

GAO

Report to the Ranking Member,
Subcommittee on International
Security, Proliferation, and Federal
Services, Committee on Government
Affairs, U.S. Senate

April 2001

HUMAN CAPITAL

The Role of Ombudsmen in Dispute Resolution



GAO

Accountability * Integrity * Reliability

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ABBREVIATIONS

ABA	American Bar Association
ADR	alternative dispute resolution
ARCS	Advisory Referral and Counseling Service
EAP	employee assistance program
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
FDA	Food and Drug Administration
GAO	General Accounting Office
GS	General Schedule
HR	human resource
IBB	International Broadcasting Bureau
NIH	National Institutes of Health
OCR	Office of Civil Rights
OPM	Office of Personnel Management



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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

April 13, 2001

The Honorable Daniel K. Akaka
Ranking Member, Subcommittee on International Security,
Proliferation, and Federal Services
Committee on Government Affairs
United States Senate

Dear Senator Akaka:

During the 1990s federal agencies have had to deal with an increasing number of complaints from their employees, particularly complaints of alleged employment discrimination. However, the formal administrative processes to deal with complaints have long been criticized as adversarial, inefficient, time consuming, and costly. Such flaws in the processes can destroy relationships and be corrosive to an agency's productivity and its work environment. As a result, federal agencies have been expanding their human capital policies to include alternative dispute resolution (ADR) processes to resolve disputes in a more efficient, timely, and less adversarial manner. In doing so, some agencies have established ombudsman offices. In the workplace, an ombudsman (also referred to as an "ombuds") provides an informal alternative to existing and more formal processes, employing a variety of techniques and often "working outside the box" to deal with conflicts and other organizational climate issues.¹ An ombuds not only works to resolve disputes but is also in the position to alert management to systemic problems and thereby help correct organizationwide situations and develop strategies for preventing and managing conflict. In this regard, an ombudsman office can be an integral part of an organization's human capital management strategy to create a fair, equitable, and nondiscriminatory workplace.

Because of the role that ombudsmen can play in an agency's management of its human capital, you asked that we provide the Subcommittee with an up-to-date perspective on the role of ombudsmen in resolving workplace issues. Specifically, in your letter of July 10, 2000, and in subsequent

¹There are two kinds of ombudsmen. In addition to ombuds who deal with workplace issues, which are the subject of this report, there are other ombudsmen who handle concerns and inquiries from the public.

conversations with your office, you asked that we develop information to answer the following questions:

1. What is the number of ombudsman offices at federal agencies addressing workplace issues, and what kinds of issues do they address?
2. At selected ombudsmen offices,
 - What are the operating characteristics in terms of their structure, financial and staff resources, authority, and how they interact with other offices responsible for handling employee complaints and providing employees assistance?
 - How do ombuds offices conform to professional standards of practice, particularly with regard to the core principles of independence, neutrality, and confidentiality?
 - What is known from formal and informal evaluations about the results of the programs?
3. How are federal ombudsmen provided with guidance and what means exist for sharing “best practices” and “lessons learned” among ombudsmen offices?

Results in Brief

The number of ombudsman offices dealing with workplace issues in federal agencies is small but, according to federal ADR experts, is expected to grow. Based on our research, and in consultation with a panel of federal ADR experts, we identified 22 workplace ombuds offices in 10 agencies. We cannot be sure, however, that this is a complete list because there was no complete and verified source of federal ombuds offices. Federal ombuds offices deal with a wide range of workplace issues, from helping employees get answers to questions about agency policies and cutting through “red tape” to more serious situations, such as allegations about employment discrimination, other prohibited personnel practices, and workplace safety issues. Ombuds work to resolve disputes between individuals as well as within work groups. We were not able to identify any governmentwide data regarding the various issues ombudsmen deal with and the frequency with which these issues are raised.

In studying the ombudsman offices at the National Institutes of Health (NIH), the International Broadcasting Bureau (IBB), and the U.S. Secret Service, we found some common approaches in how they operated as well as some differences. Common among the three ombudsman offices was

their broad responsibility and authority to deal with almost any workplace issue, their ability to bring systemic issues to management's attention, and the way in which they worked with other agency offices in providing assistance to employees. But how they were structured to carry out this authority varied. Ombuds offices at NIH and IBB were independent entities of the agency director's office while the Secret Service ombudsman was a component of the agency's Office of Human Resources and Training. Of the three offices, only the NIH ombudsman office had its own budget. Each of the ombudsmen was a high-level manager—General Schedule (GS) grade 15 or senior executive—and the ombudsmen at NIH and the Secret Service had defined or limited terms. Assistant ombudsmen were full-time permanent positions at two offices (NIH and IBB) while being a part-time, collateral duty position at the Secret Service. Two of the offices (IBB and Secret Service) drew ombudsman candidates from within their ranks while NIH recruited dispute resolution practitioners from within and outside the agency.

