

CRS Report for Congress

Federal Complaint-Handling, Ombudsman, and Advocacy Offices

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Committees of Congress**

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Summary

Federal complaint-handling, ombudsman, and advocacy offices have different forms, capacities, and designations. This report, which reviews the state of research in this field and the heritage of such offices, examines and compares them, along with recent legislative developments and past proposals to establish a government-wide ombudsman. In so doing, the report identifies the basic characteristics of these offices, recognizing differences among them with regard to their powers, duties, jurisdictions, locations, and resources, as well as control over them. This study covers only ombudsman-like offices at the federal level that deal with the public, sometimes known as “external ombudsmen.” It does not cover “internal ombudsmen,” that is, offices created to handle complaints from employees and resolve disputes between them and management; ombudsman-like offices in the private sector; or similar entities at other levels of government in the United States or abroad, except to note differences among them.

Legislative interest, albeit sporadic, in establishing a government-wide ombudsman or standardizing individual offices across-the-board dates to the early 1960s. These efforts extended in the 1970s to proposals to establish an independent office of consumer representation or consumer affairs, a plan that President Jimmy Carter later endorsed. Another initiative emerged in 1993, when President William Clinton — through an executive order “Setting Customer Service Standards” — directed executive departments and agencies to make information, service, and complaint-systems easily accessible and provide means to address such complaints. The order also called for agencies to set customer service standards, survey customers, report to the President on those surveys, and publish customer service plans. A subsequent government-wide customer satisfaction survey, incidentally, found a similar range of satisfaction between the private and public sectors.

Notwithstanding these efforts over the past five decades, no comprehensive, across-the-board transformations have occurred. Nonetheless, numerous individual offices have been established or modified by administrative directives and public laws, including several in the 110th Congress. This piecemeal approach — reflecting different demands in both the government and society over time and across policy areas — has resulted in a variety of ombudsman-like offices. Although a complete, authoritative identification and description of current offices does not exist, a number of studies — from past and contemporary eras, along with the examples here — provide a wide sampling of complaint-handling and advocacy offices for examination and consideration as models.

This report consists of three parts: (1) an analysis of the ombudsman concept and a brief look at which countries around the world have used ombudsmen; (2) a breakdown of the various ways in which federal complaint-handling offices differ; and (3) an identification and description of selected ombudsman-like offices, including specifics on their origins and operations.

This report will be updated as events warrant.

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Federal Complaint-Handling, Ombudsman, and Advocacy Offices

Overview

A variety of offices at the federal level respond to complaints, grievances, and concerns from the public about government programs, services, and operations.¹ These entities, which differ in important respects, are variously referred to as complaint-handling, advocacy, public counsel, coordinative, and ombudsman offices. Despite their differences, they exhibit a common purpose — to represent the public in such matters — which is reflected in the classic ombudsman: that is, a high-ranking official who may be situated outside the executive and possessing independent resources and powers. This notion, which has developed over more than a century, has its modern genesis in Sweden and its evolution largely in European parliamentary regimes.² An “ombudsman,” which is a Swedish word that

¹ This report builds on several previous Congressional Research Service (CRS) studies: CRS Report 76-192, *The Ombudsman Concept: Background Information*, by Harold C. Relyea, available from the author; CRS Congressional Distribution Memorandum, *Federal Complaint-Handling Offices*, by Frederick M. Kaiser, Aug. 20, 2000; and CRS Congressional Distribution Memorandum, *Options for Using the Internet to Improve Federal Complaint-Handling*, by Frederick M. Kaiser and Eric Fischer, Apr. 11, 2000.

² Such offices have since extended worldwide. For studies of the concept and its adoption, in both the United States and abroad, see American Assembly, Columbia University, *The Ombudsman: Report of the 32nd American Assembly* (Harriman, NY: American Assembly, 1967); Kent M. Weeks, *Ombudsmen Around the World* (Berkeley, CA: Institute of Governmental Studies, University of California, 1978); Sam Zagoria, *The Ombudsman: How Good Governments Handle Citizens' Grievances* (Washington: Seven Locks Press, 1988); Jeffrey S. Lubbers, *Independent Advocacy Agencies Within Agencies: A Survey of Federal Agency External Ombudsmen*, Report to the National Taxpayers Advocate (Washington: Washington College of Law, American University, 2000, updated June, 2003); David R. Anderson and Diane M. Stockton, “Federal Ombudsmen: An Underused Resource,” *Administrative Law Journal*, vol. 5, summer 1991, pp. 275-345; Walter Gellhorn, *Ombudsmen and Others* (Cambridge, MA: Harvard University Press, 1966); Donald C. Rowat, ed., *The Ombudsman, Citizen's Defender* (London: Allen and Unwin, 1965); Stanley V. Anderson, ed., *Ombudsmen for American Government?* (Englewood Cliffs, NJ: Prentice Hall, 1968); Stanley V. Anderson (The American Assembly), *Ombudsman Papers: American Experience and Proposals* (Berkeley, CA: Institute of Governmental Studies, University of California, 1969); Administrative Conference of the United States, *The Ombudsman: A Primer for Federal Agencies* (Washington: ACUS, 1991); Katja Heede, *European Ombudsmen: Redress and Control at the Union Level* (Boston: Kluwer International, 2000); Roy V. Peel, *The Ombudsman or Citizen's Defender: A Modern Institution*, in *The Annals*, vol. 377 (Philadelphia, PA: The American Academy of Political and Social Science, 1968) (entire volume); Linda C. Reif, ed., *The International* (continued...)

broadly means “one who represents someone,” is viewed as a servant of the public. As such, the position has been described as follows:

an independent high-level officer who receives complaints, who pursues inquires [sic] into the matters [sic] involved, and who makes recommendations for suitable action. He may also investigate on his own motion. He makes periodic public reports. His remedial weapons are persuasion, criticism and publicity. He cannot as a matter of law reverse administrative action.³

In brief, the concept of ombudsman has come to mean, in the words of former Senator Edward Long, “a guardian of the people’s rights against abuses and malfunctions by government, its programs, and its officials — a sort of watchman over the law’s watchmen.”⁴

The U.S. federal government has not adopted the “classic” ombudsman. Instead, the government has multifarious forms of ombudsmen-like offices. Even the entities that carry the same title (of “ombudsman,” for example) differ in their powers, functions, duties, activities, jurisdictions, independence, and resources. In comparison to one another, for instance, some offices are limited to receiving complaints or grievances from the public and passing them on to relevant units within the agency — without necessarily following up on them. Other complaint-handling entities do follow up on such charges, examine the agency’s operations, and, in some cases, mediate or resolve disputes between the aggrieved party and the agency. Still other entities may be proactive; that is, they seek out certain clientele groups to notify them about relevant government services, assist them in gaining access to these, and ensure that such services are delivered properly and fully. Separate from these functions and duties, some ombudsman-like offices issue reports (periodic and/or episodic) to agency officials, Congress, and/or the public, while others have no such obligation or practice.

Several recent statutes reflect these different characteristics, as well as varying position titles.

- The Intelligence Reform and Terrorism Prevention Act of 2004, which expanded the government’s powers to combat terrorism, established a new entity or added to the responsibilities and roles of existing ones to help protect civil rights and civil liberties. Three with enhanced responsibilities are in the Department of Homeland

² (...continued)

Ombudsman Anthology: Selected Writings from the International Ombudsman Institute (The Hague: Kluwer Law International, 1999); and Victor Ayeni, et al., *Strengthening Ombudsman and Human Rights Institutions in Commonwealth Small and Island States* (London: Commonwealth Secretariat, in collaboration with the International Ombudsman Institute, 2000).

³ American Assembly, *The Ombudsman*, p. 6.

⁴ U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Ombudsman*, hearings, 89th Cong., 2nd sess., Mar. 7, 1966, (Washington: GPO, 1966).

Security (DHS): a Privacy Officer and an Officer for Civil Rights and Civil Liberties, along with additional special duties for the inspector general (IG).⁵ In addition, a new position — the Civil Liberties Protection Officer — was created in the Office of the Director of National Intelligence (ODNI), to help protect civil liberties and privacy in policies and procedures under the ODNI.⁶

- The National Defense Authorization Act for FY2008 incorporated a number of separate bills, including the Wounded Warrior Act.⁷ The legislation is designed to aid returning wounded military personnel in receiving appropriate medical care, when they are in the service (and in the Department of Defense), as well as after they are discharged (and under the jurisdiction of the Department of Veterans Affairs). The provisions — based on the recommendations of several governmental commissions (notably, the Dole-Shalala Commission) and congressional panels that were highly critical of the care given to injured veterans⁸ — established Federal Recovery Coordinators and Transition Patient Advocates to assist them. These positions are intended to reduce, if not prevent, complications, uncertainties, and delays from arising in the first place and, if they do arise, mitigate their impact. If such problems arise, the

⁵ P.L. 108-458; 118 Stat. 3867-3869, which amended P.L. 107-296, 116 Stat. 2135, codified at 6 U.S.C. § 142. The special duty for the DHS inspector general makes it one of three — among the nearly 60 IGs under the Inspector General Act of 1978, as amended (5 U.S.C. Appendix) — to have ombudsman-related responsibilities. The others are in the Department of Justice and the Environmental Protection Agency. See CRS Report 98-379, *Statutory Offices of Inspector General: Past and Present*, by Frederick M. Kaiser.

⁶ P.L. 108-458, 118 Stat. 3658-3659. As a related development, the 2004 act also endorsed another recommendation of the National Commission on Terrorist Attacks Upon the United States, commonly called the “9/11 Commission,” by mandating a Privacy and Civil Liberties Oversight Board in the Executive Office of the President. P.L. 108-458; 118 Stat. 3684-3687. For an overview of the Board’s establishment, evolution, and functions, see CRS Report RS22078, *Privacy and Civil Liberties Oversight Board: Congressional Refinements*, by Harold C. Relyea, and CRS Report RL34385, *Privacy and Civil Liberties Oversight Board: New Independent Agency Status*, by Harold C. Relyea. Details on the requirements for protecting privacy and other legal rights with regard to information sharing are provided by U.S. Information Sharing Environment (ISE), *Purpose and Vision of the Information Sharing Environment*; *Background on Protecting Information Privacy and Other Legal Rights in the Context of the ISE*; and *Annual Report to the Congress on the Information Sharing Environment* (2007), all available at [<http://www.ise.gov>].

⁷ P.L. 110-181, Secs. 1611 and 1614.

⁸ For an overview, see U.S. Congress, House Committee on Armed Services, *Wounded Warrior Assistance Act of 2007*, H.Rept. 110-68, 110th Cong., 1st sess., 2007; and Conference Committee, *National Defense Authorization Act for Fiscal Year 2008*, H.Rept. 110-477, 110th Cong., 2nd sess., 2008. Prominent among the commissions was the President’s Commission on Care for America’s Returning Wounded Warriors, *Serve, Support, Simplify* (Washington: GPO, 2007). The commission’s popular name comes from its co-chairs, former Senator Robert Dole and former Secretary of Health and Human Services Donna Shalala.

coordinators and advocates are positioned to respond on their own or at the behest of the veterans.

- Freedom of Information Act (FOIA) amendments signed into law on December 31, 2007, created several new positions to assist the public in gaining access to government information. Public Liaisons in each federal agency are to be designated by a Chief FOIA Officer, who is also responsible for monitoring FOIA implementation and facilitating public understanding of the purposes of FOIA's exemptions.⁹ The purposes of the Public Liaisons are to serve as an official to whom a FOIA requester can raise concerns about service from the FOIA Requester Center; to assist in reducing agency delays in responding to requests and increase the transparency and understanding of the status of requests; and to assist in the resolution of disputes between a requester and the agency. The law also sets up an Office of Government Information Services in the National Archives and Records Administration; it is to review compliance with FOIA policies, recommend policy changes to Congress and the President, offer mediation services between FOIA requesters and administrative agencies, and issue advisory opinions if mediation has not resolved a dispute.¹⁰
- The American National Red Cross Governance Modernization Act of 2007 established an ombudsman in the American National Red Cross (ANRC).¹¹ Although it is not a federal agency, the ANRC is federally chartered and charged with assisting federal government efforts in disaster relief.¹² The ombudsman's office, while modest at this stage, serves as a neutral party that provides voluntary, confidential, and informal processes designed to facilitate the resolution of problems between the ANRC and others.

⁹ P.L. 110-175, Secs. 6 and 10.

¹⁰ Shortly after the office was instituted, the Bush Administration proposed to abolish it and transfer its functions from NARA to the Department of Justice. The proposal appears in a provision (Section 519) in the President's budget submission for the FY2009 appropriations for the Department of Commerce. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009, Appendix* (Washington: OMB, 2008), p. 239. Press coverage: Elizabeth Williamson, "Is Ombudsman Already in Jeopardy?" *Washington Post*, Feb. 6, 2008, p. A17.

¹¹ P.L. 110-26; 121 Stat. 110.

¹² 36 U.S.C. § 300101. For its assignments and duties related to the federal government, coordination with federal agencies, and directives from the President, see 42 U.S.C. § 5143, 5152, and 5153; and 22 U.S.C. § 2601 note. One of those responsibilities — coordinating mass care following a disaster — was transferred to the Federal Emergency Management Agency (FEMA) in the wake of the 2005 Gulf Coast Hurricanes. The primary reason for the shift was the ANRC's lack of authority to direct federal agencies' resources to meet mass care needs. See U.S. Government Accountability Office, *National Disaster Response: FEMA Should Take Action to Improve Capacity and Coordination between Government and Voluntary Sectors*, GAO Report GAO-08-369, Feb. 2008, pp. 1-2.

Attempts to establish a government-wide ombudsman at the federal level or to standardize ombudsman-like offices have received attention — from Congress, the executive, international organizations, academia, relevant professional societies, and the press — sporadically since at least the mid-1960s. These across-the-board plans, however, have remained on the drawing board.

By comparison, national-level offices of ombudsman have proliferated in Sweden and elsewhere. Finland established such an office nearly 100 years ago. In the 1960s, New Zealand, the Netherlands, Spain, Tanzania, Great Britain, and Northern Ireland established ombudsmen. In the 1970s, France, Portugal, and Austria established such offices. Countries including South Africa, Hungary, the Czech Republic, Columbia, and Zimbabwe have established national or sub-national offices of ombudsman in the last 20 years to curb human rights abuses and aid in democratic transitions. According to the International Ombudsman Institute, about 120 countries currently employ ombudsmen at the national or sub-national level of government.¹³ The European Union appointed its first European Ombudsman on July 12, 1995.¹⁴ Some of the ombudsmen in other countries serve at the national level and have broader jurisdictions and a greater degree of independence — especially those in parliamentary regimes — than their American namesakes.

This overview is not a comprehensive study of various complaint-handling, ombudsman, or advocacy offices. Instead, it provides examples of ombudsman-like offices, recognizing their variations. Differences among these instrumentalities include those noted below.

- Origins: Was the office created internally within an agency, or mandated by Congress or the President?
- Powers and duties: Does the entity simply receive complaints and pass them along, or does it also follow up on complaints after an agency response; does it resolve disputes between the agency and the complainant, or does it engage in proactive efforts, such as providing outreach and special assistance to individuals?

¹³ International Ombudsman Institute, “Ombudsman History & Development,” available at [<http://www.law.ualberta.ca/centres/ioi/About-the-I.O.I/History-and-Development.php>], visited Dec. 12, 2007. A list of countries with ombudsman offices at the national or sub-national level is available at [<http://www.law.ualberta.ca/centres/ioi/Links/Worldwide-Offices.php>], visited Dec. 21, 2007. Existing ombudsman examinations and investigations are limited because they are dated (e.g., one of the most comprehensive, detailed studies was conducted in 1977); highly specialized, focusing on particular offices or a single type of office (e.g., those titled ombudsmen); or cross-agency surveys that look at only a selected aspect of complaint handling (e.g., use of the Internet to receive complaints) and, thus, do not provide a full description of the offices and their duties, responsibilities, powers, capabilities, and resources.

¹⁴ The European Ombudsman and Authors, *The European Ombudsman: Origins, Establishment, Evolution* (Luxemburg: Office of Official Publications of the European Communities, 2005), p. 92, available at [http://ombudsman.europa.eu/10anniversary/pdf/en/volume2005_en.pdf].

- Jurisdictions: Is there one complaint-handling entity for an entire agency, or several entities with separate jurisdictions; if the latter, how confined are these?
- Locations: Is the ombudsman-like office situated within a “parent” agency or made independent of it?
- Resources: What is the level of funding and resources that the entity receives?
- Controls: Who appoints and removes the officer, and who determines the office’s budget and spending priorities?

These criteria are not discrete. The characteristics overlap and are utilized in a variety of combinations in federal agencies and organizations, offering a gamut of ways and means for the public to petition the government. The variations among the attributes also suggest important differences in the capacity and capability of each office.

Broad-Scale Studies and Proposals

Interest in institutionalizing a centralized or standardized complaint-handling role in the federal government began in the mid-1960s. Although no proposals along these lines have been adopted, a number of studies and recommendations have emerged over the years. These have come from Members of Congress, executive and administrative officers, and nongovernmental organizations.

