United States General Accounting Office

GAO

Report to the Honorable
Diana DeGette,
House of Representatives

October 2002

ENVIRONMENTAL PROTECTION

Issues Raised by the Reorganization of EPA's Ombudsman Function

GAO-03-92

October 2002

ENVIRONMENTAL PROTECTION

Issues Raised by the Reorganization of EPA's Ombudsman Function

GAO Accountability • Integrity • Reliability

Highlights

Highlights of GAO-03-92, a report to the Honorable Diana DeGette, House of Representatives

Why GAO Did This Study

Federal ombudsmen help their agencies be more responsive to the public through impartial investigation of citizens' complaints. Professional standards for ombudsmen incorporate certain core principles, such as independence. In July 2001, GAO reported that aspects of EPA's national ombudsman were not consistent with professional standards, particularly for independence. (See GAO-01-813.) Partly in response to GAO's report, EPA reorganized its ombudsman function. GAO made preliminary observations on these changes in testimony in June and July 2002. (See GAO-02-859T and GAO-02-947T). This report provides information on (1) the status of the reorganization and (2) issues identified in our report or testimonies that have not yet been addressed.

What GAO Recommends

GAO recommends that EPA reconsider placement of the national ombudsman in the OIG. EPA and the OIG disagreed with GAO's conclusion that the ombudsman function still is not consistent with the position's typical definition, which includes informally resolving disagreements. GAO continues to believe that the ombudsman and OIG functions are fundamentally different and should not be housed together.

www.gao.gov/cgi-bin/getrpt?GAO-03-92.

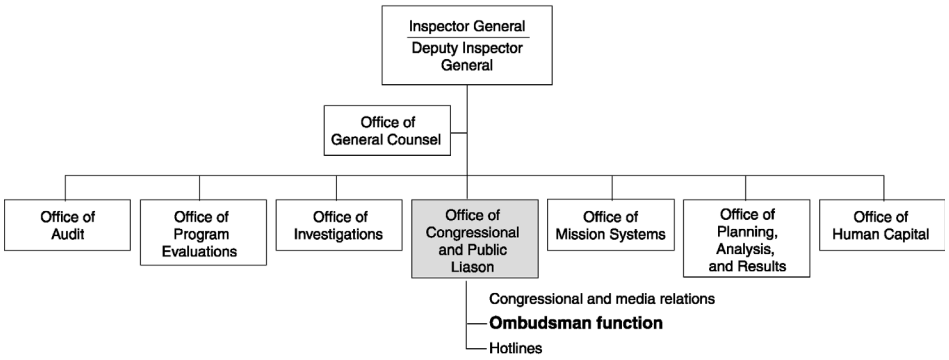
To view the full report, including the scope and methodology, click on the link above. For more information, contact John Stephenson (202) 512-3841.

What GAO Found

EPA moved the national ombudsman from the Office of Solid Waste and Emergency Response, whose decisions the ombudsman was responsible for investigating, to the Office of Inspector General (OIG). In the OIG, the ombudsman reports to a newly created Assistant Inspector General for Congressional and Public Liaison, unlike in other federal agencies where the ombudsmen report to the highest levels of the agency. Moreover, the Assistant Inspector General and not the ombudsman controls the ombudsman's budget and staff. In addition, the ombudsman no longer has authority to decide which complaints warrant further review, as was the case prior to the reorganization. The OIG's draft operating procedures indicate that many of the office's existing procedures for tracking, documenting, and reporting the results of investigations will apply to the ombudsman.

While EPA's reorganization addresses some of the concerns raised in GAO's July 2001 report and subsequent testimonies, other issues remain. For example, the ombudsman's independence is constrained because he does not control his own budget, staff, or workload. Relocating the ombudsman to the OIG also raises some issues regarding (1) the extent to which the function will serve as a "true" ombudsman in interactions with the public and (2) the potential impact of the reorganization on the OIG's role. Although the role of an ombudsman typically includes program operating responsibilities, such as helping to informally resolve disagreements between the agency and the public, such responsibilities have been omitted from the ombudsman's role within the OIG for legal reasons. In addition, with the ombudsman function a part of the OIG, the Inspector General can no longer independently audit and investigate that function, as the OIG can at other federal agencies where the ombudsman and the OIG are separate.

EPA OIG Organizational Chart



Source: GAO presentation of information provided by EPA's Office of Inspector General.

Contents

Letter 1

Results in Brief 3
Background 5
The Status of EPA's Reorganization of Its Ombudsman Function 6
Issues Raised by EPA's Reorganization of the Ombudsman Function 10
Conclusions 13
Recommendations for Executive Action 14
Agency Comments 14
Scope and Methodology 16

Appendix I **Comments from the Environmental Protection Agency** 18

Appendix II **Comments from the Environmental Protection Agency** 20

Abbreviations

ABA American Bar Association
EPA Environmental Protection Agency
GAO General Accounting Office
OIG Office of Inspector General

G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

October 31, 2002

The Honorable Diana DeGette
House of Representatives

Dear Ms. DeGette:

The Congress is currently considering legislation to reauthorize the Environmental Protection Agency's (EPA's) hazardous waste ombudsman and strengthen the ombudsman's authority. EPA's ombudsman was first established in 1984 to assist the public and the regulated community by providing information, responding to concerns, and investigating the merits of complaints relating to the implementation of waste management programs under the Resource Conservation and Recovery Act.[1] Over time, EPA expanded the ombudsman's jurisdiction to include Superfund[2] and other hazardous waste programs managed by the Office of Solid Waste and Emergency Response. Although legislative authorization for the ombudsman function expired in 1988, EPA recognizes that the ombudsman provides a valuable service to the public and has retained the function as a matter of policy. In addition to having a national hazardous waste ombudsman, as of 1996, EPA had installed ombudsmen in each of its 10 regional offices, where the function is generally seen as a collateral duty.