There are no federal standards specific to the operation of ombudsman offices, but program literature and the ombudsmen at the three offices we studied described how they adhered to the standards of practice for ombudsmen established by professional organizations. These professional standards revolve around the core principles of independence, neutrality, and confidentiality. One way in which the ombudsman offices said that they maintained independence is by having a reporting relationship with the agency head. The NIH and IBB ombudsmen reported to their agency director's office. Although the Secret Service ombudsman did not directly report to the agency director, he had "unfettered" access to the director's office, according to agency officials. The three ombudsman offices also asserted their neutrality in their dealings by not taking sides in a dispute but advocating for resolution, achieving results, as one ombudsman put it, "through persuasion." The ombudsman offices were explicit about providing for confidentiality in their dealings by not keeping a log of visitors' or callers' names or formal case records and by destroying any informal notes.

Although the recommended standards of professional organizations generally state that ombudsmen should be accountable for their activities and results, the three agencies gave only limited attention to evaluating their ombuds programs. However, officials at the three agencies generally viewed the ombudsman programs as beneficial. They said that the ombuds offices, through their early intervention, were particularly helpful in resolving workplace conflicts quickly and in lightening the caseloads of other offices dealing with complaints and grievances. The ombudsmen

estimated that they resolved between 60 and 70 percent of their cases. In addition, the ombudsmen and other officials identified lessons they learned in establishing and operating an ombuds office. Chief among these is the need for top-level support. Another important lesson officials at NIH and IBB noted was the importance of collaborating with stakeholders on ombuds program design and operation. Officials at the three agencies also said they learned that, in addition to being trained and skilled, the ombudsman must be respected and have credibility with management and staff alike. Officials said it was also important to publicize the services of the ombuds office. Having a diverse ombuds staff was something that officials said was important at each of the three agencies that we studied.

Although there is no formal federal guidance on the standards of practice for the federal ombuds community, there are several forums for ombudsmen to share information informally about best practices and lessons learned. Outside the federal government, professional groups that have developed and published professional standards of practice also provide forums for information sharing and training. Within the federal community, the Coalition of Federal Ombudsmen (an informal group of federal ombuds) and the Interagency ADR Working Group (authorized under the Administrative Dispute Resolution Act to encourage and facilitate agencies' use of ADR) are venues for information sharing and training. Some federal ADR experts are concerned that among the growing number of federal ombudsman offices there are some individuals or activities described as "ombuds" or "ombuds offices" that do not generally conform to the standards of practice for ombudsmen. As a result, the Coalition is considering developing guidance that would follow the standards of practice put out by the outside professional groups. In addition, the Interagency ADR Working Group, which has the authority to issue policy guidance on dispute resolution issues that have a governmentwide impact, has begun a study of federal ombudsman that may lead to guidance on standards.

We are recommending that the Attorney General, as chairman of the Interagency ADR Working Group, see that any guidance resulting from the Working Group's study of federal ombudsmen (1) be clearly defined and transparent and, in addition to including the core principles of independence, neutrality, and confidentiality, include standards for accountability and (2) contains information about how this new guidance can be consistently applied within the federal ombuds community. In his comments on a draft of this report, the Attorney General said that he will ensure that the Working Group's study includes guidance as we are recommending.

Background

Federal employees have long had substantial workplace protections through a redress system that safeguards them from arbitrary agency actions and prohibited personnel practices, such as discrimination or retaliation for whistleblowing.² But the redress system—especially insofar as it affects workplace disputes involving claims of discrimination—has long been criticized by federal managers and employee representatives alike as adversarial, inefficient, time consuming, and costly. As a result, federal agencies have examined their human capital policies and have moved toward alternative means of resolving workplace disputes, collectively called ADR processes. These processes give employees a place to resolve their complaints and concerns, whether or not these issues are covered under a formal redress system.