Congressional Sources

Over the past five decades, Congress has periodically looked into legislating complaint-handling mechanisms with intense interest in the 1960s and sporadic attention in the following decades.

Initiatives in the 1960s and 1970s. Legislative proposals for complaint-handling mechanisms began in 1963. Three years later, the Senate Subcommittee on Administrative Practice and Procedure launched an extensive examination of ombudsmen and other complaint-handling offices and, in 1970, considered proposals to create a public counsel corporation.¹⁵ On May 9, 1973, Representative Wayne Owens introduced H.R. 7680 to create an Office of Congressional Ombudsman,

¹⁵ U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Ombudsman*, hearings, 89th Cong., 2nd sess. (Washington: GPO, 1966); and U.S. Congress, Senate Committee on the Judiciary, *Public Counsel Corporation*, hearings, 91st Cong., 2nd sess. (Washington: GPO, 1971). Legislation along these lines was introduced as early as 1963. Among the initial advocates were Representative Henry S. Reuss, calling for an Administrative Counsel, who would be limited to receiving complaints from congressional offices, and Senator Edward V. Long, whose proposal for an Office of Administrative Ombudsman led the way to a hearing by his Subcommittee on Administrative Practice and Procedure in 1966. Other legislative initiatives were undertaken later by Senators Jacob Javits, Edward Kennedy, Birch Bayh, Robert Taft, and John Tunney. See CRS Report 76-192, *The Ombudsman Concept*, pp. 6-10.

which would have allowed legislators to request investigations of federal agencies — drawing help from both the Congressional Research Service and the General Accounting Office, now the Government Accountability Office (GAO). The bill, however, was not reported by the House Committee on House Administration. On November 6, 1973, Representative Les Aspin sponsored H.R. 11257, which proposed the addition of an ombudsman position within House members' staffs. The same fate awaited this bill; it was not reported by the House Committee on House Administration.

In the mid-1970s, the House Subcommittee on Commerce, Consumer, and Monetary Affairs examined proposals for an office of consumer affairs, a plan that President Jimmy Carter later endorsed. Despite the backing, it was not authorized.¹⁶ Shortly before this development, the Senate Governmental Affairs Committee issued its *Study on Federal Regulation*, an extensive six-volume effort that devoted an entire volume to public participation in agency proceedings.¹⁷ In this study, the panel looked at different devices — including an office of public counsel, an independent consumer agency, and various other complaint-handling offices — that served or could serve as a conduit for citizen grievances, complaints, or questions about the implementation of public policy or, beyond this, as an advocate for citizen interests. No legislation, however, was enacted.

Developments in the 1980s and 1990s. A variety of complaint-handling offices were written into legislation throughout the late 1980s and 1990s, including offices in the Internal Revenue Service (IRS), Federal Student Aid Office (FSA), and the Environmental Protection Agency (EPA).¹⁸ In the early 1990s, GAO examined access to, and utilization of, the ombudsman program under the Older Americans Act, as well as the handling of beneficiary complaints under Medicare.¹⁹

GAO Study in 2000. Many of the older and circumscribed ombudsman studies had been confined to the “paper age” and did not consider the impact and implications of computers and the Internet on complaint-handling entities, procedures, practices, and resources. An exception to this was a survey by GAO of 32 “high impact agencies” — those handling about 90% of federal contact with the public — and their use of electronic communications, especially the Internet, to

¹⁶ For coverage, see Congressional Quarterly, *Congress and the Nation, 1977-1980*, vol. 5 (Washington: Congressional Quarterly Service, 1981), pp. 353-357.

¹⁷ U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, *Public Participation in Federal Agency Proceedings*, S. 2715, hearings, 94th Cong, 2nd sess. (Washington: GPO, 1976).

¹⁸ Congress created the Office of Taxpayer Ombudsman (now the Taxpayer Advocate) in 1988 under P.L. 100-647; the Federal Student Aid Ombudsman in 1998 under P.L. 105-244; and the EPA's Asbestos and Small Business Ombudsman in 1982 under the Small Business Regulatory Enforcement Fairness Act (SBREFA), P.L. 104-121.

¹⁹ U.S. General Accounting Office, *The Older Americans Act: Access to and Utilization of the Ombudsman Program*, GAO Report PEMD-92-21 (Washington: GAO, 1992); and *Medicare: Improper Handling of Beneficiary Complaints of Provider Fraud and Abuse*, GAO Report HRD-92-1 (Washington: GAO, 1992).

receive citizen complaints and comments.²⁰ The study found that the overwhelming majority of agencies (i.e., 29 agencies) had a website to receive complaints and comments from the public — 21 had an e-mail link for program comments and complaints, and 28 had an e-mail link for comments to the agency webmaster — in addition to receiving information via telephone and mail. The survey, however, was limited in two ways: (1) it did not include the U.S. Department of Housing and Urban Development (HUD), which has substantial contact with the public; and (2) the survey inquired only about an agency’s receipt of complaints and comments, not about such other possible Internet-based, website uses, including categorizing, cataloging, storing, and disseminating information.²¹ Nonetheless, GAO’s review represented the first such cross-agency survey of Internet-based complaint handling and served as a first step to more extensive and detailed studies.

GAO’s review commented on the status of two federal efforts to develop centralized Internet-based hubs for citizens attempting to access information about federal programs or services: (1) [<http://www.consumer.gov/>], operated by the Federal Trade Commission (FTC); and (2) the USA.gov site, developed by the General Services Administration’s Office of Citizen Services and Communications. The ongoing FTC site presents consumer information and links to complaint forms grouped by topic or subject area (e.g., food, product safety, and health), rather than by agency; because of this orientation, a citizen does not need to know the responsible agency when submitting a comment or lodging a complaint. The GSA site serves as “the U.S. government’s official web portal.”²² As such, it provides links to government grants, available jobs, and information on combating identity theft. The site also links to the Federal Citizen Information Center (FCIC),²³ which has a list of federal agencies that document complaints against private companies. In addition, the GSA site includes a page of links to government agencies and elected officials.²⁴

Congressional Interest in the Internet and the “Digital Divide,” 1999-Present. Beginning at the end of the 20th century and continuing into the

²⁰ The study, released on July 7, 2000, surveyed 32 “High Impact Agencies,” that is, those that handle 90% of the federal government’s contact with the public, as identified by the National Partnership for Reinventing Government. These included bureaus and offices in 12 of the 14 Cabinet departments (omitting the Departments of Energy and Housing and Urban Development), along with such major independent agencies as the Environmental Protection Agency, Social Security Administration, and U.S. Postal Service. U.S. General Accounting Office, *Internet: Federal Web-based Complaint Handling*, Letter Report to Honorable Ernest F. Hollings and Honorable Ron Wyden, GAO Report AIMD-00-238R (Washington: GAO, 2000) pp. 1, 2, and 8.

²¹ *Ibid.*, pp. 1, 2, and 8.

²² U.S. General Services Administration, Office of Citizen Services and Communications, *About USA.gov*, available at [<http://www.usa.gov/About.shtml>].

²³ Federal Consumer Information Center, available at [<http://www.pueblo.gsa.gov/complaintresources.htm>].

²⁴ U.S. General Services Administration, Office of Citizen Services and Communications, *Contact Your Government*, available at [<http://www.usa.gov/Contact.shtml>].

21st, Congress — as well as the executive and private parties — has considered the rise of the Internet and its impact, with particular attention to the “digital divide.”²⁵ This phenomenon (discussed further in the section on e-government) recognizes a distinct division between individuals, groups, and organizations with access to, and skills and resources in using, the Internet versus those without these attributes. Congressional hearings were held in 1999-2002, in part based on an executive branch study (discussed below); and remedial legislation continues to be introduced in the 110th Congress.

Congress’s attention has focused, for the most part, on ways to increase Internet access, skills, and resources among the poor, minorities, and rural residents, the groups most likely to be on the disadvantaged side of the “divide.” Proposed legislative remedies center on increasing computer skills and resources for the disadvantaged in general, rather than on Internet access to specific governmental operations and services in particular, including complaint handling. Despite this orientation, such legislative efforts indirectly contribute to a better understanding of the impact of the Internet on complaint-handling and accessing information about government programs, operations, and activities. In addition, two CRS memoranda in 2000 did look into the use of the Internet in the context of complaint handling.²⁶

Complaint-Handling Offices and Congressional Casework. Implicitly and often explicitly, proposals to establish a government-wide ombudsman have generated concerns about its impact on congressional casework. In an earlier era, it was not entirely clear what effects the creation of ombudsmen or complaint-handling offices in the executive had on Congress in terms of the casework function of legislators. The question had been complicated in the past — according to Stanley V. Anderson (an authority on ombudsmen), writing in the late 1960s — by “a paucity of information on the treatment of grievances by elected officials in general, and by legislators in particular.”²⁷

²⁵ For a sampling, see U.S. Congress, House Committee on Small Business, Subcommittee on Empowerment, *The Digital Divide: Bridging the Technology Gap*, hearing, 106th Cong., 1st sess., July 21, 1999 (Washington: GPO, 2001); and U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *NTIA Digital Network Technology Program Act Report*, S.Rept. 107-207, 107th Cong., 2nd sess. (Washington: GPO, 2002); and U.S. Congress, Senate Committee on Commerce, Science, and Transportation, Subcommittee on Science, Technology, and Space, *S. 414, Digital Divide and Minority Serving Institutions*, hearing, 107th Cong., 2nd sess., Feb. 27, 2002 (Washington: GPO, 2005). Later legislative initiatives included the Digital Divide Elimination Act of 2003, H.R. 1131, 108th Cong., 1st sess. (2003); and the Rural America Digital Accessibility Act, H.R. 3428, 110th Cong., 1st sess. (2007).

²⁶ The CRS congressional distribution memoranda, whose analyses have been incorporated in this report, are *Options for Using the Internet to Improve Federal Complaint-Handling*, by Frederick M. Kaiser and Eric Fischer; and *Federal Complaint-Handling Offices*, by Frederick M. Kaiser.

²⁷ Stanley V. Anderson, *Ombudsman Papers: American Experience and Proposals*, Institute of Governmental Studies (Berkeley: University of California, 1969), p. 19.

Times have changed since then, as numerous studies have detailed the high priority and significant resources Members and their offices devote to casework across the board.²⁸ In political scientist Richard F. Fenno Jr.'s 1978 seminal study, *Home Style: House Members in their Districts*, this activity is recognized as an essential, albeit time-consuming, ingredient in securing the legislator's elected office. According to Fenno, casework is

a highly valued form of activity. Not only is the constituent service universally recognized as an important part of the job in its own right. It is also universally recognized as powerful reelection medicine.²⁹

This and supportive findings elsewhere may help to explain the general reluctance among legislators to relinquish congressional casework to an administrative officer, who is not under their immediate control and direction. This feature of executive ombudsmen is in stark contrast to caseworkers in Member offices. In the latter, staffers are hired and promoted by the Members, who also determine the caseworkers' duties and assignments, and can insist on their responsiveness to constituent requests. As a consequence, casework is well-institutionalized in Member offices and sometimes beyond. It is even directly aided and reinforced by executive agencies that provide casework resources, noticeably in high-demand, high-profile areas.³⁰

Testimony on the earliest ombudsman proposals of Representative Henry Reuss raised concerns that legislators would continue to act on public complaints by themselves, leaving the ombudsman underutilized. In defending the 1965 incarnation of his legislation to create an "American Ombudsman," Reuss countered criticism by stressing the heavy workload brought about by casework and its adverse impact on other congressional functions and responsibilities, particularly lawmaking, which he saw as primary.

The role Congressmen have assumed as the citizen's advocates against the bureaucracy is important and valuable in our system of government. It has helped to prevent injustices and to promote good administration. But the job of

²⁸ For discussion and citations, see CRS Report RL33209, *Casework in a Congressional Office: Background, Rules, Laws, and Resources*, by R. Eric Peterson, pp. 1-3. See also CRS Report RL34148, *Congress and the Internet: Highlights*, by Walter J. Oleszek, on "Constituent Communications," pp. 18-19.

²⁹ Richard F. Fenno, Jr., *Home Style: House Members in their Districts* (New York: Addison-Wesley Educational Publishers, Inc., 2003 ed.), p. 101. Additional sources on the difficulties, demands, and rewards of congressional casework include CRS Report RL33209, *Casework in a Congressional Office*; Roger Davidson, Walter J. Oleszek, and Frances E. Lee, *Congress and Its Members* (Washington: CQ Press, 2008), pp. 129-147; Charles L. Clapp, *The Congressman* (Washington: Brookings Institution, 1963); and Walter Gellhorn, *When Americans Complain* (Cambridge, MA: Harvard University Press, 1966).

³⁰ A prime example is in immigration matters. See U.S. Citizenship and Immigration Services (USCIS), *Resources for Congress: Resources for Caseworkers*, available at [<http://www.uscis.gov/portal/silte/uscis>]. Additional executive agency casework websites are listed in CRS Report RL33209, *Casework in a Congressional Office*, pp. 15-16.

handling constituents' cases has become so burdensome that it is interfering with the primary job of Congressmen as legislators.³¹

The Member also emphasized that a government-wide ombudsman or public counsel would head a professional office, with sufficient funding, trained and experienced personnel, and powers to pursue complaints and inquiries (via congressional offices or directly from the public) effectively and efficiently. The ombudsman's reporting requirements to Congress, in Representative Reuss's view, could aid its oversight endeavors.³²

At about the same time, however, opposing views gained currency in Congress. These centered on the projected tangible costs of an overarching executive branch ombudsman, as well as the intangible costs to congressional responsibilities and interests. A special Joint Committee on the Organization of the Congress, reporting in 1966, addressed an ombudsman plan.³³ After hearing from some legislators in favor of such a government-wide office and recognizing its adoption in other countries, however, the bipartisan, bicameral panel determined that such an entity at the federal level in the United States would be expensive, both in its funding and its impact on Congress.

The extent of the problem in the United States is such that the adoption of the proposal would require creation of a large office or department.

The [J]oint [C]ommittee, after careful consideration, decided against recommending creation of such an office at this time. We believe that casework is a proper function of the individual Member of Congress and should not be delegated to an administrative body.³⁴

Executive Sources

The executive has also conducted research and sponsored initiatives in this field over the past three decades. In 1975, for example, the Office of Consumer Affairs in the Department of Health, Education, and Welfare (now Health and Human Services (HHS)) contracted for a feasibility study to improve the handling of consumer complaints. A part of that effort examined federal government programs

³¹ Rep. Henry Reuss, House debate, *Congressional Record*, vol. 111, part 2 (Feb. 3, 1965), p. 1881. Reuss introduced nearly identical ombudsman bills in 1963, 1965, and 1967; one (i.e., the 1965 proposal) received committee consideration.

³² *Ibid.*, pp. 1880-1881.

³³ U.S. Congress, Joint Committee on the Organization of the Congress, *Organization of Congress*, S.Rept. 89-1414, 89th Cong., 2nd sess. (Washington: GPO, 1966); and Congressional Quarterly Service, *Congressional Quarterly Almanac, 1966* (Washington: CQ Press, 1966), p. 545.

³⁴ Joint Committee on the Organization of the Congress, *Organization of Congress*, S.Rept. 89-1414, p. 36.

for resolving consumer complaints and their adequacy, examining 12 executives of independent agencies in depth.³⁵

Later, as noted above, President Jimmy Carter supported the concept of an office of consumer affairs or representation. When that broad effort failed, however, he settled for a consumer affairs advisor.³⁶

In 1990, the Administrative Conference of the United States (ACUS) commissioned a study of ombudsmen in federal agencies, including detailed case studies on six of them, along with a short history of the ombudsman movement in America.³⁷ The report supplemented an ACUS recommendation to establish ombudsmen in “federal agencies that administer programs with major responsibilities involving significant interactions with members of the general public.”³⁸

Another related development was President Clinton’s 1993 Executive Order 12862 on “Setting Customer Service Standards.” It called on agencies to make information, services, and complaint systems easily accessible, and to provide a means to address customer complaints. A 1996 study by the National Performance Review provided illustrations of efforts to meet these goals, including the availability of toll-free phone lines and websites.³⁹

In 1999, the Commerce Department’s National Telecommunications and Information Administration (NTIA) reported on its study of the “digital divide.”⁴⁰ It found that computer use in general, and Internet access in particular, had increased measurably in the previous few years. Nonetheless, computer availability and

³⁵ Technical Assistance Research Program (TARP), Inc., *Feasibility Study to Improve Handling of Consumer Complaints: Evaluation Report*, Report PB-244 182, Prepared for the Department of Health, Education, and Welfare (Washington: Apr., 1975).

³⁶ Congressional Quarterly, *Congress and the Nation, 1977-1980*, vol. 5 (Washington: Congressional Quarterly Service, 1981), pp. 353-357.