Through the impartial and independent investigation of citizens' complaints, federal ombudsmen help agencies be more responsive to the public and, in particular, people who believe that their concerns have not been dealt with fully or fairly through normal channels. As the ombudsman function is typically defined within the ombudsman community, ombudsmen recommend ways to resolve individual complaints or more systemic problems and help to informally resolve disagreements between agencies and the public. In 1990, the Administrative Conference of the United States recommended that the

[1]The Congress established the ombudsman function in 1984 amendments to the Resource Conservation and Recovery Act, which governs the management of solid and hazardous waste.

[2]The Superfund program was established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clean up highly contaminated hazardous waste sites.

President and the Congress support initiatives to create and fund "external" ombudsmen[3]—ombudsmen who handle concerns and inquiries from the public—in federal agencies with significant public interaction.[4] In addition to EPA, a number of other federal agencies have established an ombudsman function, including the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services, the Federal Deposit Insurance Corporation, the Food and Drug Administration, and the Internal Revenue Service.

In a July 2001 report,[5] we compared the hazardous waste ombudsman function at EPA with relevant professional standards for ombudsmen, including those developed by the American Bar Association, and found that it was not consistent with the standards in several areas, particularly with regard to independence. For example, we found that EPA's national ombudsman was located within the Office of Solid Waste and Emergency Response, the organizational unit whose decisions the ombudsman was responsible for investigating, and that his budget and staff resources were controlled by unit managers. We also raised concerns about the extent to which other aspects of the ombudsman's operations, such as procedures for documenting and reporting on the results of investigations, were consistent with standards for impartiality and accountability. Finally, we found that the part-time status and other duties assigned to EPA's regional ombudsmen compromised their independence. We made a number of recommendations to strengthen the independence, impartiality, and accountability of the national ombudsman and to address impairments to the independence of the regional ombudsmen.

Partly in response to our recommendations, EPA, in November 2001, reorganized its ombudsman function and relocated the national ombudsman to the Office of Inspector General (OIG). As you know, we

[3]In contrast, internal or "workplace" ombudsmen provide an alternative to more formal processes to deal with conflicts and other issues that arise in the workplace. See U.S. General Accounting Office, *Human Capital: The Role of Ombudsmen in Dispute Resolution*, GAO-01-466 (Washington, D.C.: Apr. 13, 2001) for information on the role of ombudsmen in resolving workplace issues.

[4]The Administrative Conference of the United States was an independent advisory agency in the executive branch that issued recommendations and statements on the improvement of the federal administrative process. The agency was terminated in fiscal year 1996.

[5]U.S. General Accounting Office, *Hazardous Waste: EPA's National and Regional Ombudsmen Do Not Have Sufficient Independence*, GAO-01-813 (*Washington*, D.C.: July 27, 2001).

provided some preliminary observations on EPA's reorganization in testimony before the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce, Subcommittee on Environment and Hazardous Materials and Subcommittee on Health, in June 2002 and July 2002, respectively.[6] While EPA is still finalizing the detailed operating policies and procedures to implement its reorganization, the agency has made some decisions about the overall operating framework for the ombudsman function. This report provides information on (1) the current status of EPA's reorganization of its ombudsman function and (2) issues identified in our prior report and testimonies that have not yet been addressed.

Results in Brief

EPA has moved its national ombudsman from the Office of Solid Waste and Emergency Response to the OIG under a newly created Assistant Inspector General for Congressional and Public Liaison. As the reorganization takes effect, detailed policies and operating procedures for the ombudsman function have been drafted, but have not yet been finalized. However, control over the budget and staff resources for the ombudsman function is exercised by the Assistant Inspector General for Congressional and Public Liaison and not the ombudsman. Similarly, the ombudsman no longer has the authority to decide which complaints warrant further investigation, as was the case prior to the reorganization. Overall responsibility for the work performed by the OIG rests with the Inspector General, and no single staff member—including the national ombudsman—has the authority to select and prioritize his or her own caseload independent of all other needs. Regarding recordkeeping and accountability, the OIG's draft operating procedures for the ombudsman indicate that the office's existing procedures for tracking, documenting, and reporting on individual investigations and overall caseload will be used by the ombudsman. EPA did not include the 10 regional ombudsmen in the transfer of the function to the OIG, but retained them in the positions they held prior to the reorganization. EPA and OIG officials are still working out how the regional ombudsmen will be utilized and how they will interact with the national ombudsman. For now, the regional ombudsmen will continue to have a dual role in fulfilling some

[6]U.S. General Accounting Office, *Environmental Protection: Issues for Consideration in the Reorganization of EPA's Ombudsman Function*, GAO-02-859T and GAO-02-947T (Washington, D.C.: June 25, 2002, and July 16, 2002, respectively).

ombudsman responsibilities while also serving in line management positions, primarily within the Superfund program.

While EPA's decision to remove the national ombudsman from the Office of Solid Waste and Emergency Response is consistent with our earlier recommendations, placement of the ombudsman in the OIG does not fully address the concerns we identified in July 2001 and, as noted in our subsequent testimonies, raises issues that have not yet been addressed. EPA's reorganization does not provide the degree of structural or functional independence that is (1) typical of ombudsmen in other federal agencies or (2) consistent with the relevant professional standards for ombudsmen, as shown in the following examples:

- Ombudsmen at other federal agencies report to the highest levels of the agency, such as the Office of the Commissioner in case of the Food and Drug Administration and the Internal Revenue Service, and can decide how their funds will be spent.
- EPA's national ombudsman, as the position is currently envisioned, still will not be able to exercise independent control over the budget and staff resources needed to implement the function and can no longer independently determine which cases to pursue, as he was able to do prior to the reorganization.
- In addition, EPA's reorganization does not address concerns we raised in our 2001 report about the independence of the regional ombudsmen, whose position is generally seen as a collateral duty within EPA. In other agencies, the staff assigned to the regional ombudsman function devote 100 percent of their time to that responsibility and report directly to the national ombudsman.

