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# CRS Report for Congress

## A Congressional Office of Constituent Assistance: Proposals, Rationales, and Possible Objections

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# **A CONGRESSIONAL OFFICE OF CONSTITUENT ASSISTANCE: PROPOSALS, RATIONALES, AND POSSIBLE OBJECTIONS**

## **SUMMARY**

Concerns about the growing volume and complexity of casework, increasing demands of constituent service, and appearances of conflicts of interest when legislators intervene directly before administrative agencies have generated proposals to create a Congressional Office of Constituent Assistance. Such an Office could vary in terms of its overall functions, duties, responsibilities, and institutional location, depending upon its mandate, structure, and authority.

Nonetheless, it would have a primary mission of responding to constituent complaints, grievances, and inquiries about administrative actions or failures to act that are submitted to it by Members of Congress. Under this system, legislators would control the requests from and followup notification to constituents, even though the actual work would be performed outside their own offices. A separate Constituent Assistance Office could thus allow legislators to receive credit for favorable responses to constituent complaints, since Members would transmit them to the new Office for resolution, while avoiding blame for unsatisfactory results, since a separate professional office would have been responsible for them and not the Member's. A Constituent Assistance Office could also address concerns over the appearance of a conflict of interest when legislators intervene directly before administrators on behalf of constituents and others. Such an Office, outside the immediate control of individual legislators, would help to prevent this problem from arising in the first place.

Along with these possible benefits, service to constituents could be handled more efficiently and effectively through an Office whose personnel were experienced and trained in casework and were specialists in certain agencies or programs. Congress's oversight capability could also be enhanced by an Office that consolidated—and reported—relevant information, data, and statistics on patterns of administrative actions, abuses, and inefficiencies. The Office could also be empowered to make recommendations for corrective action, and, thereby, help to improve service to constituents.

Proposals along these lines, however, have not been adopted and opposition could surface for several reasons. First of all, legislators might be reluctant to transfer casework (and its perceived benefits) to an office outside their immediate control. In addition, the Constituent Assistance Office's resources and funding, whose amounts are uncertain, would either come from existing Member accounts or would require an increase in legislative branch operating expenses overall. Both options have drawbacks.

Objections might also arise over whether the new Office would be permitted to issue conclusions and recommendations about agency-wide or broad-scope problems or be confined to responding only to individual casework requests. Finally, the answer to the question of which congressional offices—Members only or Members plus committees and subcommittees—could submit requests to the Constituent Assistance Office would affect its capacity, range of responsibilities, effectiveness, and impact.

## **A CONGRESSIONAL OFFICE OF CONSTITUENT ASSISTANCE: PROPOSALS, RATIONALES, AND POSSIBLE OBJECTIONS**

Interest in creating a Congressional Office of Constituent Assistance, sometimes referred to as an Office of Ombudsman or of Administrative Counsel, has been renewed for several reasons: i.e., the growing volume of casework and other constituent services in Member offices, the difficulties encountered in dealing with a wide variety and large number of Government agencies and programs, and concerns over the appearance of a conflict of interest when legislators intervene directly with administrative agencies on behalf of constituents. This report describes the basic characteristics and variations that such an Office could take; and it suggests rationales for its establishment.<sup>1</sup> The overview also cites current and past legislative proposals along these lines and summarizes some of the possible objections to creating this type of an Office.

### **CHARACTERISTICS**

Although a Congressional Office of Constituent Assistance would have a basic function to perform—that is, to respond to constituent complaints and grievances about administrative actions or inactions, submitted by legislators—it could be assigned other related duties and responsibilities as well. Depending upon its mandate, moreover, requests could be made by congressional panels and other organizations, not just by individual Members. And the new Office could be placed in different organizational settings in the legislative branch.

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<sup>1</sup> For background information on a congressional office, see, among others, U.S. Congress. Senate. Committee on Government Operations. *Study on Federal Regulation. Volume II. Congressional Oversight of Regulatory Agencies.* Senate Document No. 95-26; 95th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1977. p. ix and 64-65; U.S. Congress. Senate. Commission on the Operation of the Senate. *Toward a Modern Senate (Final Report).* Senate Document No. 94-278; 94th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1976. p. 50; John R. Johannes. "Casework in the House." In: Joseph Cooper and C. Calvin Mackenzie (eds.). *The House at Work.* Austin, University of Texas Press, 1981; John R. Johannes. *To Serve the People: Congress and Constituency Service.* Lincoln, University of Nebraska Press, 1984. p. 212-229; and U.S. Library of Congress. Congressional Research Service. *Congressional Intervention in the Administrative Process.* Report No. 90-440 A, by Morton Rosenberg and Jack H. Maskell, Washington, 1990.