³⁷ David R. Anderson and Diane M. Stockton, *Ombudsmen in Federal Agencies: The Theory and Practice* (Report Recommendation 90-2). Administrative Conference of the United States, *Recommendations and Reports 1990* (Washington: Apr. 1990).

³⁸ Administrative Conference of the United States, “The Ombudsman in Federal Agencies,” Recommendation 90-2, June 7, 1990, *Code of Federal Regulations*, vol.1, sec. 305.90-2. The ACUS had been an independent advisory agency within the executive branch. It was abolished in 1996, via the Treasury, Postal Service and General Government Appropriations Act, Fiscal Year 1996 (P.L. 104-52). The 110th Congress has acted on legislation to revive ACUS (H.R. 3564 — submitted to the president), but the prospects for funding are uncertain.

³⁹ U.S. National Performance Review, *The Best Kept Secrets in Government: A Report to President Bill Clinton* (Washington: GPO, 1996), pp. 23-40; an electronic version is available at [<http://govinfo.library.unt.edu/npr/library/nprprt/annrpt/vp-rpt96/toc.html>], pp. 33-37.

⁴⁰ U.S. Department of Commerce, National Telecommunications and Information Administration, *Falling through the Net: Defining the Digital Divide: A Report on the Telecommunications and Information Technology Gap in America*, covered in House Subcommittee on Empowerment, *The Digital Divide*, hearings (1999), pp. 4-6 and 56-71.

Internet accessibility remained below the national average for certain groups: minority, low-income, rural, and single-parent households. The focus of the NTIA study was on computer resources, skills, and literacy — especially for the disadvantaged — for education, jobs, careers, and business opportunities.⁴¹ Nonetheless, the NTIA review had implications for access to government information and complaint-handling offices for the disadvantaged — Americans who might need these the most.

A far-reaching survey appeared in 2000 and was updated in 2003. In a report to the National Taxpayers Advocate on independent advocacy agencies, Jeffrey Lubbers examined nearly 30 such entities, ranging from the IRS National Advocate Service itself to Long-Term Care Ombudsmen.⁴² The report, in addition to describing some of the characteristics of the offices, gave attention to state ombudsmen, as well as standards of conduct, such as those offered by the American Bar Association (discussed below.). Professor Lubbers found “an increasing number of independent officers and agencies established within existing departments and agencies” and that these are “becoming prominent.”⁴³ The offices, however, are not standardized. They vary, for instance, in number within their parent departments and agencies, as well as in resources, jurisdiction, and degree of independence.⁴⁴

Non-Governmental Sources

The academic community, professional societies, and the press have also analyzed and assessed complaint-handling mechanisms. As noted above, however, these are often limited to one or a few entities. Nonetheless, several early studies opened a window into the organization and operation of some ombudsman-like offices at the time.

Prominent among these was a 1968 volume from the American Academy of Political and Social Science entitled *The Ombudsman or Citizen’s Defender*, which included several chapters on the American scene.⁴⁵ At the same time, the American Assembly raised the question of *An Ombudsman for American Government?*, examining practices and proposals affecting federal, state, and local government.⁴⁶ A further examination of the U.S. experience appeared the next year in a compilation

⁴¹ Ibid.

⁴² Jeffrey S. Lubbers, *Independent Advocacy Agencies Within Agencies: A Survey of Federal Agency External Ombudsmen*, Report to the National Taxpayers Advocate (Washington: Washington College of Law, American University, 2000, updated June, 2003).

⁴³ Ibid., p. 1.

⁴⁴ Ibid., p. 2.

⁴⁵ Sandler, *An Ombudsman for the United States?*; and Dalmas H. Nelson and Eugene Price, “Realignment, Readjustment, Reform: The Impact of the Ombudsman on American Constitutional and Political Institutions,” in Peel, ed., *The Ombudsman or Citizen’s Defender*.

⁴⁶ Stanley V. Anderson, ed., *Ombudsman for American Government?* American Assembly, Columbia University (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1968).

of papers under the auspices of the Institute for Government Studies.⁴⁷ Since then, other scholarly and legal studies have reviewed various aspects of complaint-handling offices at the federal level. These include a proposal for a federal ombudsman (1972); the ways and means by which certain federal agencies handled citizen complaints, based on survey responses from 64 separate units (1974); improved complaint-handling procedures in the Federal Bureau of Investigation (1979); and a comparison of ombudsmen-like offices in the United States with similar ones in other countries (1985).⁴⁸

Later accounts have also considered the ombudsman phenomenon in the United States. One journal article reported that the United States lagged behind European democracies in the creation of ombudsmen and showed no signs of catching up.⁴⁹ U.S. ombudsmen also differed among agencies; and a number of agencies that dealt with the public extensively did not have institutionalized complaint-handling offices.⁵⁰ Still other examinations focused on specific types of complaint-handling procedures and practices (e.g., those associated with the Immigration and Naturalization Service — now the U.S. Citizenship and Immigration Services) or on a specific office (e.g., a proposal to create a public counsel in the National Labor Relations Board).⁵¹

Several professional societies — including the American Bar Association (ABA), the United States Ombudsman Association, the Coalition of Federal Ombudsmen (CFO), and the International Ombudsman Association (IOA) — offer ombudsman job listings, as well as training seminars for investigation techniques. Additionally, the ABA and the United States Ombudsman Association recommend standards to be adopted when instituting ombudsmen or modifying already existing ombudsman offices.⁵² Moreover, the ABA's website offers a definition of

⁴⁷ Stanley V. Anderson, *Ombudsman Papers: American Experience and Proposals* (Berkeley: Institute for Government Studies, University of California at Berkeley, 1969).

⁴⁸ Rogers C. Cramton, "A Federal Ombudsman," *Duke Law Journal*, vol. 1972, Apr. 1972, pp. 1-14; Victor G. Rosenblum, "Handling Citizen Initiated Complaints: An Introductory Study of Federal Agency Procedures and Practices," *Administrative Law Review*, vol. 26, winter 1974, pp. 1-48; John T. Eliff, *The Reform of FBI Intelligence Operations* (Princeton, N.J.: Princeton University Press, 1979), p. 179-188; and Donald C. Rowat, *The Ombudsman Plan* (New York: University Press of America, 1985).

⁴⁹ Linda Gaglio, "Ombudsman," *Government Executive*, vol. 23, Mar. 1991, pp. 36-39.

⁵⁰ *Ibid.*

⁵¹ See, for example, Charles J. Morris, "Ombudspersons and the Limits of the General Counsel's Authority Under the National Labor Relations Act," *Labor Law Journal*, vol. 47, June 1996, pp. 347-355; and Bill Ong Hing, "Border Patrol Abuses: Evaluating Complaint Procedures Available to Victims," *Georgetown Immigration Law Journal*, vol. 9, fall 1995, pp. 757-799.

⁵² United States Ombudsman Association, "Governmental Ombudsman Standards," Oct. 14 2003, available at [http://usoa.non-profitsites.biz/documents/PDF/References/USOA_STANDARDS.pdf]. These standards, created in July 2000, expand on the ABA's 1969 resolution defining the essential characteristics of ombudsmen. The Coalition of

ombudsman and a typology for its various iterations, separating them into four distinct categories: classical, advocate, organizational, and executive.⁵³ According to the ABA, an ombudsman protects “the legitimate interests and rights of individuals with respect to each other; individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations.”⁵⁴ Only some of the more specific ombudsman categories apply directly to U.S. federal ombudsman offices, while others exist in the United States only in a modified form.

The Coalition of Federal Ombudsmen has stressed that ombudsmen must be “confidential [in receiving and responding to complaints], neutral and independent.”⁵⁵ The CFO also advocates a single, government-wide pay scale for all federal ombudsman. In addition, the coalition seeks a statute mandating that all federal ombudsmen — internal or external — constitute a separate, autonomous office, and that they report directly to their agency heads.⁵⁶

Differences Among Offices

Although most earlier studies are dated or limited to certain entities, these efforts reveal a wide variety of complaint-handling mechanisms at the federal level. Differences in the current collection of offices and positions that respond to complaints, grievances, concerns, and questions from the public arise along a number of distinct dimensions: their powers and duties, jurisdictions, locations, controls, neutrality, resources, and use of electronic and traditional communications. Variations among the offices are reflected in their titles: Federal Student Aid Ombudsman; Medicare Beneficiary Ombudsman; Taxpayer Advocate; Ombudsman at the Federal Deposit Insurance Corporation; Federal Recovery Coordinators and Transition Patient Advocates for wounded military personnel; Aviation Noise Ombudsman; Environmental Protection Agency Public Liaison; Superfund Ombudsman; Freedom of Information Act Office of Government Information

⁵² (...continued)

Federal Ombudsmen is currently creating a detailed update of this document, using suggestions from ombudsmen working in a variety of federal agencies. The updated document is expected to be published on the organization’s website in late 2008.

⁵³ American Bar Association, “Section of Administrative Law and Regulatory News Ombudsman Committee,” available at [<http://www.abanet.org/adminlaw/ombuds/classicalombudsmen.html>].

⁵⁴ American Bar Association, Section of Administrative Law and Regulatory Practice, *Ombuds*, available at [<http://www.abanet.org/dch/committee.cfm?com=AL322500>].

⁵⁵ Coalition of Federal Ombudsmen, “Charter of the Coalition of Federal Ombudsmen,” available at [<http://www.federalombuds.ed.gov/>].

⁵⁶ Discussed at CFO meeting, Jan. 9, 2007, at the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives national headquarters in Washington, DC.

Services and Public Liaisons; Construction Metrication Ombudsman; and Privacy and Civil Liberties Officer or, alternatively, Civil Liberties and Civil Rights Officer.⁵⁷

Reasons for Differences

The variations among the complaint-handling offices have emerged for a number of reasons. These include the piecemeal fashion in which the offices were created; the unique set of circumstances associated with each establishment; and different establishing mechanisms (e.g., legislation or administrative directive, issued by the agency head at his or her own volition or in response to a presidential directive). Additional reasons for differences are the varied rationales accompanying each construct. These range from protecting individual rights and liberties, to safeguarding the health and welfare of the public, to assisting in determining an individual's tax obligations to the government. The rationales also extend to aiding selective clientele, such as small businesses in obtaining government contracts and private firms in converting to the metric system to meet federal construction specifications.

In addition to these reasons are different expectations for each office, ranging from simply receiving and passing on complaints to relevant units within an agency, to investigating such complaints independently, to reaching out to the public proactively. Other explanations for the variations are the absence of a philosophical consensus underlying the classic ombudsman concept as applied to the United States; opposition to the creation of some ombudsman-like offices; and conflict over certain powers, authorities, and responsibilities. These conditions have, on occasion, resulted in initial compromises or later changes in the offices' structure, location, independence, and resources.

Consequently, existing federal complaint-handling offices vary with regard to their basic characteristics — including powers and duties, jurisdiction, location, controls, neutrality, resources, and communications. These differences, in turn, affect independence, autonomy, and capacity.

Powers and Duties

The complaint-handling office could be empowered only to receive complaints and pass them on to the organization in the agency responsible for the program or operation. By comparison, the office could be authorized to follow up on grievances, making recommendations for resolving a problem, or determining whether the agency's response is satisfactory. Still other ombudsman-like entities, beyond being

⁵⁷ Federal agencies have been directed to establish “advocates for competition” in procurement contracting. These positions are to be “responsible for challenging barriers to and promoting full and open competition in the procurement of property and services by the executive agency.” (41 U.S.C. § 418(a) and (b).) Such advocates, however, do not perform the basic ombudsman-like activities, such as responding to individual complaints and concerns. Instead, they play a broad advisory role in the agency, reviewing relevant practices, procedures, and regulations and recommending changes to the senior procurement executive, if these are seen as needed.

passive recipients of complaints, might adopt a proactive approach. They could, for instance, be authorized to conduct surveys among persons or groups who receive a government service or who are affected by an agency action, in order to identify a perceived problem and determine how widespread and serious it is. The Environmental Protection Agency Public Liaison can conduct independent investigations into cases that prompt concerns of improper agency action. The office does not have legal force, but it publishes its findings, offering the public a more transparent view of the EPA.

Separately, a complaint-handling office could be authorized — or required — to perform additional duties to educate the public and keep the agency head and Congress informed. These could include notifying the agency head (not just the bureau or program director) immediately about serious or widespread concerns; issuing periodic reports summarizing the office's findings, actions, and agency responses to the agency head, Congress, and the public; and testifying before congressional committees about the office's findings, recommendations (if any), and subsequent actions.

Jurisdictions

The jurisdictions of complaint-handling offices also differ, depending upon the range of agencies and programs covered. An office's jurisdiction could be limited to a particular program administered by a single bureau within an agency or expanded to all programs administered by the entire agency. The jurisdiction could also encompass a set of related programs or operations that are carried out by several federal agencies.

The complaint-handling offices' jurisdictions could differ on other grounds, including whether they extend into the private sector. A jurisdiction could be confined to the agency, per se, thus dealing only with complaints and concerns about the conduct of its employees and its administration of programs; or it could be extended, where appropriate, to private sector organizations or firms that the agency is regulating.

Locations

The specific locations of complaint-handling offices could also vary. Offices could be placed within agencies, as most are now, or exist independently of the agencies where they have jurisdiction — like the Citizenship and Immigration Services Ombudsman. Some ombudsman-like offices operate out of a centralized federal government location, like the Federal Deposit Insurance Corporation (FDIC) ombudsman, while others have decentralized, regional offices, like the Environmental Protection Agency's Superfund Ombudsmen.

A single ombudsman-like office could be granted government-wide jurisdiction and located in the Executive Office of the President. Although there is no such comprehensive ombudsman in the federal government, a single office could serve as a central clearinghouse for complaints and grievances affecting all federal agencies. Additionally, such a complaint-handling office — if it were to exist under public law

— could be given greater control over its resources and more overall autonomy than the typical agency-specific offices in the federal government. An alternative arrangement would be to establish several complaint-handling offices, each with jurisdiction over a number of related agencies. Under this plan, each office would operate independently of the agencies about which it receives complaints.

Controls

Different types of controls might be applied to a complaint-handling office and its head. Appointment and removal powers over the head of the office could vary. He or she could be appointed and be removed in one of three ways, which would affect the office's independence. He or she could be (1) appointed by, and removed by, the head of the agency — the usual way currently; (2) appointed by, and removed by, the President alone; or (3) appointed by the President with the advice and consent of the Senate, and removed by the President. Other controls over the office could also be established to determine who in agency management would supervise the office, to whom its head would report, and who would determine its resources.

Neutrality

Some ombudsman offices are created as neutral third parties that can facilitate dispute resolution. Others, by contrast, are designed as advocates for the complainant. The ABA, for example, called for a distinct category of “advocate ombudsmen,” which includes offices like the National Taxpayer Advocate within the Internal Revenue Service, and Veterans Affairs Patient Advocates.⁵⁸ Other offices, like the Federal Student Aid Ombudsman, are required to perform as neutral “fact-finders” when looking into a complaint.

In May 2006, the CFO updated the ABA's Standards for the Establishment and Operations of the Ombuds Offices.⁵⁹ Both the CFO and ABA require an ombudsman to perform as a neutral actor who “conducts inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest.”⁶⁰ Impartiality, however, does not prohibit the ombudsman from advocating “within the entity for change where the process demonstrates a need for it.”⁶¹

⁵⁸ For more information on advocate ombudsmen, see the American Bar Association, “About Advocate Ombudsman,” available at [<http://www.abanet.org/adminlaw/ombuds/advocateombudsmen.html>].

⁵⁹ The American Bar Association, *Standards for the Establishment and Operations of the Ombuds Offices*, available at [<http://www.abanet.org/adminlaw/ombuds/115.pdf>].

⁶⁰ Coalition of Federal Ombudsmen, *Standards for the Establishment and Operation of Ombuds Offices*, revised Feb. 2004, p. 3. This document is an update of the ABA's Aug. 2001 document of the same title.

⁶¹ *Ibid.*, p. 4.

Resources

Each office's budget, staff, and other resources — and control over them — could also differ, depending upon its statutory authority, range of duties and responsibilities, degree of independence, and internal office priorities. For instance, a complaint-handling office might invest heavily in computer technology — for example, setting up its own website and inputting information from paper correspondence into its own computerized data base — while other offices might maintain a more traditional approach, such as receiving and responding to grievances and questions primarily by mail, facsimile, and phone.

The office's budget and resources could be controlled independently by agency administration, be derived from the administrative and operating expenses of the agency to which it is attached, or be given a line item in the agency's appropriation act.

Hiring authority and practices could also differ — as could control of other resources, such as office space, supplies, communications equipment, training programs, and travel funds. In this regard, the head of the complaint-handling office might possess specific authority that would enable him or her to control all such resources. By contrast, the officer might not be granted such authority; in this case, the head would have to rely, for instance, on existing agency personnel who would rotate in and out of the office and on receiving office space, supplies, and equipment at the discretion of agency management.

Electronic and Traditional Communications

Though many government agencies do not have a formal or institutionalized public complaint-handling office, all have established ways, new or old, for the general public to contact agencies. These include the Internet, as well as telephone lines and the traditional mail system.