Further, the ombudsman function as typically defined within the ombudsman community includes program operating responsibilities, such as informally resolving disagreements between the agency and the public, but EPA has chosen to omit these responsibilities from the national ombudsman's role. Including them would have conflicted with the Inspector General Act, as amended, which prohibits the transfer of program operating responsibilities to the Inspector General. As a result, however, the agency has established an "ombudsman" that is not fully consistent with the typical definition. In addition, placing the ombudsman in the OIG could affect the activities of the Inspector General. For example, the OIG could no longer independently audit or investigate the ombudsman, as the OIG can at other federal agencies where the ombudsman function and the OIG are separate entities.

This report includes a recommendation that EPA reconsider placement of the national ombudsman in the OIG. In commenting on a draft of this report, EPA and OIG officials disagreed with our conclusions that, under EPA's reorganization, the ombudsman function is not consistent with the position as typically defined within the ombudsman community and lacks sufficient independence. We continue to believe that ombudsman and OIG functions are fundamentally different and should not be housed together.

Background

While there are no federal requirements or standards specific to the operation of federal ombudsman offices, several professional organizations have published relevant standards of practice for ombudsmen, such as those published by the American Bar Association (ABA), The Ombudsman Association, and the U.S. Ombudsman Association. For example, the ABA's standards[7] define the core characteristics as follows:

- **Independence**—An ombudsman must be and appear to be free from interference in the legitimate performance of duties and independent from control, limitation, or penalty by an officer of the appointing entity or a person who may be the subject of a complaint or inquiry.
- **Impartiality**—An ombudsman must conduct inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest.
- **Confidentiality**—An ombudsman must not disclose and must not be required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation must be confidential and not subject to disclosure outside the ombudsman's office.

In addition to the core principles, some associations also stress the need for accountability and a credible review process. Accountability is generally defined in terms of the publication of periodic reports that summarize the ombudsman's findings and activities. Having a credible review process generally entails having the authority and the means, such

[7]American Bar Association, *Standards for the Establishment and Operation of Ombudsman Offices*, (Aug. 2001) http://www.abanet.org/adminlaw/ombuds/ostdsfinal.doc (downloaded October 21, 2002). To help develop the standards, ABA's Sections of Administrative Law and Regulatory Practice and Dispute Resolution appointed a steering committee, which included representatives from several ombudsman associations: the Coalition of Federal Ombudsmen, The Ombudsman Association, the U.S. Ombudsman Association, and the University and College Ombuds Association.

as access to agency officials and records, to conduct an effective investigation. The ABA recommends that an ombudsman issue and publish periodic reports summarizing the findings and activities of the office to ensure its accountability to the public.

Our July 2001 report made a number of recommendations to strengthen the independence, impartiality, and accountability of the national hazardous waste ombudsman and to address impairments to the independence of the regional ombudsmen. Specifically, we recommended that EPA (1) modify its organizational structure so that the ombudsman is located outside of the Office of Solid Waste and Emergency Response and (2) provide the ombudsman with a separate budget and, subject to applicable civil service requirements, the authority to hire, fire, and supervise his own staff. To ensure the adequacy of the ombudsman's resources and provide greater accountability, we recommended that EPA require the ombudsman to (1) develop written criteria for selecting and prioritizing cases for investigation; (2) maintain records on his investigations and other activities sufficient to serve as a basis for a reasonable estimate of resource needs; (3) establish a consistent policy for preparing written reports on investigations, consulting with agency officials and other affected parties to obtain their comments before findings are made public, and including written agency comments when reports are published; and (4) file an annual report summarizing his activities and make it available to the public. With regard to the regional ombudsmen, we recommended that EPA (1) assess the demand for ombudsman services nationwide to determine where these resources are needed and, (2) in those locations where regional ombudsmen are warranted, ensure that their operations are consistent with the relevant professional standards for independence.

The Status of EPA's Reorganization of Its Ombudsman Function

In general, EPA is implementing its reorganization of the ombudsman function by adapting the OIG's organizational framework to include the national ombudsman and applying the OIG's existing policies and procedures to the ombudsman's operations. EPA is still considering how the national ombudsman will interact with the ombudsmen located in the agency's 10 regional offices. While EPA's reorganization is still in its early stages, discussions with OIG officials, their recent testimony, and other documents provided the following insights on key aspects of the ombudsman function:

- **Organizational location**. Within the OIG, the national ombudsman will report to a newly created Assistant Inspector General for Congressional

and Public Liaison. In addition to the ombudsman function, the new Assistant Inspector General has responsibility for the OIG hotline and congressional and media relations. According to EPA, the national ombudsman was moved from the Office of Solid Waste and Emergency Response to the OIG to strengthen the ombudsman's independence. EPA officials believe that certain characteristics of the OIG—independence, credibility, experience, and freedom from political influence—are also important elements of an effective ombudsman function. While EPA officials acknowledge that the ombudsman is not an independent entity within the OIG, they maintain that the position is independent by virtue of the OIG's independence. EPA did not include the regional ombudsmen in the transfer of the ombudsman function to the OIG, but retained them in the positions they were in prior to the reorganization.

- **Scope of responsibilities**. Prior to the reorganization, the national ombudsman's jurisdiction was limited to the hazardous waste programs managed by EPA's Office of Solid Waste and Emergency Response. When the ombudsman was relocated to the OIG, EPA decided to expand the scope of the ombudsman's responsibilities across the spectrum of EPA-administered programs, including those related to air pollution, water pollution, safe drinking water, and others. EPA and the OIG have not explicitly clarified the programmatic jurisdiction of regional ombudsmen, but their position is referred to as "regional Superfund ombudsman" and most of them are located within units responsible for Superfund and other waste management programs.
- **Authority over budget resources**. According to OIG officials, the national ombudsman will not have a separate budget allocation. Rather, the Office of Congressional and Public Liaison will have a specific allocation within the OIG budget, consistent with budget operations for similar OIG offices. The ombudsman's resource needs will be determined in conjunction with the needs of the new Office of Congressional and Public Liaison—and the OIG as a whole—in the context of the priorities identified in the OIG's annual work planning process. EPA officials noted that in a broader sense, relocating the ombudsman to the OIG increases the function's financial independence; in effect, the ombudsman's budget is outside EPA's control because the OIG's budget appropriation is separate from EPA's.
- **Authority over staff resources**. Within the OIG, each Assistant Inspector General is responsible for assigning staff resources, including