Overview of the Administrative Redress System for Federal Employees

Executive branch civil servants are afforded opportunities for redress of workplace disputes at three levels: first, within their employing agencies; next, at one or more of the central adjudicatory agencies; and, finally, in the federal courts. No fewer than four independent agencies hear employee complaints and appeals not resolved at the agency level. The Merit Systems Protection Board hears employees' appeals of firings or suspensions of more than 14 days, as well as other significant personnel actions. The Equal Employment Opportunity Commission (EEOC) hears employee discrimination complaints and reviews agencies' decisions on complaints. The Office of Special Counsel investigates employee complaints of prohibited personnel actions—in particular, retaliation for whistleblowing. For employees who belong to collective bargaining units represented by unions, the Federal Labor Relations Authority investigates complaints of unfair labor practices and reviews arbitrators' decisions on grievances. The complexity of the redress process is compounded by the fact that a given case may be brought before more than one of the agencies—a circumstance that adds time-consuming steps to the redress process and may result in adjudicatory agencies reviewing each other's decisions. Moreover, the law provides for further review of these agencies' decisions in the federal courts.

In the past, the government has relied heavily upon traditional, adversarial processes to resolve disputes, according to the former Attorney General in

²The current redress system grew out of the Civil Service Reform Act of 1978 and related legal and regulatory decisions that have occurred since the act's enactment.

her January 2001 letter to the President. She said that this approach can destroy the underlying relationships between the parties, which can be far more harmful in the long run. In the workplace, she said, formal complaints often force employees working in the same office to take sides against one another. During the months or years required to process a complaint, and even long after it is over, the dispute can be extremely corrosive to the productivity of the office and the morale of its employees.

Processes for complaints of discrimination have drawn particular attention because of the increased volume of such complaints and the extended time taken to process them. In oversight hearings before the House Civil Service Subcommittee, we testified that the number of new discrimination complaints by federal employees grew by more than 50 percent—from 17,696 in fiscal year 1991 to 26,655 in fiscal year 1999, overwhelming the ability of agencies and EEOC to process them.³ At the same time, backlogs of unresolved complaints grew, as did the time taken to process them. It is significant to note that a case traveling the entire administrative complaint process—from filing at the agency through hearing and appeal at EEOC—could be expected to take an average of 1,275 days (3 years and 6 months) based on fiscal year 1999 data. In fiscal year 1995, this figure stood at 801 days (2 years and 2 months).

In past reports and testimonies, we noted, among other things, that the discrimination complaint process was burdened by a number of cases that were not legitimate discrimination complaints; some were frivolous complaints or attempts by employees to get a third party's assistance in resolving workplace disputes unrelated to discrimination.⁴ Similarly, EEOC reported in its 1996 study that a "sizable" number of complaints might not involve discrimination issues at all but instead reflect basic communications problems in the workplace.⁵ EEOC said that such issues

³*Equal Employment Opportunity: Discrimination Complaint Caseloads and Underlying Causes Require EEOC's Sustained Attention* (GAO/T-GGD-00-104, Mar. 29, 2000).

⁴*Equal Employment Opportunity: Complaint Caseloads Rising, With Effects of New Regulations on Future Trends Unclear* (GAO/GGD-99-128, Aug. 16, 1999); *Federal Employee Redress: An Opportunity for Reform* (GAO/T-GGD-96-42, Nov. 29, 1995); *Federal Employee Redress: A System in Need of Reform* (GAO/T-GGD-96-110, Apr. 23, 1996); and *Civil Service Reform: Redress System Implications of the Omnibus Civil Service Reform Act of 1996* (GAO/T-GGD-96-160, July 16, 1996).

⁵Only a small proportion of agency and EEOC decisions contains findings of discrimination. In fiscal year 1999, for example, discrimination was found in 1.4 percent of the cases agencies decided on the merits without a hearing, and 9 percent of EEOC administrative judges' hearings decisions contained findings of discrimination.

may be brought into the EEO process because of a perception that there is no other forum to air general workplace concerns. EEOC said “there is little question that these types of issues would be especially conducive to resolution through an interest-based approach.”

Movement Toward ADR

Federal agencies have been spurred towards greater use of ADR to deal with workplace disputes by legislation, policies of the adjudicatory agencies, and by the desire to avoid the time, cost, and frustration of the more formal dispute resolution processes.⁶ ADR is a term that covers a variety of techniques designed to resolve conflicts consensually, usually with the assistance of a neutral third party. ADR techniques generally focus on determining the disputants’ underlying interests and working to resolve their conflicts on a more basic level, perhaps to bring about a change in the work environment in which the conflicts developed. It is generally agreed that early intervention is important in bringing about resolution before positions harden, working relationships deteriorate, and matters wind up in a formal process.