Development of E-government. The adoption and development of electronic government (e-gov)⁶² have been both a cause and effect of the E-Government Act of 2002.⁶³ It was intended to “promote the use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government ..., to provide citizen-centric Government information

⁶² A working definition of electronic government (e-gov) is “the use of information technology to integrate government information and services for citizen, business, government, and other institutional uses.” CRS Report RL34104, *State E-Government Strategies: Identifying Best Practices and Applications*, by Jeffrey W. Seifert and Glenn J. McLoughlin. For an overview of e-government in the United States and abroad, see Peter Heron, Rowena Cullen, and Harold C. Relyea, eds., *Comparative Perspectives on E-government: Serving Today and Building for Tomorrow* (Lanham, MD: Scarecrow Press, Inc., 2006). This volume examines such issues as access and security, citizen responses and perspectives, government portals and websites, broadband Internet access and the digital divide, and e-government's accomplishments and potentialities.

⁶³ P.L. 107-347; 116 Stat. 2890-2971.

and services ..., [and] to promote access to high quality Government information and services across multiple channels.”⁶⁴ E-gov, in general, and the E-Government Act, in particular, have added new modes of communication between government and citizens, and have increased the accessibility, speed, and efficiency of receiving and responding to public inquiries.⁶⁵

Despite these advances, some recent studies have discovered weaknesses and limitations in several aspects of e-gov: what it currently does (e.g., primarily providing information); how well it does it (declining levels of satisfaction); and what it has been unable to do satisfactorily (particularly, progressing into the “transactions stage,” referring to exchanges among entities in the same agency, among agencies at the same level of government, among governments at different levels, and among government agencies, private sector stakeholders, and the general public).⁶⁶

⁶⁴ 116 Stat. 2901. Some observers have seen a much different reason behind the adoption of e-gov. Rather than to increase efficiency and accessibility, e-gov is a way to “reduce the high costs associated with face-to-face service provision [and] ... compensate for the loss of human workers and other resources,” which were the result of “deep budget cuts” in the early and mid-1990s. H. Brinton Milward and Louise Ogilvie Snyder, “Electronic Government: Linking Citizens to Public Organizations Through Technology,” *Journal of Public Administration Research and Theory*, vol. 6, Apr. 1996, p. 264.

⁶⁵ One of the goals of the 2002 E-Government Act (116 Stat. 2916-2917) was to improve the accessibility and usability of government information. The Bush Administration’s views on its e-gov initiatives are spelled out in U.S. Office of Management and Budget, *Expanding E-Government: Improved Service Delivery for the American People Using Information Technology*, Dec. 2005; and *Report to the Congress on the Benefits of E-Government Initiatives* (3rd annual), Feb. 2008; both available at [<http://www.whitehouse.gov/omb/egov>]. An earlier exploration by Congress appeared in U.S. Congress, House Committee on Government Reform, Subcommittee on Technology, Information Policy, Intergovernmental Relations, and the Census, *Electronic Government: A Progress Report on the Successes and Challenges of Government-wide Information Technology Solutions*, hearings, 108th Cong., 2nd sess., Mar. 24, 2004 (Washington: GPO, 2004).

⁶⁶ Notwithstanding the apparent increased availability and use of e-gov, an independent survey of government websites in 2008 found that public satisfaction with e-government has continued to wane since mid-2007, dropping to its lowest level since 2005. According to the study’s coordinator, the decrease might be the result of rising public expectations coupled with uncertainty about the forthcoming election and accompanying government transition less than a year away, rather than a decline of e-gov’s quality, utility, and accessibility. *American Consumer Satisfaction Index: E-Government Satisfaction Index*, Commentary and Analysis by Larry Freed, President and CEO, ForeSee Results, Mar. 18, 2008, available at [<http://www.ForeSeeResults.com>], pp. 2-4. See also, “Citizen Satisfaction with E-Government Falls to Lowest in Three Years,” *PA Times*, vol. 31, Apr. 2008, pp. 1-2. For further interpretations about this and other aspects of e-gov, see a symposium on “New Perspectives on E-Government”; it discusses a number of weaknesses, limitations, and challenges facing e-gov in its second decade: David Coursey and Donald F. Norris, “Models of E-Government: Are They Correct?”; Yu-Che Chen and Kurt Thurmaier, “Advancing E-Government: Financing Challenges and Opportunities”; Caroline J. Tolbert, et al., “Institutions, Policy Innovation, and E-Government in the American States”; and Mark D. Robins, et al., “Citizens and Resource Allocation: Improving Decision Making with
(continued...)”

Despite such growing pains, e-gov and the Internet have become prominent features of the government-citizen interaction, including within the ombudsman and complaint-handling function. Even with this advance, however, government-citizen communications continue through traditional forms as well.

Websites and the Internet. The 2002 E-Government Act called upon federal agencies to establish domain directories for their websites.⁶⁷ Many of these are for general access, not necessarily for complaint handling specifically. Nonetheless, several different websites — major and minor — demonstrate the range of offerings.

In July 2003, the General Services Administration (GSA) unveiled USA Services, which promised to answer all citizen inquiries — whether submitted by e-mail, conventional mail, telephone, or in-person — within two days. The initiative was described as a “comprehensive ‘customer service department’” for citizens.⁶⁸ USAServices.gov serves as the initiative’s web portal and offers citizens and agencies assistance in communication and information access. Additionally, the federal government offers an Internet gateway to all of its agencies and services: USA.gov, formerly known as both WebGov and FirstGov. The website lists all government agencies, and offers links to each one’s website, along with links to state, local, and tribal government websites. Citizens, visitors, employees, and businesses are offered their own entry portals into the website through a web page designed to offer information and services that would be most pertinent to that user. The site also includes a link to the Federal Citizen Information Center,⁶⁹ which offers a list of agencies the public can use to register complaints against private businesses.

Although most agencies and departments have websites that outline their mission and duties, there remains a general dearth of formal agency-wide ombudsman-like offices, even at those that serve a substantial number of people. Instead, agencies have adopted other similar offices for more specialized or select clientele. The Social Security Administration (SSA), for example, has a toll-free telephone number (1-800-772-1213 or TTY 1-800-325-0778) for complaints and an online complaint form.⁷⁰ The SSA also has a website that informs members of the public of various administrative services that are available online, on the phone, or

⁶⁶ (...continued)

Interactive Web-Based Citizen Participation,” *Public Administration Review*, May/June 2008, pp. 523-575.

⁶⁷ P.L. 107-347; 116 Stat. 2916-2917.

⁶⁸ U.S. General Services Administration, “GSA Launches USA Services: New Initiative Rapidly Connects Citizens with the Federal Government Service; Answers Citizens’ Web, E-mail and Telephone Questions in Two Days or Less,” at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=8953&noc=T].

⁶⁹ Federal Citizen Information Center, “Filing a Complaint,” available at [<http://www.pueblo.gsa.gov/complaintresources.htm>].

⁷⁰ Social Security Online, “Comments and Feedback,” available at [<http://www.ssa.gov/feedback/complaints.htm>].

at their offices.⁷¹ Online, for example, clients can calculate their benefits or apply for help with Medicare prescription drug costs. The website also includes maps and directions to local offices. If clients are dissatisfied with the response to their complaints — whether made over the phone or at the local SSA office — they may appeal to a higher level of the SSA.⁷²

The Department of Transportation hosts an Aviation Consumer Protection Division (ACPD) that serves as a last resort for airline consumers who are dissatisfied with service and attempts by a company to remedy the problem.⁷³ The ACPD clearly states that the individual airlines are better suited to resolving disputes with consumers, but the division offers consumers the opportunity to have their complaints published in the division's monthly *Report of Consumer Complaints*, as well as to register the complaints in the federal database. Although this service handles grievances about private sector operations, for the most part, it also responds to consumer complaints that involve an aviation regulatory issue. Complaints about airline safety are channeled to the Federal Aviation Administration's hotline,⁷⁴ while transportation security issues are handled in-house or routed to the Transportation Security Administration in the Department of Homeland Security.⁷⁵

The Federal Communications Commission (FCC) has four different, topically organized online complaint forms available for consumers.⁷⁶ The complaint topics are general complaints, obscenity and indecency, slamming,⁷⁷ and telemarketing. Consumers who do not have online access may send complaints and supporting documentation via mail.⁷⁸

⁷¹ U.S. Social Security Administration, "Do you need an appointment?" Social Security Administration, available at [<http://www.socialsecurity.gov/appointment.htm>].

⁷² U.S. Social Security Administration, *Social Security Online - Social Security Organizational Structure and Functional Information*, available at [<http://www.ssa.gov/org/orgoig.htm>].

⁷³ Complaints about general airline service, including late departures or being bumped from a flight, can be registered via telephone (202-366-2220; TTY 202-366-0511); online at [<http://airconsumer.ost.dot.gov/escomplaint/es.cfm>]; or by mail (Aviation Consumer Protection Division, C-75, U.S. Department of Transportation, 1200 New Jersey Ave., S.E., Washington, DC 20590).

⁷⁴ Toll-free line: 1-800-TELL-FAA.

⁷⁵ For more information, including a mailing address and the types of security issues the FAA oversees, see [http://www.faa.gov/passengers/travel_problems/consumer_hotline/]. TSA accepts complaints via a toll-free hotline (1-866-289-9673) or e-mail TSA-ContactCenter@dhs.gov.

⁷⁶ The complaint-filing page is available at [<http://www.fcc.gov/cgb/complaints.html>].

⁷⁷ According to the FCC, "slamming" is "the illegal practice of changing a consumer's telephone service ... without permission." See [<http://www.fcc.gov/slamming/>].

⁷⁸ The e-mail addresses for the FCC follow: (1) its websites, fccinfo@fcc.gov and slamming@fcc.gov for slamming complaints; (2) its facsimile phone numbers, 1-866-418-0232 and 202-418-0035 for slamming complaints; and (3) telephone, 1-888-CALL-FCC and 1-888-TELL-FCC for telephone typewriter (TTY). A mediation (continued...)

Similarly, other “high-impact” federal agencies provide e-mail links or online forms for citizens or customers to use when lodging their complaints.⁷⁹ The U.S. Consumer Product Safety Commission’s website, for example, includes a toll-free customer hotline and online complaint forms for the general public, doctors, fire investigators, police, or others to use to report an injury or death caused by a product.⁸⁰ Although such complaints are usually generated by private sector products, the submissions could also involve the Commission’s regulatory and enforcement responsibilities.

Another site for e-gov communications is [<http://www.business.gov/>]. Launched in 2004 as the official business link to the U.S. government, it is managed by the Small Business Administration in partnership with 21 other federal agencies.⁸¹

Benefits and Concerns. Use of the Internet for government-citizen communications, especially for complaint handling, offers benefits, while at the same time, raising concerns.

Benefits. The potential of the Internet for making complaint handling more efficient and effective is significant. Ideally, government web portals could provide “one stop” for inputting and accessing complaint-related information for an entire agency — or at least a particular office or program. This, in turn, could lead to increased sharing of information and data within and among federal agencies, between the federal government and state and local governments, and between the federal government and private sector organizations and the general public. This development might also encourage standardization in receiving and responding to complaints, as well as other operational and organizational characteristics of ombudsman-like offices, including resources and independence.

Concerns. Nonetheless, concerns exist with regard to the inclusiveness, accessibility, and availability of Internet-based information and the government’s responsiveness to complaints. Reflective of this is the “digital divide,” which sees the population separated into “haves and have-nots” in terms of Internet access and use.⁸² This divide separates those with requisite computer skills, resources, and

⁷⁸ (...continued)

specialist assists with complainants.

⁷⁹ According to a 2000 GAO letter, 32 “high-impact” organizations handle about 90% of the federal government’s contact with the public. U.S. General Accounting Office, *Internet: Federal Web-based Complaint Handling*, GAO letter AIMD-00-238R, July 7, 2000, pp. 1-2.

⁸⁰ Hotline at 800-638-2772 and TTY 800-638-8270; forms available at [<http://www.cpsc.gov/talk.html>].

⁸¹ Rob Kleinsteuber, “Business.gov Unveils New Search Features,” *The Small Business Advocate*, Feb. 2008, p. 3.

⁸² The E-Government Act of 2002, recognizing “disparities in access to the Internet,” authorized a study to make recommendations to correct this. P.L. 107-347; 116 Stat. 2944-2945. For differing views of the digital divide, see Pippa Norris, *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (New York: Cambridge (continued...))

Internet access from those without these. The latter group lacks the capability to issue complaints and comments through this medium and to discover what information is held in Internet-based data banks.

Another concern about reliance on the Internet for complaint handling is that it might be manipulated. For instance, an organized interest group might encourage its membership to flood a website with complaints — substantiated or not, witnessed first-hand or not — about a particular agency or program. Although this same problem could arise by way of other means of communications (mail or telephone, for example), these traditional avenues would be more cumbersome, more difficult, and possibly more costly to use. In effect, it would be easier to mount massive attacks through the Internet than through more traditional communications media.

Use of the Internet as a source for collecting public complaints also prompts worries about maintaining the anonymity of the complainant. These worries might be mitigated, to a degree, through the rise in toll-free hotlines and centralized websites like USA.gov, which could allow for anonymous reporting.

Concluding Observations

Although there is no authoritative, comprehensive, detailed survey of current federal complaint-handling offices, earlier studies (even if dated and limited), along with the coverage here, provide useful information with which to describe, examine, and compare them. One observation, for instance, is that such offices appear to be growing in number, prominence, and range of activities and duties.

As noted throughout this report, federal complaint-handling offices exhibit different forms, capacities, and designations. The variations range from the individual office's powers, resources, duties, and functions, to its jurisdiction, location, controls, neutrality, and adoption of new technologies — notably the Internet. The activities, services, and duties of ombudsman-like entities, for instance, cross a wide spectrum, from the nearly passive to the proactive. The range extends from simply receiving a complaint and passing it on to appropriate offices; to following up on it and notifying the complainant of the results; to helping resolve disputes between the agency and complainant. Some offices report findings to agency officials, Congress, and/or the public, while others do not. Some conduct outreach efforts to the public or select groups, while others do not. A few even embark on preemptive efforts — that is, they intervene on behalf of clientele from the beginning to the end of a service, thereby reducing, if not preventing, problems — while most do not.

The variations among the offices reflect their piecemeal establishment — at different times, for different reasons, and for different purposes, duties, and functions. Some, for instance, are designed to assist a particular clientele who

⁸² (...continued)

University Press, 2001); and Benjamin M. Compaine, ed., *The Digital Divide: Facing a Crisis or Creating a Myth?* (Cambridge, MA: MIT Press, 2001).

conduct business with an agency or who are the primary recipients of its services. Other entities may be intended to meet the needs of the public at large or broad sectors of it. Variations also arise over time and across policy areas, as the needs and demands of government and society change. Recent constructs demonstrate this. The Departments of Defense and Veterans Affairs Federal Recovery Coordinators for wounded military veterans were prompted by instances of inadequate medical care. And the creation of a Privacy Officer and an Officer for Civil Rights and Civil Liberties in the Homeland Security Department was due to concerns about the possible intrusiveness and potential impact of the government's new anti-terrorism powers.

Efforts to establish a government-wide ombudsman, create complaint-handling offices throughout the executive branch, and/or standardize such entities have existed since the mid-1960s. None of these one-size-fits-all initiatives, however, has been enacted into law. Instead, the legislative and administrative solutions — to meet the challenge of responding to a large and growing number of inquiries, grievances, and concerns from the public — have arisen on an ad hoc basis, focusing on particular agencies and specific problem areas.⁸³ Even in the few cases where a single statute has called for similar offices in a number of agencies — such as Freedom Of Information Act (FOIA) public liaisons, construction metrication ombudsmen, and banking agency ombudsmen — these entities have been highly specialized, responding to a select clientele in a distinct policy area.

As a consequence of their varied attributes and development, ombudsman-like entities vary in their roles, capabilities, and independence. These constructs thus reflect certain fundamental characteristics of American national government: dispersed and decentralized power, the absence of uniformity and standardization among similar institutions, and competition between the executive and legislature for control over government organizations and operations.

⁸³ In addition to the examples covered in this report, more than 100 bills in the 110th Congress have incorporated provisions for an “ombudsman” or “ombudsmen.” The list is available at [<http://www.congress.gov/cgi-lis/query>].

Appendix. Examples of Ombudsman-like Entities

American National Red Cross

Although it is not a federal government agency, the American National Red Cross (ANRC) is an organization chartered by public law.⁸⁴ Its charter established the basic purposes of the organization, one of which is serving as a disaster relief organization for the United States.