hiring.[8] According to OIG officials, decisions on staff resources are largely based on the advice and recommendations of senior staff or project leads, such as the national ombudsman. Initially, the OIG assigned eight full-time staff to inventory and organize the case files transferred from the former ombudsman's office—more than double the staff that had been assigned to the ombudsman function when it was located within the Office of Solid Waste and Emergency Response. In part, this exercise will help determine the ombudsman's caseload and an appropriate allocation of resources. OIG officials noted that the ombudsman now has access to other OIG resources as needed, including scientists, auditors, attorneys, engineers, and investigators as well as staff with expertise in specific subject matters, such as hazardous waste and water pollution. At the time of our review, OIG officials were still finalizing operating policies and procedures for the ombudsman function in a number of areas, including the assignment of other OIG resources to ombudsman cases. However, in testimony before the Senate Committee on Environment and Public Works, the Inspector General stated that the OIG is a matrix organization in which staff and other resources are assigned to projects on a priority basis, drawing from the pool of OIG resources.[9] In addition, according to draft operating procedures for the ombudsman, staff will be temporarily assigned from OIG Resource Centers (field offices) to perform detailed field work on ombudsman assignments under the technical direction of the ombudsman or a designee.

- **Case selection and prioritization**. In general, OIG officials told us that the Inspector General has the overall responsibility for the work performed by the OIG, and no single staff member—including the national ombudsman—has the authority to select and prioritize his or her own caseload independent of all other needs. Prior to the reorganization, the ombudsman had authority to determine which cases warrant further investigation. According to the OIG's draft operating procedures for the ombudsman, all complaints, allegations, concerns, and inquiries submitted to the ombudsman will be logged into a tracking system, subject to initial screening, and, ultimately, assessed against the OIG's priorities, as established in its annual work planning process. Informational inquiries will be referred to the appropriate EPA office or to other federal or state

[8]In April 2002, the OIG appointed an acting ombudsman; OIG officials said that once an official position description has been prepared, they will issue a vacancy announcement to fill the position permanently.

[9]Testimony of Nikki L. Tinsley, Inspector General, U.S. Environmental Protection Agency, before the Senate Committee on Environment and Public Works, June 25, 2002.

agencies if the inquiries are not related to EPA programs or operations. Decisions on which matters warrant a more detailed review will be made by the Assistant Inspector General for Congressional and Public Liaison in consultation with the national ombudsman and other OIG staff. Complaints, allegations, and concerns deemed to warrant further investigation will be assessed to determine if they can be incorporated into ongoing or planned OIG assignments. Otherwise, the cases will be proposed as new work, evaluated, and prioritized for staffing according to the OIG's work planning evaluation criteria to ensure that staff are assigned to the highest priority work. The criteria include potential environmental risk; fraud, waste, or abuse risk; the potential for increasing EPA's economy, efficiency, and effectiveness; and the extent of interest by external stakeholders, among other things.

- **Recordkeeping and accountability**. In testimony before the Senate Committee on Environment and Public Works, the Inspector General agreed that public reporting on the ombudsman's caseload, activities, and accomplishments is a vital and important responsibility.[10] She also endorsed public accountability as a means of strengthening the credibility of a reviewer's findings and stated that the OIG would publish, at least annually, a report summarizing the ombudsman's work, including a status report on cases opened and recommendations or findings made to the agency. The OIG's draft operating procedures for the ombudsman indicate that they incorporate existing OIG operating policy and procedures, including those for tracking, documenting, and reporting the results of investigations. For example, the current tracking system will be used to separately track the status of ombudsman cases and provide annual or semiannual activity reports on the ombudsman's activities. With regard to reporting on individual cases, OIG officials indicated that rather than issue reports to complainants, the national ombudsman's reports will be addressed to the EPA Administrator, consistent with the reporting procedures for other OIG offices.
- **Status of the regional ombudsman**. EPA has also not yet fully defined the role of its regional ombudsmen or the nature of their relationship with the national ombudsman in the OIG. According to officials from the Office of Solid Waste and Emergency Response and the OIG and draft operating procedures for the ombudsman, the investigative aspects of the ombudsman function will be assigned to the OIG and the regional ombudsmen will respond to inquiries and have a role in informally resolving issues between the agency and the public before they escalate

[10]Testimony of Nikki L. Tinsley, June 25, 2002.

into complaints about how EPA operates. For the time being, EPA officials expect the regional ombudsmen to retain their line management positions.[11] EPA officials told us that the relationship between the national ombudsman and regional ombudsmen is a "work in progress" and that EPA and the OIG will be developing procedures for when and how interactions will occur.

Issues Raised by EPA's Reorganization of the Ombudsman Function

EPA's reorganization of the ombudsman function does not fully address the issues we raised in our July 2001 report and, as noted in our subsequent testimonies, raises some new concerns as well. First, several aspects of EPA's reorganized ombudsman function are not consistent with existing professional standards for ombudsmen. For example, among the key indicators of independence identified in the ABA standards are a budget funded at a level sufficient to carry out the ombudsman's responsibilities; the ability to spend funds independent of any approving authority; and the power to appoint, supervise, and remove staff. However, under EPA's reorganization, the national ombudsman will not be able to exercise independent control over budget and staff resources, even within the general constraints that are faced by federal agencies. While the national ombudsman will be consulted about the hiring, assignment, and supervision of staff, overall authority for staff resources and the budget allocation rests with the Assistant Inspector General for Congressional and Public Liaison, to whom the ombudsman reports.