## Functions, Duties, and Requesters

A Congressional Office of Constituent Assistance would respond to constituent complaints, grievances, and inquiries about Federal administrative actions or failures to act. These would be referred to the Office by Senators and Representatives and, possibly, by congressional committees and subcommittees or even congressional caucuses, depending upon the Office's mandate. (Inquiries from congressional panels or caucuses, if permitted, would presumably arise from grievances or complaints about Government services from the general public, such as those generated by delays in entering the United States at ports of entry and border crossing stations, difficulties encountered in filing social security claims or receiving benefits, backlogs in processing passports, and the like.)

As its priority function, therefore, a Constituent Assistance Office would handle casework, which is now largely the responsibility of individual Member offices. The findings and conclusions from each investigation would then be reported to the congressional office that submitted the request, which, in turn, would transmit them to the constituent. The Constituent Assistance Office could also be authorized to look into a broader range of related matters, such as those connected to agency procedures and operations in dealing with the general public or clientele.

In addition, the new Office could be directed to consolidate—and report to Congress—information, data, and statistics about administrative activities and services provided by different Government departments, agencies, and other entities. An analysis of this information could reveal patterns of administrative inefficiencies or abuses among agencies and types of programs. This collection of data and analysis could be reported on a regular basis, annually or semiannually, to Congress. Specialized reports about particularly serious or widespread problems could be submitted to the committees and subcommittees with jurisdiction for the offending agency or the troubled program, along with copies to the agency itself.

Finally, the Constituent Assistance Office could be empowered to issue conclusions about administrative procedures and agency operations in serving the public, as well as recommendations for corrective action. These could lead to changes taken either directly by the administrative agencies themselves or by Congress through new legislation, to prevent similar problems from arising in the future.

### Location

A Congressional Office of Constituent Assistance would, of course, be located in the legislative branch. (By contrast, the ombudsman offices that exist in the Federal Government are housed in the agencies themselves.<sup>2</sup>) Such

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<sup>2</sup> See David R. Anderson and Diane M. Stockton. *The Ombudsman in Federal Agencies: The Theory and Practice*. Administrative Conference of the United States, Washington, 1990; Linda Gaglio. "Ombudsmen." *Government*

an Office, however, could be placed in four different organizational settings on Capitol Hill, depending upon whether it would respond to requests from all legislators or separately from only House or Senate Members:

- it could be a single entity attached to the Congress itself, serving Members from both Houses;
- it could be attached to an existing legislative agency, such as the General Accounting Office, also serving Members from both Houses;
- each chamber could have a separate office serving only its own Members; or
- either the House or the Senate could have its own office, if only that one chamber established an Office of Constituent Assistance to serve its own Members exclusively.

The institutional setting of the Constituent Assistance Office would affect its capacity and capabilities. For instance, a single Office serving all Members of Congress would consolidate requests, followup investigations, and reports for the entire Congress; it would, therefore, have a broader and more reliable base of information and data on which to develop conclusions and recommendations for corrective action than separate Offices in each chamber would. A Congress-wide Office would also avoid the duplication of effort that would result from two separate Offices responding to a similar or identical inquiry submitted by a constituent independently to both the Senate and House Member offices.

By comparison, if either or both chambers established separate Constituent Assistance Offices, it would be limited to inquiries and followup investigations based only on inquiries from its own chamber's Members. This would prevent it from consolidating information or developing conclusions and recommendations based on requests from the entire Congress; and its reports would go only to its own chamber's committees and subcommittees, thereby limiting its effectiveness. Two separate Constituent Assistance Offices (one for each the House and Senate), moreover, might be unable to process casework as efficiently as a single Office serving all legislators could; this is because an Office in each chamber might duplicate the other's efforts when the same constituent inquiry is submitted to both a Senator and Representative. Nonetheless, a separate Office in each chamber would serve only one master, simplifying its supervision, and could be implemented if only one chamber wanted to act.