Congress also mandated, in the Governance Modernization Act of 2007,⁸⁵ an ANRC Ombudsman, who began operating in October 2007. Besides the Ombudsman, the office presently consists of three positions: two analysts, who compile annual reports to Congress and the ANRC Board of Governors, and an ombudsman service representative, who receives incoming telephone complaints.⁸⁶

While the ombudsman position was created by Congress, the duties of the office have been delineated by the organization's Board of Governors. The post is to serve as a neutral party that

- provides a voluntary, confidential, and informal process to facilitate fair and equitable resolutions to problems brought before it; and
- explores a range of alternatives or options to resolve the problems.⁸⁷

The position serves as both an internal and external ombudsman, fielding complaints from employees, blood donors, volunteers, financial donors, disaster victims, and other Red Cross clients.⁸⁸

⁸⁴ A charter is a document that legally establishes a corporation and its most fundamental characteristics, such as its legal purpose, basic governance structure, and means of public accountability. The ANRC's charter is codified at 36 U.S.C. § 300101. Other duties and charges related to the federal government are at 10 U.S.C. § 2602; 22 U.S.C. § 2601 note; and 42 U.S.C. § 5152 and 5153. These have been modified recently with regard to directing mass care following disasters, as described in U.S. Government Accountability Office, *National Disaster Response*, GAO Report GAO-08-369 (Washington: 2008). For additional information on the unusual establishment of the ANRC, as an independent organization with statutory responsibilities to the government, see CRS Report RL33314, *The Congressional Charter of the American National Red Cross: Overview, History, and Analysis*, by Kevin R. Kosar.

⁸⁵ P.L. 110-26; 121 Stat. 110.

⁸⁶ Information provided by telephone by Corporate Ombudsman Beverly Ortega Babers, Jan. 2, 2008.

⁸⁷ American Red Cross, "The American Red Cross Code of Business and Ethics Conduct," available at [http://www.redcross.org/static/file_cont5875_lang0_2860.pdf].

⁸⁸ American Red Cross, "Ombudsman to Strengthen 'Sacred Trust' with Public," press release, Oct. 27, 2007, available at [<http://www.abanet.org/adminlaw/ombuds/115.pdf>].

Department of Commerce, Bureau of the Census, Small Business Ombudsman

In the Department of Commerce, the Bureau of the Census houses an Office of the Small Business Ombudsman. It is the “primary advocate between the small business community and the Census Bureau and ... provide[s] services and opportunities for the small business community in an effort to simplify and reduce the reporting burden on requested forms.”⁸⁹ As such, the Ombudsman

- provides technical assistance through a small business toll free number and a small business website;
- provides Internet assistance for small businesses in completing report forms; and
- expands the use of electronic reporting, data sharing, and the use of administrative records.

Department of Defense

The Department of Defense (DOD) has a number of different ombudsman-like offices. Most of these, however, are “internal; “that is, the offices and positions, such as the Federal Recovery Coordinators, provide services to military and civilian personnel within the department. Nonetheless, DOD also has several different types of external ombudsman-like offices, as the following examples illustrate:

- Base Transition Coordinators (BTCs) attached to individual military bases undergoing realignments and closings (BRAC), whose involvement ends with the completion of the base closure and reuse;
- Defense Procurement and Acquisition Policy (DPAP) Ombudsman, whose jurisdiction covers both domestic and foreign contractors;
- Ombudsman of the Employer Support of the National Guard and Reserve (ESGR), a permanent office whose participation on behalf of eligible service personnel might be a one-time event or recurrent; and
- select ombudsmen operating at Navy medical centers, whose voluntary participation on behalf of family members of patients at individual command centers might be short-term and sporadic or long-term and continuous.

Base Transition Coordinators for Military Base Reuse. Introducing its community guide to military base reuse, the Department of Defense recognizes that it “has been closing military bases and assisting Defense-impacted communities

⁸⁹ U.S. Census Bureau, Office of the Small Business Ombudsman, *Mission*, available at [<http://www.census.gov/eos/www/osbonew/mission.html>].

through its Defense Economic Adjustment Program for more than 35 years.”⁹⁰ The program has increased in prominence most recently, because of the Base Realignment and Closing (BRAC) initiative affecting a large number of military bases. Among the many local, state, and federal entities involved in each case is a DOD Base Transition Coordinator (BTC), described as “the local, on-site, Federal point of contact who works as an ombudsman for the community.”⁹¹ As such, the BTC “is a key contact, problem solver and information source for the local community, especially in relation to environmental cleanup and property disposal.”⁹²

Defense Procurement and Acquisition Policy Ombudsman. The role of the DPAP Ombudsman is to assist companies, both domestic and foreign, interested in performing contracts to satisfy DOD requirements, following the instructions of the DPAP Contract Policy and International Contracting Directorate.⁹³ In the case of a foreign company, it may contact the Ombudsman if the company “has difficulty fully understanding contracting rules and regulations, or if it thinks it was unfairly excluded from defense procurement...”⁹⁴ The DPAP Ombudsman also provides contact information for the benefit of U.S. companies in doing business with various foreign governments.

Employer Support of the National Guard and Reserve Ombudsman. The Employer Support of the National Guard and Reserve (ESGR) Ombudsman is designed to ensure smooth transitions for soldiers returning from their military duty by ensuring that they return to their civilian jobs — or equivalent positions — without complication. This assignment results in the ESGR being a combination of an internal ombudsman (for active duty military personnel) as well as an external ombudsman (for discharged personnel reentering the private sector).

President Richard M. Nixon established the ESGR in 1971 as a “conduit between the DOD and the nation’s employers when the United States changed to an all-volunteer force,” by ensuring that service members would have their prior civilian jobs or equivalent jobs when they returned to their homes.⁹⁵ In 1994, Congress passed the Uniformed Service Employment and Reemployment Rights Act (USERRA). Its purposes are

- (1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their

⁹⁰ U.S. Department of Defense, Office of Economic Adjustment, *Community Guide to Base Reuse* (Washington: DOD, 2007), p. 1.

⁹¹ *Ibid.*, p. 5; see also pp. A-1, and A-2.

⁹² *Ibid.*, p. 5.

⁹³ DPAP, “Contract Policy and International Contracting,” available at [<http://www.acq.osd.mil/dpap/cpic/indx/html>]

⁹⁴ *Ibid.*

⁹⁵ Information provided via e-mail by Commander Robert Lyon, Chief of Ombudsman Services.

fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service, and (3) to prohibit discrimination against persons because of their service in the uniformed services.⁹⁶

The ESGR is currently tasked to

- recognize outstanding support from employers of service members;
- increase awareness of the law; and
- resolve employment conflicts through informal mediation.⁹⁷

More than 900 ombudsmen are located within 56 ESGR “field committees” that help resolve disputes between employers and employees. Complaints against an employer can be filed online.⁹⁸ If the ombudsman is not making progress toward the resolution of a dispute within seven days, the case is referred to the Department of Labor.⁹⁹ The ombudsmen, however, report their findings and suggestions to the Office of the Assistant Secretary of Defense for Reserve Affairs. A service member seeking to nominate his or her employer for outstanding service can fill out an online nomination form at the ESGR website.¹⁰⁰

NMCP Navy Family Ombudsman. The Navy Family Ombudsman, operating out of the Naval Medical Center Portsmouth (NMCP), assists families of military personnel needing medical services there.¹⁰¹ The Ombudsman duties include providing information, referrals, and contacts with regard to complaints, concerns, and questions. The Ombudsman, “an officially appointed volunteer,” serves as: the primary communications link between families and the command; the channel of official information from the command; and a link to related services and facilities, including legal assistance, military medical facilities, professional counseling, and various relief societies.¹⁰² Through outreach programs and other ways, the Ombudsman also acts “as an advocate for the command’s families.”¹⁰³

⁹⁶ 38 U.S.C. § 4301. The full enactment (38 U.S.C. § 4301-4333) spells out the requirements, including reemployment rights, health plans, pension benefit plans, reports, and outreach matters.

⁹⁷ Information provided by e-mail by Commander Robert Lyon, Chief of Ombudsman Services, Jan. 17, 2008, contact at USERRA@osd.mil.

⁹⁸ Employer Support of the Guard and Reserve, “ESGR USERRA Complaint Request Form 100,” available at [<http://www.esgr.org/forms.asp?p=complaintrequest>].

⁹⁹ Ibid. Cases that do not involve employee wages are given 14 days to progress toward mediated resolution.

¹⁰⁰ Employer Support of the Guard and Reserve, “Mainpage,” available at [<http://www.esgr.net/>].

¹⁰¹ U.S. Naval Medical Center Portsmouth, Ombudsman, *The Role of the NMCP Command Ombudsman*, available at [<http://www-nmcp.med.navy.mil/ombudsman/role.asp>].

¹⁰² Ibid.

¹⁰³ Ibid.

USNHGUAM Ombudsman. The Ombudsman attached to the U.S. Navy Hospital in Guam is, like the one at the NMCP, a volunteer, trained to “offer support and guidance to command families and acts as an official liaison between command and the command families.”¹⁰⁴ As such, the Ombudsman serves as the primary link between the command families and the command; serves as a communicator of information between the two; communicates regularly with command families, via newsletters, careline, phone tree, and e-mail; provides information and outreach to family members; interacts and cooperates with relevant organizations, including the American Red Cross as well as appropriate military legal and medical treatment entities; refers individuals in need of professional assistance to appropriate resources (for counseling, for instance); and acts as an advocate for command families.¹⁰⁵

Department of Education Federal Student Aid Ombudsman

The Department of Education houses the Federal Student Aid (FSA) Ombudsman. Created in 1998 by amendments to the 1965 Act of Higher Education,¹⁰⁶ the FSA Ombudsman’s office received its first cases in late September 1999.¹⁰⁷ Appointed by the FSA’s Chief Operating Officer (COO), the FSA Ombudsman serves as a neutral fact-finder in disputes between students with loans and the FSA. The officer serves at the discretion of the COO (there is no fixed term for the position) and reports directly to the COO. The Ombudsman can recommend resolutions, but cannot compel the FSA to overturn its previous decisions. The service is free, but operates only as a last resort — provided the FSA has not already begun legal proceedings against a person receiving the loan.

Though the Ombudsman cannot enforce his or her decisions, the position was created to

- resolve disputes from a neutral, independent viewpoint;
- informally conduct impartial fact-finding about complaints;
- recommend solutions (without the authority to reverse decisions);
- work to bring about changes that will help prevent future problems for other student loan borrowers; and
- research problems and determine whether the complainants have been treated fairly.¹⁰⁸

¹⁰⁴ U.S. Naval Hospital Guam, Ombudsman, “History of the Ombudsman Program” (OPNAV Instruction 1750.1), available at [<http://www.usnhguam.med.navy.mil/us/ombudsman/default.htm>].

¹⁰⁵ Ibid.

¹⁰⁶ P.L. 105-244; codified at 20 U.S.C. § 1018.

¹⁰⁷ U.S. Department of Education, “FSA Ombudsman,” available at [<http://www.ombudsman.ed.gov/about/about.html>].

¹⁰⁸ U.S. Department of Education, “About the FSA Ombudsman,” available at [<http://www.ombudsman.ed.gov/about/about.html>].

If the Ombudsman determines that a complaint is justified, he or she is to help a student negotiate with the agency or other parties involved in the dispute.¹⁰⁹

Prior to requesting help from the FSA Ombudsman, a person seeking assistance is asked to review an online checklist of other options for resolving the dispute. If the person then determines himself or herself qualified for ombudsman assistance, he or she may send a letter to the office, telephone, or fill out the online Ombudsman Assistance Request Form.¹¹⁰ The ombudsman office does not assist the public in filling out loan forms, nor does it help find ways to pay off loans.

Department of Health and Human Services

The Department of Health and Human Services (HHS) houses a number of distinct complaint-handling and client-assistance offices. Among them are the following.

Food and Drug Administration Ombudsman. When Food and Drug Administration (FDA) employees were found to be inadequately performing their duties in reviewing pre-market generic drug applications, the commissioner issued a “managerial fiat” creating the FDA Office of the Ombudsman.¹¹¹ The Ombudsman provides several services, including the following:

- reviews marketing or investigational applications;
- provides information on import or export issues;
- offers explanations in response to citizen petitions or general inquiries; and
- ensures a fair hearing of claims of unfair or unequal treatment.¹¹²

The office also serves as the FDA’s Product Jurisdiction Officer, who determines the jurisdiction of a product headed for review if the jurisdiction is questionable. The office, however, predominantly handles complaints about regulatory issues or FDA policies.

Long-term Care Ombudsman. The Long-term Care Ombudsman (LTCO) began as a demonstration program in 1972, but was mandated by statute in the Older Americans Act, which is currently administered by the Administration on Aging (AOA).¹¹³ The LTCO office consists of more than 1,000 paid, and nearly 14,000

¹⁰⁹ Ibid.

¹¹⁰ U.S. Department of Education, “Contact the FSA Ombudsman,” available at [<http://www.ombudsman.ed.gov/about/contactus.html>].

¹¹¹ Lubbers, Report to the National Taxpayer Advocate, *Independent Advocacy Agencies Within Agencies*, pp. 16-17.

¹¹² U.S. Food and Drug Administration, “When to Contact the Office of Ombudsman,” available at [<http://www.fda.gov/oc/ombudsman/whencon.htm>].

¹¹³ P.L. 102-375; 106 Stat. 1195. Though the original Older Americans Act became law in 1965, the 1992 amendments created Title VII, which called for “Vulnerable Elder Rights (continued...)”

volunteer, staffers, who are located in the 50 states and three additional locales — Washington, DC, Guam, and Puerto Rico.¹¹⁴ Serving an estimated 280,000 people per year, the ombudsman

- identifies, investigates, and resolves complaints made by, or on behalf of, residents;
- provides information to residents about long-term care services;
- represents the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect residents;
- analyzes, comments on, and recommends changes in laws and regulations pertaining to the health, safety, welfare, and the rights of residents;
- educates and informs consumers and the general public regarding issues and concerns related to long-term care, and facilitates public comment on laws, regulations, policies, and actions;
- promotes the development of citizen organizations to participate in the program;
- provides technical support for the development of resident and family councils to protect the well-being and rights of residents; and
- advocates for changes to improve residents' quality of life and care.¹¹⁵

LTC ombudsmen are a blend of state and federal oversight. Though each state ombudsman office operates differently, most house their Office of the State LTC Ombudsman within the individual state's unit on aging. The National Long Term Care Ombudsman Resource Center offers "support, technical assistance and training to the State Long Term Care Ombudsman Programs and their statewide networks of almost 600 regional (local) programs."¹¹⁶ The ombudsmen tread a line between acting as neutral fact-finders and as advocates for older Americans. Additionally, the ombudsmen often deal with third party private entities — an apparent rarity for federal government ombudsmen.

Medicare Beneficiary Ombudsman. Created by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003,¹¹⁷ the Medicare Beneficiary Ombudsman is intended to ensure that those eligible for Medicare have reliable and current information about

¹¹³ (...continued)

Protection Activities.”

¹¹⁴ U.S. Department of Health and Human Services, Administration on Aging, “Elder Rights and Resources,” available at [http://www.aoa.gov/eldfam/Elder_Rights/LTC/LTC.asp].

¹¹⁵ Ibid.

¹¹⁶ U.S. Office of Management and Budget, “National Long Term Care Ombudsman Resource Center,” available at [http://www.ltombudsman.org/ombpublic/49_151_940.CFM].

¹¹⁷ P.L. 108-173; 117 Stat. 2066.

- their Medicare benefits and whether they have the information needed to make good health care decisions;
- their rights and protections under the Medicare Program; and
- the procedures for getting problems and disputes resolved.¹¹⁸

The Ombudsman is to aid Medicare recipients in filing appeals if they believe their insurance did not pay proper amounts for their medical services. Recipients can also file complaints or ask for help joining or leaving a given Medicare program. The job of the Ombudsman requires him or her to take an overview of the Medicare system and ensure that the appeals process is operating properly at all government levels.¹¹⁹ The officer reports to both the Medicare Administrator and the Director of the Office of External Affairs, and is also required to submit an annual report to Congress.

Specialized Jurisdictional Ombudsmen. The FDA also has four additional ombudsmen who serve as the points of contact for specific public complaints connected to the subject of their jurisdiction. The specialized ombudsmen are located at four centers:

- Center for Biologics Evaluation and Research (CBER);
- Center for Drug Evaluation and Research (CDER);
- Center for Devices and Radiological Health (CDRH); and
- Center for Veterinary Medicine (CVM) Ombudsman

If any of them cannot resolve or remedy a complaint, the issue is to be sent to the FDA Office of Ombudsman.

Department of Homeland Security

The Department of Homeland Security (DHS) houses a number of ombudsman-like offices. In addition to several connected with immigration and transportation matters, three others are an outgrowth of the authorities and responsibilities that the department received under legislation dealing with anti-terrorism. The 2004 Intelligence Reform and Terrorism Prevention Act (IRTPA), importantly, gave additional duties to the Privacy Officer and Officer for Civil Rights and Civil Liberties, as well as the inspector general, in the Department of Homeland

¹¹⁸ U.S. Department of Health and Human Services, *How the Medicare Beneficiary Ombudsman Works for You*, available at [<http://www.medicare.gov/Publications/Pubs/pdf/11173.pdf>].

¹¹⁹ Information provided by telephone by the Medicare Ombudsman, Daniel Schreiner, Dec. 21, 2007.