OIG officials pointed out that the concern our July 2001 report raised about control over budget and staff resources was closely linked to the ombudsman's placement within the Office of Solid Waste and Emergency Response. The officials believe that once the national ombudsman function was relocated to the OIG, the ombudsman's inability to control resources became much less significant as an obstacle to operational independence. They maintain that although the ombudsman is not an independent entity within the OIG, the position is independent by virtue of the OIG's independence. Nonetheless, we note that the national ombudsman will also lack authority to independently select and prioritize cases that warrant investigation. If both the ombudsman's budget and workload are outside his or her control, then the ombudsman will be

[11]EPA officials told us that they are piloting a new approach in three regional offices in which the ombudsmen will be increasing their level of involvement in the ombudsman role, although the individuals will continue to have other responsibilities.

unable to ensure that the resources for implementing the function are adequate.

As we noted in our July 2001 report, the ombudsmen in the other federal agencies we looked at—including the Agency for Toxic Substances and Disease Registry, the Federal Deposit Insurance Corporation, the Food and Drug Administration, and the Internal Revenue Service—report to the highest levels of the agency.[12] In addition, although ombudsmen at other federal agencies must live within a budget and are subject to the same spending constraints as other offices within their agencies, they can set their own priorities and decide how their funds will be spent.

Depending on how EPA ultimately defines the role of its regional ombudsmen, concerns about their independence could remain. In our July 2001 report, we concluded that the other duties assigned to the regional ombudsmen—primarily line management positions within the Superfund program—hamper their independence. Among other things, we cited guidance from The Ombudsman Association, which states that an ombudsman should serve "no additional role within an organization" because holding another position would compromise the ombudsman's neutrality. Although it appears that EPA's regional ombudsmen will not participate in investigations, perceptions about their lack of independence could affect their ability to play a role in informally mediating disagreements between the agency and the public.

When we looked at how other federal agencies dealt with regional ombudsmen as part of our July 2001 report, we found that the ombudsmen in two of the other four federal agencies we examined, the Federal Deposit Insurance Corporation and the Internal Revenue Service, had staff located in regional offices. In both instances, the regional staffs devote 100 percent of their time to the ombudsman function; they are considered part of the national ombudsman's office for budget purposes and report directly to the national ombudsman.

From a broader perspective, EPA's reorganization of the ombudsman function also raises issues about consistency with the way the role is typically defined within the ombudsman community. Specifically, the role

[12]For example, the ombudsmen from the Food and Drug Administration and the Internal Revenue Service each report to the Office of the Commissioner in their respective agencies.

of an ombudsman typically includes program operating responsibilities, such as helping to informally resolve program-related issues and mediating disagreements between the agency and the public. However, EPA has chosen to omit such responsibilities from the national ombudsman's role within the OIG. Including them would have conflicted with the Inspector General Act, as amended, which prohibits an agency from transferring any function, power, or duty involving program responsibilities to its OIG.[13] According to OIG officials, the national ombudsman's role will be limited to reviewing complaints about EPA's programs and operations; the ombudsman will not be disseminating basic information about the agency's programs and operations or become an advocate for individuals or groups. OIG officials acknowledge that the reorganized ombudsman function differs from the accepted definition in some respects, but say that they do not intend to have a "traditional" ombudsman function. Under similar circumstances, having an ombudsman function that is not consistent with the way the position is typically defined has raised concerns within ombudsman community. In an April 2001 report on the role of ombudsmen in dispute resolution,[14] we noted that some federal experts in the field were concerned that among the growing number of federal "ombuds" or "ombuds offices," there are some individuals or activities that do not generally conform to the standards of practice for ombudsmen.

A related issue is that ombudsmen generally serve as a key focal point for interaction between the government, or a particular government agency, and the general public. By placing the national ombudsman function within its OIG, EPA appears to be altering the relationship between the function and the persons who make inquiries or complaints. Ombudsmen typically see their role as being responsive to the public without being an advocate. However, EPA's reorganization signals a subtle change in emphasis: OIG officials see the ombudsman function as a source of information regarding the types of issues that the OIG should be investigating. In addition, where possible, the OIG plans to incorporate complaints made to the ombudsman into ongoing or planned OIG investigations. Finally, as noted earlier, OIG officials expect that the national ombudsman's reports will be addressed to the EPA Administrator rather than to complainants, consistent with the reporting procedures for

[13]See 5 U.S.C. Appx. 3 § 9(a)(2).

[14]See U.S. General Accounting Office, *Human Capital: The Role of Ombudsmen in Dispute Resolution*, GAO-01-466 (Washington, D.C.: Apr. 13, 2001).

the OIG. However, the officials told us that their procedures for the national ombudsman function, which are still being developed, could provide for sending a copy of the final report or a summary of the investigation to the original complainant along with a separate cover letter when the report is issued to the Administrator.

Finally, EPA's reorganization of the ombudsman function raises issues about consistency with the role of the OIG. In reorganizing the ombudsman function, EPA had to consider statutory restrictions on the Inspector General's activities. However, although it appears that EPA has successfully defined the ombudsman's role in a way that avoids conflict with the Inspector General Act, the reorganization raises concerns about the effect on the OIG. With the ombudsman function a part of the OIG, the Inspector General can no longer independently audit and investigate that function, as is the case at other federal agencies where the ombudsman function and the OIG are separate entities. As we noted in a June 2001 report on certain activities of the OIG at the Department of Housing and Urban Development, under applicable government auditing standards the OIG cannot independently and impartially audit and investigate activities in which it is directly involved.[15] Also of potential concern are situations in which the national ombudsman receives an inquiry or complaint about a matter that has already been investigated by the OIG. For example, OIG reports are typically transmitted to the EPA Administrator after a review by the Inspector General. A process that requires the Inspector General to review an ombudsman-prepared report that is critical of, or could be construed as reflecting negatively on, previous OIG work could pose a conflict for the Inspector General.