## PROPOSALS

Three proposals along these lines—two bills introduced in the 93d Congress (H.R. 7680 and S. 2500) and one in the 102d Congress (S.1649)—illustrate some of the possible variations a Congressional Office of Constituent Assistance or similar office could take. Differences exist in titles, duties, functions, specific reporting obligations, and eligible requesters for an office which would handle constituent inquiries, complaints, and grievances about administrative actions.

The early proposals followed efforts in the late 1960s to create offices of ombudsman or other complaint-handling devices directly in administrative agencies; these sought to improve and standardize agency responsiveness to a growing number of citizen grievances.<sup>3</sup> The 1973 proposals for a congressional office to handle constituent complaints focused on its perceived need in the absence of such administrative ombudsmen and in light of the increasing amount of casework in Member offices. The 1991 initiative revived this same objective, that is, to meet the continuing escalation of casework and other constituent services, resulting from the increases in citizens and government programs. The recent proposal also added another anticipated benefit from a Constituent Assistance Office: it would reduce or eliminate the appearances of conflicts of interest when legislators intervene directly with agencies.<sup>4</sup>

### 93d Congress Bills for a Congressional Ombudsman and Congressional Office of Constituent Assistance

In 1973, Representative Wayne Owens sponsored H.R. 7680 to establish an Office of Congressional Ombudsman. If approved, the Office would have been directed to "do casework referred to it by Members of Congress, keep records of the agencies and laws involved and the pertinent circumstances of the cases, report this information to Congress, and make recommendations which might enable Congress to better discharge its responsibilities to oversee the administration of laws . . ."

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<sup>3</sup> For such proposals, see, among others, Stanley Anderson. *Ombudsman Papers: American Experience and Proposals*. Berkeley, CA, Institute of Governmental Studies, University of California, 1969; Ake Sandler. "An Ombudsman for the United States." *Annals*, v. 377, May 1968; American Assembly. *Ombudsmen for American Government*. Englewood Cliffs, NJ, Prentice-Hall, Inc., 1968; and U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Administrative Practice and Procedure. *Ombudsman*. Hearings pursuant to S. Res. 190, 89th Cong., 2d Sess., March 7, 1966. Washington, U.S. Govt. Print. Off., 1966; *Administrative Ombudsman*. Hearings on S. 1195, 90th Cong., 2d Sess., January 16, 1968. Washington, U.S. Govt. Print. Off., 1968; and *Regional Ombudsman Proposal*. Hearings pursuant to S. Res. 232 on S. 3123, 90th Cong., 2d Sess., March 27-28 and May 10, 1968. Washington, U.S. Govt. Print. Off., 1968.

<sup>4</sup> See Dennis DeConcini. Remarks in the Senate on S. 1649, Office of Constituent Assistance Act. *Congressional Record*, Daily Edition, v. 137, August 2, 1991. p. S12204-S12207.

Also in the 93d Congress, Senator Vance Hartke introduced S. 2500 to establish an Office of Constituent Assistance. At the request of any Member, committee, or subcommittee, the Office would have conducted appropriate investigations of an administrative action which, among other reasons, might be "contrary to law or regulation; unreasonable, unfair, or oppressive; mistaken in law or arbitrary in ascertaining the facts; unclear or inadequately explained; or inefficiently performed." The Office would also have reported its findings to the requesting legislator or panel and made an annual report to Congress summarizing the issues and number of inquiries per issue under investigation. Along with this, it would have issued recommendations concerning priority problems among Federal programs and courses for changes or corrective action.

### **102d Congress Bill for a Congressional Office of Constituent Assistance**

In 1991, Senator Dennis DeConcini introduced S. 1649 to establish an Office of Constituent Assistance within Congress. It would assist Members and committees of Congress in responding to concerns and grievances of their constituents regarding agency actions. The Office would also provide a statistical framework by which legislators and agency officials could identify issues that pose problems for constituents on a continuing and broad basis; help in formulating remedial action, where appropriate; and alert Members and committees of Congress, along with agency officials, to possible patterns of abuse or inefficiency. In order to accomplish this, the new Office would conduct an investigation in each case and report its findings to the congressional requester (within six months). The Office would also issue an annual report containing several interrelated items: an index of the issues and number of requests for assistance for each one, a description of the issues that were investigated, and a list of issues that may indicate patterns of inefficiency or abuse.