Security.¹²⁰ All three entities originated in the Homeland Security Act of 2002, which established the department.¹²¹

Privacy Officer. The Privacy Officer’s “mission is to minimize the impact on the individual’s privacy, particularly the individual’s personal information and dignity, while achieving the mission of the Department of Homeland Security.”¹²² According to DHS, to meet this end, the Officer, who reports directly to the Secretary,

- requires compliance with the letter and spirit of federal laws promoting privacy;
- centralizes Freedom of Information Act and Privacy Act operations within the Privacy Office to provide policy and programmatic oversight and support operational implementation within the components;
- provides education and outreach to build a culture of privacy and adherence to fair information principles across the department;
- communicates with the public through published materials, formal notices, public workshops, and meetings; and
- coordinates with the Officer for Civil Rights and Civil Liberties, to ensure that relevant programs, policies, and procedures are addressed in an integrated and comprehensive manner and that Congress receives appropriate reports.¹²³

Officer for Civil Rights and Civil Liberties. The mission of the DHS Officer for Civil Rights and Civil Liberties (OCRCL) is to “protect civil rights and civil liberties and to support homeland security by providing the Department with constructive advice on the full range of civil rights and civil liberties issues the

¹²⁰ P.L. 110-181; 118 Stat. 3867-3869. Notwithstanding these protective entities, concerns have arisen in Congress and elsewhere over the Department’s domestic intelligence program; attention has focused, for instance, on a new National Applications Office, which promotes the use of overhead surveillance for homeland security purposes. See letter to Hon. Michael Chertoff, Secretary, Department of Homeland Security, regarding the National Applications Office, from Hon. Bennie Thompson, Chairman, House Committee on Homeland Security; Hon. Jane Harman, Chairwoman, Subcommittee on Intelligence; and Hon. Christopher Carney, Chairman, Subcommittee on Management, Investigations, and Oversight, Apr. 7, 2008. See also Siobhan Gorman, “Privacy Fears Threaten Satellite Program,” *Wall Street Journal*, Apr. 8, 2008, p. 1.

¹²¹ P.L. 107-296; 116 Stat. 2135.

¹²² U.S. Department of Homeland Security, “The Privacy Office of the U.S. Department of Homeland Security,” available at [http://www.dhs.gov/xabout/structure/editorial_0338.shtm], p. 1. Statutory authority is at 6 U.S.C. § 142, as amended by P.L. 108-458; 118 Stat. 3868-3869.

¹²³ U.S. Department of Homeland Security, “The Privacy Office of the U.S. Department of Homeland Security,” available at [http://www.dhs.gov/xabout/structure/editorial_0338.shtm], p. 1; and U.S. Department of Homeland Security, “DHS Privacy Office — About the Privacy Office,” available at [http://www.dhs.gov/xabout/structure/editorial_0375.shtm].

Department will face, and by serving as an information and communication channel with the public regarding all aspects of these issues.”¹²⁴

According to its statutory authority, the OCRCL is to

- review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of DHS;
- make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the OCRCL;
- help the DHS Secretary, directorates, and offices of DHS to develop, implement, and periodically review DHS policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into DHS programs and activities;
- oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of DHS;
- coordinate with the Privacy Officer to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and that Congress receives appropriate reports regarding such programs, policies, and procedures; and
- investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the inspector general of the Department determines that any such complaint or information should be investigated by the inspector general.¹²⁵

Office of Inspector General. The third component, the inspector general in the Department of Homeland Security, has been given certain ombudsman-like responsibilities (similar to those required of the IG in the Department of Justice). The DHS IG is to

- receive and review complaints and information from any source alleging abuses of civil rights and liberties by DHS officials and employees, including contractors;
- initiate investigations of such alleged abuses;
- consult with and refer investigations which the IG decides not to investigate to the Officer for Civil Rights and Civil Liberties; and

¹²⁴ U.S. Department of Homeland Security, “About the Office for Civil Rights and Civil Liberties,” and “Report to Congress on Implementation of Section 705 of the Homeland Security Act and the Establishment of the Office of Civil Rights and Civil Liberties,” June 2004, both available at [http://www.dhs.gov/xabout/structure/editorial_0375.shtm].

¹²⁵ 6 U.S.C. § 345(a), as amended by P.L. 108-458; 118 Stat. 3867.

- publicize and provide convenient public access to information regarding the procedures to file complaints and the status of corrective action taken by the Department.¹²⁶

Transportation Security Administration Office of Civil Rights and Liberties. The Transportation Security Administration (TSA) operates two distinct ombudsman-like offices. One handles internal matters, for the most part,¹²⁷ while the other deals with external complaints.

Most public inquiries and concerns are handled by the Office of Civil Rights and Liberties in the External Compliance Division of TSA. The Office's mission is:

- to ensure that the civil rights and liberties of the traveling public are respected throughout screening processes, without compromising security;
- to ensure that agency processes and procedures do not discriminate against the traveling public, and respect the constitutional freedoms of the traveling public;
- to ensure that the External Compliance Division meets its mission by providing civil rights guidance and services to TSA program offices, including security offices, technology offices, and communications offices; and
- to review TSA policies and procedures to ensure that the civil rights and liberties of the traveling public are taken into account.¹²⁸

United States Citizenship and Immigration Services Ombudsman.

The 2002 Homeland Security Act created the United States Citizenship and Immigration Services (USCIS) Ombudsman.¹²⁹ Unlike most other ombudsman-like offices in the federal government, the USCIS Ombudsman operates separately from the agency about which it receives complaints. The Ombudsman, instead, is located under the aegis of the Department of Homeland Security and reports to the DHS Secretary or Deputy Secretary, not to a USCIS official. The USCIS Ombudsman's mission, as specified in its establishing legislation, is threefold:

- assist individuals and employers in resolving problems with USCIS;

¹²⁶ 5 U.S.C. Appendix, as amended by P.L. 108-458; 118 Stat. 3868. The DHS inspector general, moreover, is required to report semi-annually to the Secretary and Congress, by the IG Act of 1978, as amended (5 U.S.C. Appendix). The inspector general in DHS appears to be one of three, among the nearly 60 IGs under the Inspector General Act of 1978, to have been given ombudsman-related responsibilities. The other two are in the Department of Justice and Environmental Protection Agency.

¹²⁷ The TSA Office of the Ombudsman operates primarily internally, handling workplace related problems, issues, and concerns. U.S. Transportation Security Administration, Ombudsman, *Helping You Find Solutions*, available at [http://www.tsa.gov/join/benefits/careers_benefits_ombudsman.shtml]. Contact at TSA.OCR-ExternalCompliance@dhs.gov.

¹²⁸ U.S. Transportation Security Administration, External Compliance Division, *Civil Rights for Travelers*, available at [http://www.tsa.gov/what_we_do/civilrights/travelers.shtml].

¹²⁹ P.L. 107-296; codified at 6 U.S.C. § 272.

- identify areas in which individuals and employers have problems dealing with USCIS; and
- propose changes to mitigate identified problems.¹³⁰

A client seeking Ombudsman services may fill out an online form and mail it to the USCIS Washington, DC, office, where it is to be reviewed.¹³¹ Potential clients should receive a response to their case within 45 days. As with other complaint-handling offices, complainants may leave anonymous postings on the office's website. Like the Federal Student Aid Ombudsman, the USCIS Ombudsman can neither overturn the agency's decisions nor make exceptions to its regulations. The Ombudsman may, however, facilitate a resolution and offer formal and informal recommendations to USCIS to help it serve patrons. The office also submits an annual report to the House and Senate Judiciary Committees.

Unlike offices that act as conduits only, the USCIS Ombudsman serves as an advocate for the complainants — including those experiencing delays because of the backlogs in processing immigration requests. The office also conducts outreach programs, including teleconferences and site visits. It is attempting, moreover, to create an online form that can be submitted via the Internet to expedite complaint processing, as well as establish a Virtual Ombudsman Office online that would offer a way to eliminate costly data entry.¹³²

Department of the Interior, Office of Insular Affairs, CNMI Ombudsman

The Commonwealth of the Northern Mariana Islands (CNMI), Office of Insular Affairs in the Department of the Interior (DOI) has an affiliated Ombudsman with a confined jurisdiction and clientele: the Ombudsman is charged with providing “assistance to the Commonwealth of the Northern Mariana Islands’ 30,000 [foreign] workers with labor and immigration complaints.”¹³³ Often known as the Federal Ombudsman, the office was established to assist foreign workers to gain a better understanding of the laws and policies affecting them. In so doing, according to a press release, the Ombudsman’s office “works hand-in-hand with the CNMI’s Department of Labor and Immigration, the U.S. Attorney’s Office, and the

¹³⁰ 6 U.S.C. § 272. See also U.S. Department of Homeland Security, USCIS Ombudsman, *Citizenship and Immigration Services Ombudsman Annual Report to Congress 2008*, pp. v-vii and 1, available at [http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2008.pdf]. Further contact information is available at cisombudsman@dhs.gov or cisombudsman.trends@dhs.gov.

¹³¹ DHS Form 7001, available at [<http://www.dhs.gov/cisombudsman>].

¹³² The office expects “to have a Virtual Ombudsman pilot program in place before the end of the fiscal year.” USCIS Ombudsman, *2008 Annual Report*, pp. v. For a further description of its outreach program, see *ibid.*, pp. 73-75.

¹³³ U.S. Department of the Interior, Office of Insular Affairs, “Federal Ombudsman’s Office,” p. 1, available at [<http://www.doi.gov/oia/Firstpginfo/Ombudsman.htm>]. To carry out its duties, the office employs a staff of professional caseworkers/interpreters who speak Mandarin, Taiwanese, Tagalog, Bengali, Hindu, Urdu, and Singhalese. *Ibid.*

Department of the Interior to ensure activities are properly coordinated and developed.”¹³⁴

Department of Justice Office of Inspector General

The USA PATRIOT Act of 2001, passed shortly after the 9/11 terrorist attacks, gave the Office of Inspector General (OIG) in the Department of Justice (DOJ) certain ombudsman-related responsibilities, particularly related to civil rights and liberties matters.¹³⁵ One of the provisions of the act, which expanded government powers in anti-terrorism efforts, directs the IG to designate an official to carry out certain duties:

- review information and receive complaints alleging a violation of civil rights and civil liberties;
- make information about the functions and responsibilities of the office, including how to contact the official, available through the Internet, radio, newspapers, and television; and
- report semi-annually to the House and Senate Committees on the Judiciary about the implementation of these requirements.

These functions are connected to complaints from individuals alleging abuses of civil rights and civil liberties by DOJ employees, including contractors. To respond to relevant allegations, the IG has established two special entities — a Civil Rights and Civil Liberties Complaints unit, along with a special section in the OIG Investigations Division — which are directed to

- review information and receive complaints alleging such abuses;
- identify the more serious allegations and assign them to OIG employees for investigation; and
- refer other complaints to department components for their review and handling (and refer still others to different federal departments and agencies which have jurisdiction over the policies in question).¹³⁶

¹³⁴ U.S. Department of the Interior, Office of Insular Affairs, “James J. Benedetto Named Federal Ombudsman,” available at [<http://www.doi.gov/oia/press/2002/Benedettorelease2.htm>].

¹³⁵ P.L. 107-56; 115 Stat. 391. Contact at inspector.general@usdoj.gov. As noted elsewhere, the Justice Department inspector general is one of only three — the others being in DHS and EPA — among the more than 60 offices of inspector general given ombudsman-like responsibilities and duties.

¹³⁶ U.S. Department of Justice, Office of the Inspector General, *Report of Violations of Civil Rights and Civil Liberties*, Feb. 2008, available at [<http://www.usdoj.gov/oig/FOIA/hotline2.htm>], pp. 3-8. DOJ also houses a separate Privacy and Civil Liberties Office (PCLO) within the Office of the Deputy Attorney General; the PCLO oversees and makes recommendations for departmental policy in this area. It has established a departmental Privacy and Civil Liberties Board, chaired by the Chief Privacy Officer and composed of

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Department of Transportation, Federal Aviation Administration, Aviation Noise Ombudsman

An Aviation Noise Ombudsman (ANO) is located in the Federal Aviation Administration (FAA), Department of Transportation. Created by the Federal Aviation Reauthorization Act of 1996,¹³⁷ the office “serves as a public liaison for issues about aircraft noise questions or complaints.”¹³⁸ The ANO usually intervenes, however, only when a complainant thinks FAA officials who had been contacted about noise problems are not responsive to an inquiry or grievance.¹³⁹

Department of the Treasury

Several different types of ombudsman-like offices are located in the Department of the Treasury. One responds to the general public, while the others respond to a select clientele in the banking industry.

Internal Revenue Service Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS), headed by the National Taxpayer Advocate (NTA), in the Internal Revenue Service (IRS) has undergone a number of permutations over its history, which dates from the late 1970s. Formerly titled the Office of Ombudsman, TAS is located within the Internal Revenue Service, but operates independently of any other office within the agency. Each state, the District of Columbia, and Puerto Rico has at least one local taxpayer advocate, who attempts to expedite lingering taxpayer issues and recommend “administrative and legislative changes” to IRS policies and operations.¹⁴⁰

The first taxpayer advocate was appointed by the IRS commissioner in 1979. In 1988, the Office of Taxpayer Ombudsman was officially mandated by Congress in P.L. 100-647. Later, the 1996 Taxpayer Bill of Rights 2 — intended “to provide

¹³⁶ (...continued)

representatives of major divisions and bureaus in DOJ. One of the Board’s duties is to “refer credible information pertaining to possible privacy or civil liberties violations by any federal employee or official to the appropriate office for prompt investigation.” U.S. Department of Justice, Privacy and Civil Liberties Office, *Initial and First Annual Report to Congress*, 2007, available at [<http://www.usdoj.gov/pclo/reporttocongress101606.pdf>], p. 11. See also U.S. Department of Justice, Office of Inspector General, “Civil Rights and Civil Liberties,” *Top Management and Performance Challenges in the Department of Justice — 2006*, and *Top Management and Performance Challenges in the Department of Justice — 2007*, both available at [<http://www.usdoj.gov/oig/challenges/>].

¹³⁷ P.L. 104-264; 110 Stat. 3282.

¹³⁸ U.S. Federal Aviation Administration, “Aircraft Noise Issues,” available at [http://www.faa.gov/about/office_org/headquarters_offices/aep/aircraft_noise/].

¹³⁹ *Ibid.*

¹⁴⁰ U.S. Internal Revenue Service, “Taxpayer Advocate Service: Troublesome Tax Issues?” p. 1, available at [<http://www.irs.gov/pub/irs-pdf/p1546.pdf>].

increased taxpayer protections”¹⁴¹ — changed the title and altered the responsibilities of the office by creating the Taxpayer Advocate.

Two years later, the IRS Restructuring and Reform Act of 1998, which also created an IRS Oversight Board, changed the name of the office and its head again: the Office of the Taxpayer Advocate under the supervision and direction of the National Taxpayer Advocate.¹⁴² The 1998 act also strengthened the office’s oversight functions. The NTA is now required to submit an annual report to the House Committee on Ways and Means and the Senate Committee on Finance by June 30 of each year. The report must include Advocate initiatives to improve IRS services, as well as potential recommendations to the existing system. No employee of the IRS, including the commissioner, is permitted to review or comment on the report before it is submitted to Congress.

In addition, the 1998 amendments reinforced the expanded duties of the Office of the Taxpayer Advocate, requiring it to

- assist taxpayers in resolving problems with the Internal Revenue Service;
- identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
- propose changes, to the extent possible, in the administrative practices of the Internal Revenue Service to mitigate problems; and
- identify potential legislative changes that may be appropriate to mitigate such problems.¹⁴³

In 2000, the office became known as the Taxpayer Advocate Service (TAS), which handles both systemic IRS issues and individual taxpayer complaints. The Advocate currently reports directly to the IRS commissioner and has no term limit. The National Taxpayer Advocate is appointed by the Secretary of the Treasury, after consultation with both the Commissioner of the IRS and the IRS Oversight Board.

Though the TAS has the word “advocate” in its title, the position has a two-fold goal: it advocates for fair and efficient operation of the IRS, as well as directly for individual taxpayers themselves. Any person or business suffering “economic harm” or “experiencing delays” in the resolution of a tax problem has free access to a taxpayer advocate.¹⁴⁴ A taxpayer may seek an advocate by contacting the TAS via

¹⁴¹ P.L. 104-168, 110 Stat. 1452. For congressional initiatives, see U.S. Congress, House Committee on Ways and Means, *Taxpayer Bill of Rights 2*, H.Rept. 104-506, 104th Cong., 2nd sess. (Washington: GPO, 1996).

¹⁴² P.L. 105-206; 112 Stat. 699.

¹⁴³ P.L. 105-206; 112 Stat. 698-699.