Conclusions

EPA's reorganization of its ombudsman function has addressed some of the recommendations contained in our July 2001 report. For example, the agency modified its organizational structure so that the national ombudsman is located outside of the Office of Solid Waste and Emergency Response. In addition, as we recommended, EPA's ombudsman function now has written criteria for selecting and prioritizing cases for investigation and, by virtue of its relocation to the OIG, will be adopting many of that office's existing procedures for tracking, documenting, and

[15]U.S. General Accounting Office, *HUD Inspector General: Actions Needed to Strengthen Management and Oversight of Operation Safe* Home, GAO-01-794 (Washington, *D*.C.: June 29, 2001).

reporting the results of investigations and summarizing annual activities in a public report.

Notwithstanding the positive aspects of EPA's reorganization, other concerns remain. While the move to the OIG provides a measure of budgetary independence, the national ombudsman will continue to lack independent control over budget and staff resources. In addition, EPA has not yet resolved concerns about the independence of its regional ombudsmen. Moreover, in relocating the national ombudsman to the OIG, EPA has created a position that will not function as a "true" ombudsman in interactions with the public and may adversely affect the independence of the OIG.

Recommendations for Executive Action

To ensure that EPA's national ombudsman (1) is consistent with what the ombudsman community and the public have come to expect from that position and (2) does not adversely affect the independence of the agency's OIG, we recommend that the Administrator, EPA, reconsider placement of the national ombudsman in the OIG.

Agency Comments

EPA and the OIG commented on a draft of this report. Specifically, we received comments from the Assistant Administrator of the Office of Solid Waste and Emergency Response and the Inspector General. These comments are contained in appendix I and appendix II, respectively. In addition, we incorporated technical comments from the OIG as appropriate throughout the report.

EPA commented that its reorganization of the ombudsman function achieves the "spirit" of the ABA standards for ombudsmen and cited the OIG's independence, objectivity, and quality of work as reasons why the relocation of the national ombudsman to the OIG was a sound and correct decision. More specifically, EPA said that locating the ombudsman in the OIG ensures that the function operates within ABA's standards of practice for ombudsmen: independence, impartiality, and confidentiality. Similarly, the comments from the OIG raised a number of points relating to the appropriateness of housing the ombudsman in the OIG. Among other things, the OIG said that it intends to perform the ombudsman function in the same manner in which the office performs its audit, program evaluation, and investigative functions. The OIG also maintained that its independence—in terms of controlling budget and staff resources, selecting and prioritizing cases, and reporting—are characteristics that also surround the ombudsman function by virtue of the function's location

within the OIG. In response to our concerns about the reorganization's impact on the role of the OIG, the office commented that its framework of internal and external checks and balances is adequate to ensure that OIG officials can objectively monitor the quality of internal work processes, including those of the ombudsman, and address problems if necessary. These checks and balances would also ensure objectivity in the OIG's review of any ombudsman reports critical of OIG work, according to the Inspector General.

We disagree with the premise underlying the comments by EPA and the OIG—that there is little or no distinction between the functions performed by ombudsmen and the OIG. We believe that these functions are fundamentally different and, as such, should not be housed together. [16] The OIG intends to perform its ombudsman function in the same manner in which the office performs its audit, program evaluation, and investigative functions, but doing so means that EPA will have an ombudsman in name only. ABA's standards clearly define the ombudsman's role as including certain responsibilities that have been omitted from the OIG's conception of the ombudsman function. Specifically, according to ABA, ombudsmen "work for the resolution of particular issues" and, among other things, are engaged in "developing, evaluating, and discussing options available to affected individuals" and "facilitating, negotiating, and mediating." If EPA and the OIG are intent on maintaining their reorganization, we concur with ABA's position that "those who are now called ombudsmen but do not meet these Standards may provide important or valuable services. But, it would be far better if entities that established these positions were to call them a term more fitting of the function they provide and to reserve the term 'ombudsman' for those who do in fact meet certain basic authorities and essential characteristics."

EPA also commented that based on its preliminary research, some of the ombudsmen in other federal agencies we contacted may not have as much independence as our report suggests. Specifically, EPA stated that the ombudsmen at the Food and Drug Administration and the Internal Revenue Service (1) do not have independence from agency decision-

[16]Similarly, in comments on S. 606, the Ombudsman Reauthorization Act of 2001, The Ombudsman Association cited concerns about the placement of the ombudsman function within the OIG, saying that the tenets of the inspector general and ombudsman professions are not compatible. For example, the association pointed out that inspectors general serve a compliance function while the ombudsman function is specifically designated as an alternative to formal compliance channels.

making processes and (2) do not have independent budgets because their budgets are allocated according to decisions by their respective commissioners and subject to competing demands from other priorities. We disagree. Both the Food and Drug Administration and the Internal Revenue Service, whose ombudsmen report to their respective commissioners, have adopted measures to help ensure that the ombudsmen are isolated from agency decision-making processes likely to be the subject of investigations. Consistent with the ABA standards, these ombudsmen have both "sufficient stature in the organization to be taken seriously by senior officials" and "placement in an organization at the highest possible level and at least above the heads of units likely to generate the most complaints." Regarding budgetary independence, our report acknowledges that ombudsmen at other federal agencies must live within a budget and are subject to the same spending constraints as other offices within their agencies. In contrast to EPA's national ombudsman, however, the other federal ombudsmen have a specifically allocated budget, can set their own priorities, and can decide how their funds will be spent.

Finally, EPA commented that its Community Involvement and Outreach Center provides "an avenue for active community involvement and participation in Superfund issues" and is specifically charged with responding to community concerns. However, we believe that the center serves a different purpose than an ombudsman. While the center may help alleviate community concerns, its focus is limited to Superfund issues and providing greater community access and participation, not fulfilling an ombudsman role, particularly with respect to the independent investigation and resolution of individual complaints.

Scope and Methodology

To determine how EPA is implementing its reorganization of the ombudsman function, we met with key officials from EPA's Office of Inspector General and Office of Solid Waste and Emergency Response. We also reviewed relevant testimony by EPA and OIG officials and other pertinent documents, such as the OIG's new case selection criteria for the ombudsman and EPA's response to congressional inquiries about the reorganization.