## **RATIONALES**

The basic rationales for a Congressional Office of Constituent Assistance are connected to the benefits it might provide to (1) constituents, (2) individual Members of Congress, and (3) Congress as an institution.

### **Constituents**

Ideally, increased and improved service to constituents could arise from an office which consolidates constituent assistance duties, focuses entirely on this responsibility, coordinates related inquiries from different Member offices, and is operated by staff specially trained and experienced in this work. The operation of such an office contrasts with exclusive reliance on individual Member offices, whose casework efforts lack central coordination in the chamber and where staff may be in short supply, inexperienced or untrained in responding to these demands, or facing other duties, assignments, and responsibilities.

A central, professional Constituent Assistance Office is arguably more important now than in the past for several reasons. The number of constituents



has increased, while the number of legislators has remained constant, resulting in the possibility of Member offices being overextended by casework and other constituent services. Constituent needs and demands have also changed over time, placing added burdens on individual Member offices in providing services. Federal programs and Government services, moreover, have grown in size, scope, and complexity, affecting a greater number of citizens and in different ways than in the past.

Finally, the type of Federal administrative entities have become increasingly varied, ranging from Cabinet Departments to government-sponsored enterprises and from independent regulatory commissions to Government corporations and private firms (under contract to perform Government services). These diverse establishments and entities differ in their responsiveness to constituent complaints and inquiries; some agencies, for instance, have internal ombudsmen, while most do not. These features of the contemporary Government can intimidate or confuse citizens, contributing to their need and demands for assistance from Congress.

### Members of Congress

A number of benefits for Representatives and Senators could derive from the creation of a Constituent Assistance Office. An immediate one is likely to be a reduction in a Member's office workload, since constituency service, especially casework, comprises an apparently large and increasing portion of that workload.<sup>5</sup> This transfer, in turn, would free the Member's staff to concentrate on other assignments and responsibilities or to focus on a smaller number of constituent complaints and inquiries, thereby improving service on selected ones. Under this system, the Member's office would be responsible for pursuing all inquiries, even if through the Constituent Assistance Office, and would likely be credited by constituents for the effort and for a satisfactory resolution to the complaint.

Yet not all grievances or complaints have merit or can be resolved to the constituent's satisfaction. Under current circumstances, in which a Member and

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<sup>5</sup> There are no comprehensive, current statistics on casework versus other congressional office duties. But several studies and indirect indicators recognize its growth—both in absolute terms and as a percentage of activities—particularly over the past two decades. For instance, the percentage of Member office staff based in the district or state, where much of the casework and other constituent services are performed, has increased measurably during this time: House staff based in the district has expanded from 22.5 percent in 1972 to 41.5 percent in 1990, and Senate staff based in State offices has gone from 12.5 percent to 35.0 percent over the same period. Norman J. Ornstein, Thomas E. Mann, and Michael J. Malbin. *Vital Statistics on Congress, 1991-1992*. Washington, Congressional Quarterly Press, 1992. p. 128-129. See also Johannes, *To Serve the People*, p. 212-229, and "Casework in the House;" and Richard H. Shapiro. *Frontline Management: A Guide for Congressional District/State Offices*. Washington, Congressional Management Foundation, 1989. p. 93-106.

his or her own staff conduct the inquiry, the legislator might be held responsible by the constituent for an undesirable or undesired outcome. If a Constituent Assistance Office handled the request, by comparison, the legislator presumably would less likely be blamed for disappointing findings and conclusions.

Another benefit might be to reduce or eliminate the appearance of a conflict of interest that could occur when a Member or personal staff intervene directly on behalf of a constituent before an administrative agency or official. By contrast, such an appearance would be unlikely to arise if a legislator calls upon a Constituent Assistance Office (outside the legislator's immediate control) to look into a constituent inquiry or complaint about an agency action.

### **Congress as an Institution**

Benefits for Congress as a whole could result from increased information about administrative actions and from an improved oversight capability regarding suspected abuse of authority, maladministration, incompetence, and inefficiency in administrative agencies. Presently, information which comes from constituent complaints or inquiries is dispersed among individual Member offices. There is no central repository for casework information and no institution-wide followup capability to assess the reliability or validity of the complaints or to compare them to similar charges coming from different congressional offices. Under these circumstances, it is difficult, if not impossible, to discern and follow up on patterns of administrative actions.