¹⁴⁴ U.S. Internal Revenue Service, “Taxpayer Advocate Service: Troublesome Tax Issues?”, p. 1, available at [<http://www.irs.gov/pub/irs-pdf/p1546.pdf>]. A “delay” occurs if any issue that takes more than 30 days to resolve or if the taxpayer has not received a response by the date promised. Taxpayer advocates are also to be brought in when “IRS actions prevent [the affected person] from providing for necessities such as housing, transportation or food.”

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a toll-free number and asking an IRS employee to complete and submit a required form (form 911). The taxpayer may also request and fill it out himself or herself. The completed form is sent to the appropriate taxpayer advocate, who — once assigned — is required to remain an advocate for the private party until any IRS dispute is resolved. The advocate, whose service is confidential, is independent of all other IRS offices.

Office of the Comptroller of the Currency Ombudsman. The Ombudsman in the Office of the Comptroller of the Currency (OCC) — which operates under the Community Development and Regulatory Improvement Act of 1994 — is one of five in “appropriate federal banking agencies” established by the act and one of two in the Department of the Treasury.¹⁴⁵ The ombudsman is to

- act as a liaison between the agency and any affected person with respect to any problem in dealing with the agency resulting from its regulatory activities; and
- assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.¹⁴⁶

In so doing, the OCC Ombudsman is to report weaknesses in OCC policy and may stay any appealable agency decision.¹⁴⁷

Office of Thrift Supervision Ombudsman. The Office of Thrift Supervision (OTS) is one of the five federal entities required by the Community Development and Regulatory Improvement Act of 1994 to have an Ombudsman.¹⁴⁸ All five Ombudsmen are to follow the same statutory directives, that is, to serve as liaisons between the agency and any affected parties with respect to problems in dealing with agency regulatory activities and to encourage complainants to come forward. The jurisdictions and clientele differ among these Ombudsmen. The OTS ombudsman is to respond to questions, concerns, and complaints from federally chartered thrift institutions. He or she is to “assist the thrift community in resolving such matters relating to regulatory oversight that may hinder their institution.”¹⁴⁹

¹⁴⁴ (...continued)

Ibid., p. 2.

¹⁴⁵ P.L. 103-325; 108 Stat. 2160; codified at 12 U.S.C. § 4806. The act calls for Ombudsmen in the National Credit Union Administration Board and each “appropriate Federal banking agency,” meaning the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System.

¹⁴⁶ Ibid.

¹⁴⁷ U.S. Department of the Treasury, Comptroller of the Currency Administrator of National Banks, “National Banks Appeal Process,” available at [<http://www.occ.treas.gov/NationalBankAppeals.htm>].

¹⁴⁸ P.L. 103-325; 108 Stat. 2160.

¹⁴⁹ U.S. Department of the Treasury, Office of Thrift Supervision, *Frequently Asked Industry Questions about the Ombudsman*, available at [<http://www.ots.treas.gov/>]

Although hired and paid by OTS, the Ombudsman is to be “an advocate for equity ... and is required to perform his duties in an objective and neutral manner.”¹⁵⁰

Department of Veterans Affairs

The Department of Veterans Affairs (DVA) houses several ombudsman-like offices,¹⁵¹ including the following.

Board of Veterans’ Appeals Ombudsman. For military service members who claim that they have been unfairly denied medical treatment for an injury received or condition caused during duty, the Board of Veterans’ Appeals (BVA) is to determine whether they are eligible to receive benefits. The BVA Ombudsman is to assist in this matter in two basic ways:

- remedy unsatisfactory experiences with the department; and
- make certain that communication with the BVA is clear and timely.¹⁵²

The BVA website also offers links to a variety of VA offices, including the Debt Management Center and the National Personnel Records Center. Like similar ombudsman positions, the BVA Ombudsman does not have the ability to require other VA centers or offices to take specific action. The Ombudsman, however, receives complaints from eligible parties and attempts to ensure that the BVA is operating effectively.

Federal Recovery Coordinators and Transition Patient Advocates. For injured combat veterans, there are two newly created statutory positions to handle

¹⁴⁹ (...continued)
pagehtml.cfm?catnumber=84].

¹⁵⁰ Ibid.

¹⁵¹ A bill in the 110th Congress — H.R. 2192, with an amended version approved by the House Veterans Affairs Subcommittee on Health on June 5, 2008 — would establish an Office of Ombudsman in the Department. The Ombudsman, designated by the Secretary and reporting directly to the head, would act as a liaison for veterans and their families with respect to health care and benefits. The new officer, assisted by an Ombudsman Director in each Administration of the Department, would provide: information about relevant services; problem resolution services; patient advocacy; and assistance in understanding and receiving available benefits, including submitting claims or applications for benefits and fielding complaints. U.S. House Committee on Veterans’ Affairs, Subcommittee on Health, *Establishing an Ombudsman in the Department of Veterans Affairs*, hearings, 110th Cong., 2nd sess., June 14, 2007. One press account noted, however, that the DVA does not support the bill, with the department arguing that the new office would create an unnecessary level of bureaucracy, in light of patient advocates and state-level counselors. Andy Leonatti, “House bill creates VA ombudsman’s office,” *CongressDaily*, June 9, 2008, available at [http://www.govexec.com/story_page.cfm?articleid=40193&dcn=e_gvet].

¹⁵² U.S. Department of Veterans Affairs, “Board of Veterans’ Appeals Ombudsman (Customer Service): Complements, Questions, Concerns, Etc.,” available at [<http://www.va.gov/vbs/bva/contactbva.htm>].

aspects of their recovery.¹⁵³ Though neither the Transition Patient Advocate (TPA) nor the Federal Recovery Coordinator operates in the classic ombudsman capacity, they both serve to help returning soldiers navigate the veterans' medical system.

One hundred TPAs currently operate within VA hospitals across the country. The TPA program, which began in May 2007, consists almost entirely of former soldiers who offer assistance and advice as peers to soldiers who return from service with a severe injury.¹⁵⁴ The TPAs are part of a three-person team assigned to each returning Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF) soldier with a severe injury. The other two members of the team are a program manager and a case manager — usually a nurse or social worker. The TPA's job is to “ensure a smooth transition of wounded service members through VA's health care system.”¹⁵⁵ In so doing, the TPA can aid in meeting the everyday needs — including scheduling medical appointments — of a returning soldier who is enrolled at any of the 1,308 VA facilities.

In addition to the 100 TPAs working at the Veterans Affairs medical treatment centers, the VA joined forces with the Department of Defense (DOD) to add 10 “Federal Recovery Coordinator” positions.¹⁵⁶ The two departments created the coordinator positions after the Report of the President's Commission on Care for America's Returning Wounded Warriors, commonly known as the Dole-Shalala Commission, recommended their creation.¹⁵⁷ The recovery care coordinators, who are separate from a three-person case management team, are to

- coordinate services between VA and DOD and, if necessary, private sector facilities;
- serve as the ultimate resource for families with questions or concerns about VA, DOD, or other federal benefits; and
- ensure the appropriate oversight and coordination for care of active duty service members and veterans with major amputations, severe

¹⁵³ P.L. 110-181, Secs. 1611 and 1614.

¹⁵⁴ Information provided by telephone by the Department of Veteran Affairs, Jan. 8, 2008.

¹⁵⁵ *Ibid.*

¹⁵⁶ The positions were created after published news and other accounts reported unsatisfactory conditions at Walter Reed Army Medical Center. See, among others, Michael Abramovitz and Steve Vogel, “Army Secretary Ousted; Second Firing Follows Walter Reed Revelations; Bush Vows a Probe,” *Washington Post*, Mar. 3, 2007, p. A1; Anne Hull and Dana Priest, “Hospital Officials Knew of Neglect; Complaints About Walter Reed Were Voiced for Years,” *Washington Post*, Mar. 1, 2007, p. A1; Dana Priest and Anne Hull, “Swift Action Promised at Walter Reed; Investigations Urged as Army Moves to Make Repairs, Improve Staffing,” *Washington Post*, Feb. 21, 2007, p. A8; and Steve Vogel, “Review At Walter Reed Is Ordered; Defense Secretary Vows Accountability,” *Washington Post*, Feb. 24, 2007, p. A1.

¹⁵⁷ Bob Dole and Donna Shalala, “Serve, Support, Simplify: Report of the President's Commission on Care for America's Returning Wounded Warriors,” July 2007, available at [http://www.pccww.gov/docs/Kit/Main_Book_CC%5BJULY26%5D.pdf].

traumatic brain injury, spinal cord injury, severe sight or hearing impairments, and severe multiple injuries.¹⁵⁸

The Federal Recovery Coordinator focuses on the long-term recovery of each returning wounded soldier,¹⁵⁹ whereas the TPA focuses on day-to-day needs. Also, in contrast to the TPAs, the recovery coordinators may offer their services to all returning injured soldiers, regardless of whether they are receiving treatment at VA facilities.

Environmental Protection Agency

The Environmental Protection Agency (EPA) has several prominent complaint-handling offices.

Office of Inspector General Public Liaison. The Public Liaison (formerly the ombudsman) currently operates within the Office of Inspector General (OIG) of the Environmental Protection Agency (EPA).¹⁶⁰ Congress created an ombudsman function within the Office of Solid Waste and Emergency Response with an amendment to the Resource Conservation and Recovery Act in 1984.¹⁶¹ The position initially dealt only with hazardous waste matters. Later, EPA extended the position past its 1988 legislative authorization and expanded its jurisdiction to include Superfund sites.¹⁶² After a July 2001 GAO report critical of the ombudsman

¹⁵⁸ U.S. Department of Veterans Affairs, Office of Public Affairs Media Relations, “VA, DOD Announce ‘Recovery Coordinators,’” press release, Oct. 31, 2007, available at [<http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1407>].

¹⁵⁹ Reflecting the long-term orientation of the coordinators, the Departments of Defense and Veterans Affairs set up a Joint VA/Defense Federal Recovery Coordinator Program for wounded military personnel. It plans to provide a “life map for recovery” for those eligible, designed to integrate their health records and identify and list followup services. U.S. Congress, Senate Committee on Veterans’ Affairs, *VA and DoD Cooperation and Collaboration on Caring for the Families of Wounded Warriors*, hearing, Mar. 11, 2008, 110th Cong., 2nd sess. See also Bob Brewin, “Defense, VA lay out plans to improve health care for wounded soldiers,” *Government Executive*, available at [http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0308/031108bb1.htm].

¹⁶⁰ As noted above, this OIG is one of only three with ombudsman-like responsibilities among the nearly 60 offices operating under the Inspector General Act of 1978, as amended (5 U.S.C. Appendix). The others are in the Departments of Homeland Security and Justice. For background, see CRS Report 98-379, *Statutory Offices of Inspector General*.

¹⁶¹ P.L. 98-616; 98 Stat. 3221.

¹⁶² While the national ombudsman covers all issues pertaining to hazardous waste, the regional ombudsmen focus more on Superfund issues. Superfund is the name of the federal program that addresses issues associated with abandoned hazardous waste sites around the United States. See U. S. General Accounting Office, *Hazardous Waste: EPA’s National and Regional Ombudsmen Do Not Have Sufficient Independence*, GAO Report GAO-01-813 (Washington: 2001), also available at [<http://www.gao.gov/new.items/d01813.pdf>]. An overview of the Public Liaison activities is available at [<http://www.epa.gov/oig>]. For additional information on Superfund, see U.S. Environmental Protection Agency,

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office, EPA proposed a controversial transfer of the Office of Congressional and Public Liaison to the Office of Inspector General (OIG). The GAO report found several structural weaknesses in the ombudsman office at the time:

EPA's national ombudsman is located within the Office of Solid Waste and Emergency Response (OSWER), the organizational unit whose decisions the ombudsman is responsible for investigating, and his budget and staff resources are controlled by unit managers within OSWER [T]his arrangement undermines another fundamental requirement of an effective ombudsman: impartiality.¹⁶³

EPA Administrator Christine Todd Whitman determined that moving the ombudsman into the IG office would give the ombudsman “more independence and the impartiality necessary to conduct credible inquiries,” while critics of the move — including Robert J. Martin, the EPA Ombudsman at the time — insisted that the transfer would “put the ombudsman even more firmly under the authority” of EPA administrators.¹⁶⁴ In January 2002, Martin filed a motion in federal district court to block the proposed move.¹⁶⁵ Three months later, however, a federal district judge dismissed the motion,¹⁶⁶ paving the way for the ombudsman to be moved into the OIG. Martin resigned his post, which was renamed Public Liaison, shortly after the move.¹⁶⁷ According to the EPA, the Public Liaison

- receives, reviews, and processes complaints and allegations about agency programs and activities;¹⁶⁸

¹⁶² (...continued)

“Superfund: Basic Information,” available at [<http://www.epa.gov/superfund/about.htm>].

¹⁶³ GAO also found that the position did not have adequate “independence from any person who may be the subject of a complaint or inquiry.” It added that EPA’s ombudsman failed to file an annual report and did not meet many of the relevant professional standards for the post. *Ibid.*, abstract and p. 3.

¹⁶⁴ Edward Walsh, “EPA to Transfer Ombudsman,” *Washington Post*, Nov. 29, 2001, p. A3. See also Megan Twohey, “Whitman Under Fire for Dropping Ombudsman,” *Federal Paper*, Feb. 29, 2001, pp. 1, 3.

¹⁶⁵ “EPA Ombudsman Files Suit to Prevent Pending Move,” *Federal Times*, Jan. 14, 2002, p. 2.

¹⁶⁶ U.S. Environmental Protection Agency, “Whitman Pleased with Judge’s Dismissal; Relocation Proceeds, Allowing for Greater Independence of Ombudsman,” press release, Apr. 12, 2002, available at [<http://yosemite.epa.gov/opa/admpress.nsf/6427a6b7538955c585257359003f0230/f7d547b2dd8aae2f85256b990073237a!OpenDocument>].

¹⁶⁷ “Hill Report Criticizes EPA on Watchdog Autonomy,” *Washington Post*, Nov. 15, 2002, p. A5.

¹⁶⁸ U.S. Environmental Protection Agency, Office of the Inspector General, “Public Liaison (Ombudsman) & Hotline,” available at [<http://www.epa.gov/oig/ombudsman-hotline.htm>].

- writes and publishes reports of agency needs and desired assessments;¹⁶⁹ and
- prevents and detects fraud, waste, and abuse.¹⁷⁰

In addition to the Public Liaison, 10 regional EPA ombudsmen receive complaints about regulatory polices regarding Superfund sites. The public can contact the Office of Congressional and Public Liaison, located in Washington, DC, by telephone, mail, facsimile, or e-mail.

Although the Public Liaison cannot require EPA to make changes to policies or practices, he or she can “refer” cases to agency management for “review or action,” or refer the case to an outside agency — such as the Federal Bureau of Investigation — for further review, if warranted.¹⁷¹ In most cases, the complaint comes in through the Public Liaison’s “hotline,” which includes a toll-free phone number. It may also be submitted via e-mail, traditional mail, or in-person. Complainants may remain anonymous. The Liaison then reviews the complaint and determines whether the agency has performed its duties in an acceptable manner. All other waste management complaints are to be handled by the liaison, while criminal investigations are to be referred to a different office.

Small Business Ombudsman. The EPA created the Small Business Ombudsman (SBO) function in 1982. In 1986, the SBO began also serving as the EPA’s Asbestos Ombudsman. The position is established to

- serve as a liaison between small businesses and the EPA to promote understanding of Agency policy and small business needs and concerns;
- staff a small business hotline that provides regulatory and technical assistance information;
- maintain and distribute an extensive collection of informational and technical literature developed by the various EPA program offices;
- make personal appearances as a speaker or panelist at small business–related meetings;
- meet with more than 45 key national trade associations representing several million small businesses and with state and regional ombudsmen who serve businesses on the local level;
- provide guidance on the development of national policies and regulations that impact small businesses; and
- track development and implementation of regulations affecting small business in support of the Regulatory Flexibility Act.¹⁷²

¹⁶⁹ U.S. Environmental Protection Agency, Office of the Inspector General, “Public Liaison Reports,” available at [<http://www.epa.gov/oig/reports/liaison.htm>].

¹⁷⁰ U.S. Environmental Protection Agency, Office of the Inspector General, “Public Liaison (Ombudsman) & Hotline,” available at [<http://www.epa.gov/oig/ombudsman-hotline.htm>].

¹⁷¹ Ibid.

¹⁷² U.S. Environmental Protection Agency, “About SBO,” available at [<http://www.epa.gov/>]
(continued...)

The Ombudsman's primary responsibility is to respond to telephone inquiries about regulatory requirements and pollution prevention.¹⁷³ The office also prepares a semi-annual newsletter that is sent to its constituency, which includes members of the public, small business owners, legislators, employees, and agency managers. In addition to the main ASBO office, there are 10 Regional Fairness Boards, each consisting of five members, who are small business owners in their local communities.¹⁷⁴

Federal Deposit Insurance Corporation Ombudsman

The Federal Deposit Insurance Corporation (FDIC), which insures deposits in U.S. banks, includes an Office of the Ombudsman (OO). It is one of five such offices established by the Community Development and Regulatory Improvement Act of 1994.¹⁷⁵ The OO has two primary charges under the act:

- act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
- assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.¹⁷⁶

The OO, however, does not act as an “advocate” for the complainant, although it may clarify FDIC policies and direct complaints to the appropriate division or office while maintaining the complainant's anonymity. The office cannot conduct in-depth investigations or require changes in management decisions.¹⁷⁷

¹⁷² (...continued)

sbo/aboutus.htm]. The Regulatory Flexibility Act is 5 U.S.C. 601-612.