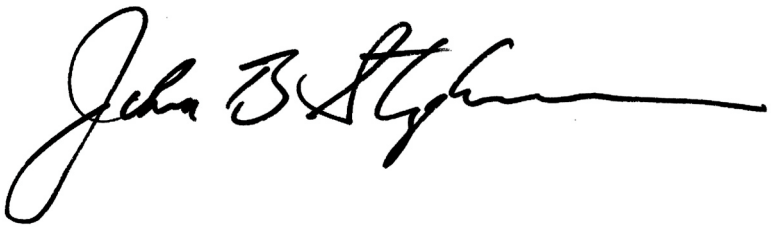
To identify issues raised by the reorganization, we followed up on preliminary observations provided in our testimony of June 2002 and July

2002.[17] As part of this effort, we used information developed for our July 2001 report, including information on relevant professional standards for ombudsmen, such as those published by ABA, The Ombudsman Association, and the U.S. Ombudsman Association. We also reviewed legislation applicable to Inspector General offices and other relevant GAO reports.

We conducted our review from June 2002 through September 2002 in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Administrator, EPA, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov. If you or your staff have questions about this report, please call me at (202) 512-3841. Key contributors to this assignment were Ellen Crocker, Les Mahagan, Richard Johnson, and Cynthia Norris.

Sincerely yours,



John B. Stephenson
Director, Natural Resources and Environment

[17]GAO-02-859T and GAO-02-947T.

Appendix I: Comments from the Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 28 2002

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. John B. Stephenson
Director
Natural Resources and Environment
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Stephenson:

I am responding to your request that the Environmental Protection Agency (EPA or Agency) review the General Accounting Office (GAO) draft report on the organizational placement of the ombudsman. EPA appreciates the opportunity to respond to the draft report.

We continue to believe that the transfer of the National Solid and Hazardous Waste Ombudsman function to the Office of Inspector General (OIG) was a correct and sound decision, and that it addresses those concerns that were raised in GAO's July 2001 report. When Administrator Whitman authorized the transfer in her November 27, 2001 memorandum, she believed then – and continues to believe now – that the OIG is the logical home for the function, with its newly expanded role to investigate complaints about all Agency environmental programs. Within the EPA organization, locating the ombudsman in the OIG ensures that the function operates with independence, impartiality, and confidentiality, which are standards of practice for ombudsmen, according to the American Bar Association (ABA). The OIG has an excellent track record of objectively evaluating interests and has extensively trained technical staff that will support the ombudsman's expanded scope of work. There is no other office within the Agency which, by statute, provides for this level of independence.

The independence of the OIG is ensured through its separate budget authority, hiring and contracting authority, and distinct reporting responsibilities to Congress that is independent from the Agency. In addition, internal and external controls monitor the OIG's quality of work, identify areas for improvements, and ensure that the ombudsman operates with the highest level of integrity and efficiency.

While the draft report provides analysis of ombudsmen in other Federal organizations, our preliminary research suggests that some of the Federal ombudsmen may not have the degree of independence the draft report suggests. For example, neither the Food and Drug Administration (FDA) nor the Internal Revenue Service (IRS) ombudsman functions have independence from

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (40% Postconsumer)

Agency decision making processes, which is suggested in the ABA standards. In contrast, the EPA ombudsman is independent from the Agency decision making processes, since the OIG is an independent organization within EPA.

Our preliminary research also finds that the ombudsmen at FDA and IRS do not have independent budgets, as inferred in the draft report. According to our colleagues at FDA and IRS, the ombudsmens' budgets are reviewed along with others in their respective Commissioner's office, and resources are allocated according to their decisions. In addition, FDA and IRS ombudsmens' budgets are subject to the resource demands of other priorities when additional funds are required to supplement programs. Therefore, we believe that the funding processes for the OIG ombudsman function at EPA compare favorably to those at FDA and IRS, both of which require management review and approval.

As the GAO draft report indicates, the ombudsman in OIG does not retain program operating responsibilities, such as resolving disagreements between the Agency and the public. However, EPA continues to maintain a Community Involvement and Outreach Center to provide an avenue for active community involvement and participation in Superfund issues. The Center is specifically charged with responding to community concerns.

Many of the issues that are identified in the draft report have been and continue to be addressed during a transition period. One issue concerns the independence of regional ombudsmen and their relationships with the national ombudsman function. The OIG is reviewing this and other issues, as stated in the Inspector General's letter to you dated October 11, 2002.

We believe that the placement of the ombudsman function in the OIG achieves the spirit of the ABA standards and that of the ombudsman community in the Federal context. We expect that the OIG will continue to provide the Agency and the American public with quality and objective evaluations

Thank you for this opportunity to review the draft report. I appreciate GAO's consideration of these comments and their incorporation in the final report. I am available to discuss them with you, and your staff may contact Steve Tiber at 202/564-5184 for additional clarifications.

Sincerely,

Marianne Lamont Horinko
Assistant Administrator

Appendix II: Comments from the Environmental Protection Agency

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 11 2002

THE INSPECTOR GENERAL

Mr. John B. Stephenson
Director, Natural Resources and Environment
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Stephenson:

Thank you for the opportunity to review your recently issued draft report, "Issues Raised by the Reorganization of EPA's Ombudsman Function." We offer the following comments.

The draft report questions whether the Office of Inspector General's (OIG's) Ombudsman function is inconsistent "with the way the position is typically defined . . . ." We believe there is no question that the OIG Ombudsman function is fully consistent with a typical Ombudsman definition. On July 2, 2002, the American Bar Association (ABA) submitted comments to the Honorable James M. Jeffords, Chairman of the Senate Committee on Environment and Public Works, regarding S. 606, the "Ombudsman Reauthorization Act of 2002." In suggesting that S. 606 "clearly set forth the role and jurisdiction of the ombudsman," the ABA[1] recommended that the bill:

> . . . state whether the EPA Ombudsman is a 'classical' or 'advocate' ombuds. ***A classical ombuds operates in the public sector addressing issues raised by the general public or internally, usually concerning the actions or policies of government entities or individuals.*** An advocate ombuds, like a classical, evaluates claims objectively but is authorized or required to advocate on behalf of individuals or groups found to be aggrieved . . . . (Emphasis added)

We have clearly stated in congressional testimony that we intend to operate in the "classical," versus the "advocate" Ombudsman role. It is no less of an Ombudsman role. Furthermore, we have stated often that we intend to perform this function in the same manner in which we perform our audit, program evaluation, and investigative functions. That is, the OIG will not become an "advocate" for the specialized interests of individuals or groups. We review

[1]The ABA's website contains information about three categories of Ombudsman. They are "Classical," "Advocate," and "Organizational."