An Office of Constituent Assistance could provide a centralized capacity for evaluating and comparing constituent complaints. It could also pass relevant information to the committees and subcommittees with jurisdiction over the agency, program, or operation in question. This additional oversight capability not only could help in checking abuses or arbitrary administrative actions but also could contribute to legislative and agency initiatives to correct underlying problems.

Another advantage to Congress might arise from improved coordination in responding to the same request from a constituent. Presently, a constituent may make a request to three congressional offices: i.e., the two Senators from his or her State plus the Representative from the district. If the congressional offices are not aware of such multiple referrals, duplication of effort would result because each would respond independently. (The agency might also duplicate effort by responding to each of the multiple referrals from the different congressional offices.) By comparison, a Constituent Assistance Office, because it would consolidate casework, would more likely be alert to such identical requests and, thus, preclude wasting scarce resources.

### **POSSIBLE OBJECTIONS**

Objections to a Congressional Office of Constituent Assistance might arise for several reasons. (Indeed, none of the past proposals has been approved, even as a pilot program.)

## **Representation and Constituent Service**

A principal objection might be the Office's anticipated impact on representation of constituent interests and on control over constituent service by individual Member offices. If a separate Constituent Assistance Office were established, these duties and, in effect, a part of the representation function would be transferred to an organization outside the immediate control of individual legislators. Despite the increasing demands of constituent service and casework, Members of Congress might be reluctant to give up these assignments and their perceived benefits.

In this event, a Constituent Assistance Office would be underutilized. At the same time, its establishment could lead to a duplication of effort, if some Member offices retained casework (or a substantial portion of it) while others transferred all or most of it to the Constituent Assistance Office.

Also, Members who questioned a finding from the Constituent Assistance Office might be compelled to embark on their own inquiry. This necessity could result either in a duplication of effort again or in the Member's office having to conduct such an inquiry without adequate resources (if these had been transferred to the Constituent Assistance Office or the Member's office otherwise lacked experienced caseworkers).

## **Requesters**

Besides these concerns, the question of which congressional units would be permitted to make requests to such an Office could present Congress with a Hobson's choice. On the one hand, a Constituent Assistance Office might be overwhelmed with work if congressional committees and subcommittees, along with individual Member offices, were permitted to make requests. On the other hand, if only Member offices were allowed to submit requests, then broader concerns—from subcommittees, for instance, receiving a wide range of complaints about alleged agency abuses or inefficiencies in serving the public—might not be heard. This restriction, in turn, would limit the effectiveness of the new Office.

## **Conclusions and Recommendations from the Office**

Difficulties might also arise over the conclusions and recommendations issued by a Constituent Assistance Office, depending upon the comprehensiveness of its casework—and resulting reliability of its data base—as well as the scope and type of its conclusions and recommendations. The Constituent Assistance Office would not have custody for all casework or, possibly, even a majority of it, if Members refrained from transferring many of these assignments to the new Office. In this event, the Office might lack a reliable base of data and information on which to develop broad conclusions and recommendations.

Furthermore, if the Office were not permitted to make recommendations for broad corrective action, based on its findings and conclusions, then its

effectiveness and ability to contribute to agency-wide or substantial improvements would be circumscribed. Yet such conclusions and recommendations for corrective action might themselves prove controversial. If so, the Constituent Assistance Office could become embroiled in conflicts with the agency in question and, possibly, with congressional panels which have jurisdiction for the program involved (and have authorized or appropriated funds for it over the years).

### **Costs and Payment**

Concerns might also surround the uncertainty of what an Office of Constituent Assistance would cost and where its resources and funding would likely come from. Assuming, for instance, that the new Constituent Assistance Office would be taking over duties and work previously handled by Member offices, then its resources and personnel might be transferred from existing Member office accounts and staff. This approach would necessarily result in a reduction of funding and employees for each Member office. The other alternative for paying for a Congressional Office of Constituent Assistance also has drawbacks for legislators: If the staff and resources were not transferred from Member offices, then Legislative Branch operating expenses would probably have to be increased to cover the added costs of the Office.

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