¹⁷³ Information provided by telephone by the ASBO, Dec. 7, 2007.

¹⁷⁴ U.S. Environmental Protection Agency, Office of Policy, Economics, and Innovation, “Environmental Assistance Services for Small Businesses: A Resource Guide,” EPA-231B-01-001, Aug. 2001, p. 9, available at [<http://www.epa.gov/sbo/pdfs/ea-resourceguide.pdf>].

¹⁷⁵ P.L. 103-325; 108 Stat. 2160; codified at 12 U.S.C. § 4806. This statute required that all “appropriate Federal banking agencies” create ombudsmen, including the Federal Reserve Board of Governors, the National Credit Union Administration, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, as well as the FDIC.

¹⁷⁶ Enabling legislation, FDIC, Office of the Ombudsman, available at [<http://www.fdic.gov/regulations/resources/ombudsman/legislation.html>]. Contact at ombudsman@fdic.gov.

¹⁷⁷ U.S. Federal Deposit Insurance Corporation, “What the FDIC Ombudsman Cannot Do,” available at [<http://www.fdic.gov/regulations/resources/ombudsman/cannot.html>].

Freedom of Information Act Entities

The Freedom of Information Act (FOIA) Amendments of 2007 created two ombudsman-like posts: Public Liaisons and an Office of Government Information Services.¹⁷⁸

Public Liaisons. The 2007 amendments to the Freedom of Information Act required the creation of public liaison positions throughout much of the executive branch to ensure prompt and proper responses to the public's FOIA requests. The amendments called for the designation of "one or more FOIA Public Liaisons" in each agency, leaving the determination of the size of the staff up to department and agency heads. As instructed by the amendments, "each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency."¹⁷⁹ The Liaison is permitted, moreover, to attempt non-binding dispute resolutions as an alternative to litigation. In addition, each agency is to designate a Chief FOIA Officer who will, in turn, "designate one or more FOIA Public Liaisons."¹⁸⁰

Office of Government Information Services. The 2007 FOIA Amendments also provided for the creation of an Office of Government Information Services (GISO) within the National Archives and Records Administration.¹⁸¹ The law required the new office to

- review policies and procedures of administrative agencies under this section;
- review compliance with this section by administrative agencies; and
- recommend policy changes to Congress and the President to improve the administration of this section.¹⁸²

¹⁷⁸ P.L. 110-175; 121 Stat. 2524.

¹⁷⁹ Ibid. The law also states that the Public Liaison "shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes."

¹⁸⁰ Ibid.

¹⁸¹ Ibid. GISO's future location, however, is uncertain, in light of reported White House objections to placing the office in NARA. President Bush's FY2009 budget includes language that would repeal GISO's establishment (within NARA) and place its responsibilities in the Department of Justice. The proposed change reads: "The Department of Justice shall carry out the responsibilities of the office established in 5 U.S.C. 552(h), from amounts made available in the Department of Justice appropriation for 'General Administration Salaries and Expenses'. In addition, subsection (h) of section 552 of title 5, United States Code, is hereby repealed, and subsections (i) through (l) are redesignated as (h) through (k)." This provision is included in the President's budget submission covering the 2009 appropriations for the Department of Commerce. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2009: Appendix* (Washington: GPO, Feb. 2008), sec. 519, p. 239.

¹⁸² 121 Stat. 2524.

General Services Administration Construction Metrication Ombudsman

The General Services Administration (GSA) has established a highly specialized ombudsman with narrow jurisdiction: the Construction Metrication Ombudsman (CMO), located in the Administration's Senior Procurement Executive.¹⁸³ The CMO, as with counterparts in other agencies, stems from a statutory requirement that

the head of each executive agency that awards construction contracts within the United States and its territories shall designate a senior agency official to serve as a construction metrication ombudsman who shall be responsible for reviewing and responding to complaints from prospective bidders, subcontractors, suppliers, or their designated representatives related to — (A) guidance or regulations issued by the agency on the use of the metric system of measurement in contracts for the construction of Federal buildings; and (B) the use of the metric system of measurement for services and materials required for incorporation in individual projects to construct Federal buildings.¹⁸⁴

In so doing, the CMO is required to respond to each complaint in writing within 60 days and make a recommendation to the head of the agency for an appropriate resolution. After the agency head has made a decision, based on this recommendation, the ombudsman is to communicate it in writing to the affected parties and to the public in a timely manner, as well as to all appropriate offices within the agency. The CMO is also charged with monitoring the implementation of the decision.¹⁸⁵

National Aeronautics and Space Administration Procurement Ombudsman and Center Procurement Ombudsman

In 1996, the National Aeronautics and Space Administration (NASA) established a Procurement Ombudsman, along with related Center Procurement Ombudsmen in the Administration's eight centers. Created administratively (NPD 5101.32), the Procurement Ombudsman is to "take action to resolve concerns, disagreements, and recommendations submitted by interested parties that cannot be resolved at the Center level, or those having agency-wide implications."¹⁸⁶ Basically, the office was created "to address the procurement concerns of NASA contractors before they become problems."¹⁸⁷

¹⁸³ *GSA Acquisition Manual*, sec. 511.002-71, "Construction metrication ombudsman," available at [<http://www.acquisition.gov/gsam/current/html/Part511.html>].

¹⁸⁴ 15 U.S.C. § 205(f).

¹⁸⁵ *Ibid.*

¹⁸⁶ U.S. National Aeronautics and Space Administration, "NASA Ombudsman," *NASA Procedural Requirements*, Chapter 1, available at [<http://nodis3.gsfc.nasa.gov>].

¹⁸⁷ "Ombudsman Program Established to Address Procurement Concerns," *Spaceport News*, Feb. 2, 1996, p. 2, available at [<http://www-pao.ksc.nasa.gov/kscpao/snews/1996/feb/feb02-5.htm>].

To accomplish this, the NASA Ombudsman is to respond to relevant inquiries and concerns, work with appropriate NASA officials to resolve concerns, and refer specific matters to appropriate Center Procurement Ombudsmen. Additional responsibilities for the Agency and Center Procurement Ombudsmen include collecting and distributing relevant facts and information, reviewing and resolving complaints relative to certain types of contracts, and maintaining a log to track individual cases from receipt to disposition.¹⁸⁸

National Credit Union Administration Ombudsman

The National Credit Union Administration (NCUA) houses an Ombudsman, who “investigates complaints and recommends solutions” related to “regulatory issues that cannot be resolved at the operational (regional) level.”¹⁸⁹ The Ombudsman is to help the complainants resolve disputes by defining options and recommending actions to the parties involved. The Ombudsman, however, cannot decide on matters in dispute or advocate the position of the complainant, NCUA, or other parties.¹⁹⁰

The position is one of five created by the Community Development and Regulatory Improvement Act of 1994, which also covers the Federal Deposit Insurance Corporation, Federal Reserve Board of Governors, Office of Thrift Supervision, and Office of the Comptroller of the Currency.¹⁹¹ The enactment directs them to act as liaisons between the agency and any affected persons with respect to problems associated with regulatory activities and to encourage complainants to come forward.¹⁹²

Office of the Director of National Intelligence Civil Liberties Protection Officer

The Intelligence Reform and Terrorism Prevention Act of 2004 provided for a number of ombudsman-like offices connected with the protection of civil rights, civil liberties, and individual privacy. In addition to those in the Department of Homeland Security is the Civil Liberties Protection Officer (CLPO) in the Office of the Director of National Intelligence (ODNI); the CLPO is appointed by and reports directly to the Director.¹⁹³ The Civil Liberties Protection Officer’s duties, among others, are to ensure that

¹⁸⁸ U.S. National Aeronautics and Space Administration, “NASA Ombudsman,” *NASA Procedural Requirements*, Chapter 1.

¹⁸⁹ U.S. National Credit Union Administration, “NCUA’s Ombudsman,” available at [<http://www.ncua.gov/Ombudsman/Index.htm>].

¹⁹⁰ *Ibid.*

¹⁹¹ P.L. 103-325; 108 Stat. 2160; codified at 12 U.S.C. § 4806.

¹⁹² *Ibid.*

¹⁹³ P.L. 108-458; 118 Stat. 3658-3659.

- the protection of civil liberties and privacy is appropriately incorporated in the relevant ODNI policies and procedures;
- the use of technologies sustains, and does not erode, privacy; and
- complaints and other information indicating possible abuses of civil liberties and privacy in the administration of programs and operations of the ODNI are reviewed and assessed and, as appropriate, investigated.¹⁹⁴

Small Business Administration

Two separate offices in the Small Business Administration (SBA) — Ombudsman and Advocacy — provide various types of complaint-handling services, information, outreach, and other forms of assistance to clients in the small business community. In light of their possible overlap, the two offices issued a Memorandum of Understanding (MOU) to foster increased cooperation between them, recognizing that “both work to provide a more small business friendly regulatory environment.”¹⁹⁵ The MOU spells out their separate roles and responsibilities.

SBA Ombudsman. Congress created the SBA’s Small Business and Agriculture Regulatory Enforcement Ombudsman, now known as the National Office of the Ombudsman, in the Small Business Regulatory Fairness Enforcement Act of 1996.¹⁹⁶ Under the act, the Office is designed to

- establish a means to receive comments from small businesses regarding federal agency compliance and enforcement activities;
- conduct hearings in each of the 10 federal regions to solicit comments on small business concerns to ensure that these businesses have an avenue through which they can comment on agency enforcement activities; and
- issue annual reports to the SBA Administrator and Congress evaluating the enforcement activities of agency personnel, including a rating of the agency’s responsiveness to small businesses.¹⁹⁷

In receiving comments, the Ombudsman serves as a liaison between small businesses and federal agencies. These comments are to be forwarded to federal agencies for a high-level review; and the agencies are requested to consider the fairness of their enforcement actions, after which the Ombudsman is to send a copy

¹⁹⁴ Ibid., p. 3659. See also U.S. Office of the Director of National Intelligence, “Civil Liberties Protection Office,” available at [<http://odni.gov/CivilLiberties.htm>].

¹⁹⁵ Office of Advocacy and Office of Ombudsman, Small Business Administration, *Memorandum of Understanding*, Nov. 17, 2006, p. 1, available at [http://www.sba.gov/advo/laws/law_mouombu02.pdf].

¹⁹⁶ P.L. 104-121; 110 Stat. 857; codified at 15 U.S.C. § 657.

¹⁹⁷ Ibid.; and SBA Office of the National Ombudsman, *National Ombudsman’s 2006 Report to Congress*, available at [http://www.sba.gov/idc/groups/public/documents/sba_program_office/ombud_ono2006.pdf]. Contact at ombudsman@sba.gov.

of the agencies' responses to the small businesses.¹⁹⁸ In some cases, fines have been lowered or eliminated and decisions changed in favor of small businesses. Nonetheless, the Ombudsman cannot change, stop, or delay a federal agency enforcement action.

SBA Office of Advocacy. SBA also houses a distinct Office of Advocacy, headed by a chief counsel.¹⁹⁹ The office, established in 1976, is broadly designed to examine the role of small businesses in the American economy, including the impact and effectiveness of regulations on them, and make recommendations with regard to such determinations.²⁰⁰ In so doing, the Office is to provide relevant data and information to the small business community and the federal government. The Advocacy Office may also file amicus curiae briefs on regulatory matters before federal appellate courts. The regional advocates are to help to ensure communication between the small business community and the chief counsel, and provide a link between the counsel, local businesses, and state and local governments. Part of this process may involve receiving complaints and concerns from small businesses, but the Advocate is not obligated to respond to individual pleas as is the Ombudsman.²⁰¹

U.S. Agency for International Development Acquisition and Assistance Ombudsman

The U.S. Agency for International Development (USAID) established an Acquisition and Assistance (AA) Ombudsman in 1999, in part prompted by the

¹⁹⁸ SBA Office of the National Ombudsman, "About the Office," available at [<http://www.sba.gov/aboutsba/sbaprograms/ombudsman/aboutus>].

¹⁹⁹ 15 U.S.C. § 634a.; P.L. 96-354; 94 Stat. 1164, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 110 Stat. 847. A primary charge of the agency is to ensure that the SBA is in compliance with the Regulatory Flexibility Act of 1980, which requires semi-annual publication of federal regulation changes that will affect small businesses. In 1999, a General Accounting Office report questioned the independence of the Office of Advocacy from the SBA's managers. U.S. General Accounting Office, *Small Business Administration: Review of Selected Personnel Practices*, GAO/GGD-99-68 (Washington: GAO, 1999). In 2001 and 2003, bills that would have created a stronger "firewall" between the SBA and the Office of Advocacy's Chief Counsel, who heads the office, were considered by congressional committees; but these initiatives were not enacted. U.S. Congress, Senate Committee on Small Business, *Independent Office of Advocacy*, S.Rept. 107-5, 107th Cong., 1st sess. (Washington: GPO, 2001); and House Committee on Commerce, *Small Business and Advocacy Improvement Act of 2003*, 108th Cong., 1st sess., H.Rept. 108-162 (Washington: GPO, 2003). The office may also file amicus curiae briefs in court. For background, see Lubbers, Report to the Taxpayer Advocate, *Independent Advocacy Agencies Within Agencies*.

²⁰⁰ An example is the Advocacy Office's urging federal acquisition councils to consider exempting small firms from a regulation that would compel contractors to verify workers' employment eligibility by using a Homeland Security database, specifically, DHS's E-Verify system. Elizabeth Newell, "Advocacy office says small firms deserve break on E-Verify," *Government Executive*, Aug. 14, 2008, available at [http://www.govexec.com/story_page.cfm?articleid=40715&dcn=e_gvet].

²⁰¹ SBA Office of Advocacy, *About Advocacy*, and *The Office of Advocacy*, both available at [<http://www.sba.gov/advo/about.html>]. Contact advocacy@sbs.gov.

earlier Federal Acquisition Streamlining Act.²⁰² The role of the Ombudsman is to ensure “equitable treatment of all parties participating in USAID’s grants and contracts (for acquisitions and assistance) throughout the process.”²⁰³ The AA Ombudsman is tasked with managing complaints about specific AA proceedings and with facilitating the resolution of differences through an informal, impartial administrative review of the agency action in question. Operating as a neutral intermediary, the Ombudsman is to maintain the anonymity and confidentiality of complainants.²⁰⁴

U.S. Consumer Product Safety Commission Small Business Ombudsman

In 1996, the Consumer Product Safety Commission (CPSC) established a Small Business Ombudsman (SBO) to serve as a liaison to that community to answer inquiries, provide information, and proffer advice and guidance about compliance with the statutes, regulations, and policies under the CPSC’s jurisdiction.²⁰⁵ The SBO also is to provide technical guidance to small businesses attempting to resolve problems with the Office of Compliance and the Office of Hazard Identification and Reduction.²⁰⁶ Along with these activities, the Ombudsman is to maintain a liaison with its counterpart in the Small Business Administration and “an ongoing dialogue with national trade associations that represent small businesses.”²⁰⁷

U.S. Postal Service Consumer Advocate

In 1970, Congress passed the Postal Reorganization Act (PRA),²⁰⁸ which transformed the struggling United States Post Office Department into the United States Postal Service (USPS), an independent establishment in the executive branch. One of its components is a Consumer Advocate.

The workload of USPS, the largest federal civilian employer, is heavy. It delivers more than 212 billion pieces of mail annually to more than 120 million homes and businesses in the United States and its territories and commonwealths. When customer complaints arise over its service, responses usually follow several stages, initially with the local post office. At the national level, the Postal Service established a Consumer Advocate of the Postal Service as another way to improve

²⁰² U.S. Agency for International Development, *Acquisition and Assistance Ombudsman*, available at [<http://www.usaid.gov/business/reviewprocess.html>]. Contact AandAOmbudsman@usaid.gov.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ U.S. Consumer Product Safety Commission, *Small Business Ombudsman*, *Small Business Ombudsman*, available at [<http://www.cpsc.gov/BUSINFO/ombud.html>]. Contact at sbo@cpSC.gov.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ 84 Stat. 719.

customer service. The Advocate, created in 1971 by then-Postmaster Winton M. Blount, is to respond to customer concerns in several ways. It aids customers whose insured parcels were lost or damaged during mailing. If USPS denies the indemnity claim, the Customer Advocate adjudicates an appeal. The Advocate also independently measures customer satisfaction and customer perspectives, relying on nearly 900,000 survey results annually.²⁰⁹ A patron seeking assistance from the Consumer Advocate can request it from the local mail carrier; call, write, or visit the local post office; or call the USPS national hotline.

²⁰⁹ Information provided electronically by the USPS Consumer Advocate, Jan. 31, 2008.