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (40% Postconsumer)

Page 2 - Mr. John B. Stephenson

and analyze problems in the EPA programs and operations and recommend solutions. That is what Inspectors General do. We believe other Federal agency Ombudsman, such as the Federal Deposit Insurance Corporation, also operate in that manner.

The report challenges the degree of Ombudsman independence and the application of Ombudsman professional standards subsequent to the placement of the Ombudsman in the OIG. We disagree with these characterizations. As we have publicly stated in congressional testimony, we believe the IG Act provides complete independence for the OIG as an organization as well as for all of its employees. We select, prioritize and carry out all of our work assignments independent of EPA oversight. We have separate budget authority, separate hiring and contracting authority, and independent reporting responsibilities to Congress. These are some of the key characteristics that enable us to effectively review Agency programs and assure our structural independence. These characteristics surround the Ombudsman and, thus, provide the requisite "independence" from the government entity being reviewed -- the EPA. It is difficult to conceive how any further positional independence can or needs to be achieved. We do not believe that an individual must be free from basic managerial oversight to have the structural independence to carry out the work of an Ombudsman, or any other activity.

Regarding Ombudsman professional standards, the OIG has not specifically adopted such standards. We note, however, that the American Bar Association standards mirror professional standards found in GAO's Government Auditing Standards and are already fully incorporated in OIG operations. These include standards such as independence, impartiality, and confidentiality. Again, it is difficult to conceive how the application of these standards can be further enhanced.

The draft report states that OIG Ombudsman detailed policies and operating procedures are still under development. Since the time of your fieldwork, we drafted Ombudsman operating procedures to guide our work. These procedures address many of the recommendations made in your July 2001 report, "EPA's National and Regional Ombudsmen Do Not Have Sufficient Independence," such as developing case selection and prioritization criteria, maintaining case file records, establishing a case reporting policy that include an agency comment process, and preparing an annual report of activities. These operating procedures appear at Enclosure 1 for your consideration as you prepare your final report.

See comment 1.

The draft report also states EPA is still considering how the OIG Ombudsman will interact with EPA regional Ombudsmen. There have been several developments since the time of your fieldwork. First, in June 2002, we issued a memorandum jointly signed by the OIG and the Office of Solid Waste and Emergency Response (OSWER) that defines general roles and responsibilities for each office as well as coordination expectations. This memorandum appears at Enclosure 2 for your consideration. Second, our operating procedures provide further guidance on coordination and communication to include regular meetings and case referral procedures. Third, the OIG recently initiated a review to assess OSWER's Regional Ombudsman Program. A copy of our engagement letter appears at Enclosure 3.

Page 3 - Mr. John B. Stephenson

The draft report discusses whether OIG's assumption of the Ombudsman function raises concerns because "the Inspector General can no longer independently audit and investigate that function." We believe these concerns are misplaced.

OIGs have "checks and balances" (both internal and external), enabling them to monitor the quality of their work processes and, if need be, address problems or make improvements. These mechanisms apply to all of our activities, including our Ombudsman activities. First, we have Quality Assurance Reviews (QAR), Annual Self-Assessments (ASA), and Administrative Program Reviews (APR) of our program activities. A copy of the IG Policy describing these mechanisms appears as Enclosure 4. Second, each OIG employee is required to annually sign an Impairments Statement, a sample of which appears at Enclosure 5. Third, we have peer reviews conducted every 3 years by another OIG organization. Fourth, if we determined that a matter arose which we could not adequately address ourselves (e.g., due to the seriousness of an allegation of wrongdoing by an OIG employee or the senior position of an OIG employee), we would refer the matter to the President's Council on Integrity and Efficiency, to another Federal agency with jurisdiction over the matter, or to another law enforcement authority (including another OIG).

Finally, the draft report states, "[a]lso of potential concern are situations in which the national ombudsman receives an inquiry or complaint about a matter that has already been investigated by the OIG. . . . A process that requires the Inspector General to review an Ombudsman-prepared report that is critical of, or could be construed as reflecting negatively on, previous OIG work could pose a conflict for the Inspector General." If I review an Ombudsman-prepared report critical of earlier OIG work, it would be incumbent on me to correct any deficiencies. This is the case whether I receive such a report from the Ombudsman, a QAR, an ASA, an APR, the peer review process, or the results from an outside referral. If need be, I will recuse myself from any matter in which I had prior personal involvement that might impact my objectivity. Again, that is standard practice in the IG community.

If you have any questions, or need additional information, do not hesitate to contact me at (202) 566-0847.

Sincerely,

Nikki L. Tinsley

Nikki L.Tinsley

Enclosures

The following are GAO's comment on the Office of Inspector General's letter dated October 11, 2002.

GAO Comment

1. The enclosures provided by the OIG indicate that EPA and the OIG are still developing policies and procedures for the regional ombudsmen and how they will interact with the national ombudsman within the OIG. For example, the enclosure concerning the OIG's review of the regional ombudsman program states that the review, which was scheduled to begin in September 2002, includes questions on the roles and responsibilities of the regional ombudsmen and actions taken by EPA to address GAO's recommendations regarding the regional ombudsmen

GAO's Mission

The General Accounting Office, the investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to daily E-mail alert for newly released products" under the GAO Reports heading.

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are $2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone:	Voice:	(202) 512-6000
	TDD:	(202) 512-2537
	Fax:	(202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Nelligan, managing director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548

PRINTED ON RECYCLED PAPER