/consultation	Unknown

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

Independence Protections	Employment Status	Removal by Person in Reporting Chain?	Independent Counsel Access	Independent Budget	Confidentiality Protections?	Confidentiality Basis	Information Disclosure Protection	Authority to Obtain Documents	Reporting Requirements	Congressional Oversight
Riegle Act	Appointed by Board from long-serving Reserve employees, has other duties	Not likely	Ombuds is attorney, obtains independent advice when necessary	Budget depends on other duties	Except in unusual circumstances, yes	Riegle	Standard. procedure	Voluntary compliance	Voluntary briefs to Board and staff	Congressional overview of Board, some indirect contact with Representatives.
None	Govt. employee w/ other responsibilities	Probably	No	None	Yes	None	None	No response	Informally to commission	None
NSF manual	Additional duty for senior NSF official	Not likely	No	None	Unclear, can't compromise party outside Govt. involvement	NSF manual	NSF FOIA official	Yes	Inform NSF Director of issues and actions	None
12 USC 48 requires intra-agency appellate process/ agency policy	Appointed by Comptroller	NA	No	Yes	No response	OCC bulletin 2002-9	FOIA guidelines	No response	Voluntary, annual	None
SBREFA	Non-career SES Govt. employee	No response	No: Agency Counsel	Yes	Yes	SBREFA	Privacy Act, General counsel policy statements	Yes, SBREFA, FACA	Annually to Congress; SBA administrator	Yes, Small Business Committees
Not independent	Appointed indefinitely	No	No	No response	Must share info as needed with CEA and Board	None	FOIA guidelines	TVA expected to comply with requests (based on CEO authority)	Voluntary to CEO	None
No response	Career Govt. employee w/ other responsibilities	Unknown	Unknown	Unknown	Unknown	Unknown	SOPs	Yes	Yes, internally	None
Unknown	No response	No response	No response	No response	No response	No response	No response	No response	No response	No response

Taxpayer Advocate Service Survey of Federal Government External Ombudsmen

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