The Administrative Dispute Resolution Act of 1990, reenacted with amendments in 1996, authorizes agencies to use ADR and requires that they adopt a policy that addresses the use of ADR. According to the act, ADR techniques are voluntary procedures that supplement rather than limit other available agency dispute resolution techniques. In addition to mediation, the act defines alternative means of dispute resolution to include conciliation, facilitation, and fact finding. The act also authorized “use of an ombuds.”

Impetus for agencies to adopt alternative means of dispute resolution as an integral component of their human capital policies has also come from the Government Performance and Results Act (GPRA), which requires agencies to pursue performance-based management. Under GPRA, agencies are encouraged to assess their human capital policies to determine how well their “people policies” focus on valuing employees and are aligned to support organizational performance goals. As part of a framework for human capital self-assessment that we developed, agencies are encouraged to evaluate their performance culture to determine the health of the workplace—for example, whether there is honest two-way

⁶ *Alternative Dispute Resolution: Employers’ Experiences With ADR in the Workplace* (GAO/GGD-97-157, Aug. 12, 1997) discusses in detail why organizations turned to ADR.

communication and whether perceptions of unfairness are minimized—and whether workplace disputes are resolved by fair and efficient means.⁷ ADR processes can help in achieving such goals.

What Is an Ombudsman?

An ombudsman, or ombuds, is a dispute resolution practitioner who (1) receives complaints, concerns, and questions from individuals; (2) works to resolve these issues, making recommendations on individual matters where appropriate; and (3) brings to an entity’s attention chronic or systemic problems and makes recommendations for improvement.⁸ Although the Administrative Dispute Resolution Act authorized use of an ombuds, an ombuds is not itself an alternative means of dispute resolution; rather, the ombudsman is a neutral who uses a variety of procedures, including ADR techniques, to deal with complaints, concerns, and questions. A key feature distinguishing ombuds from other dispute resolution practitioners is the ombuds’ focus on systemic issues and on developing conflict prevention strategies.

There are two kinds of ombudsmen. Traditionally, ombudsman has described an individual who handles concerns and inquiries from the public—often referred to as an “external” ombudsman. For example, the U.S. Environmental Protection Agency (EPA) has ombudsmen who serve as points of contact for members of the public who have concerns about Superfund activities.⁹ Over time, organizations—government and nongovernment alike—have also established ombudsmen to deal with workplace issues. Workplace ombudsmen provide an informal alternative to existing and more formal processes to deal with conflicts that arise in the workplace and other organizational climate issues. Because an

⁷*Human Capital: A Self-Assessment Checklist for Agency Leaders* (GAO/OGC-00-14G, Sept. 2000). The checklist provides a framework for human capital self-assessment divided into five parts: strategic planning, organizational alignment, leadership, talent, and performance culture.

⁸The Ombudsman Association, a professional association for practicing ombudsmen, published sample generic ombuds position descriptions. Among the critical skills and characteristics for an ombudsman contained in these position descriptions are communication and problem-solving skills, conflict resolution skills, sensitivity to diversity issues, and integrity. The sample position descriptions also suggest that an ombuds have a bachelors degree or equivalent, managerial experience, demonstrated leadership skills, and demonstrated ability in implementing and managing broad-based programs.

⁹The Superfund Program provides support to locate, investigate, and clean up hazardous waste sites nationwide.

ombuds does not have to follow formal processes, he or she can exercise flexibility and “work outside the box” to resolve issues.

Core Principles for Ombudsmen— Independence, Neutrality, and Confidentiality

Professional organizations expect ombudsmen to conform to professional standards of practice that revolve around the core principles of independence, neutrality (or impartiality), and confidentiality. Although authorizing the use of an ombuds, the Administrative Dispute Resolution Act does not further define an ombudsman or establish standards specific to an ombudsman.¹⁰ However, members of the Interagency ADR Working Group, authorized under the act to facilitate and encourage federal agencies’ use of ADR, and other experts said that although there are no specific federal standards for ombudsmen, they identified other professional organizations that have published or drafted standards of practice for ombudsmen. Among those groups are The Ombudsman Association, the Ombudsman Committee of the American Bar Association (ABA), and the University and College Ombuds Association.¹¹ In addition, a model ombudsman act for state governments drafted by the United States Ombudsman Association¹² and recommendations of the Administrative Conference of the United States contain standards for ombudsmen. These

¹⁰The Administrative Dispute Resolution Act charged the Administrative Conference of the U.S. with establishing standards for neutrals. However, the Administrative Conference, an independent federal agency and advisory committee, was abolished in October 1995. The 1996 amendments to the act authorized a successor to the Administrative Conference to facilitate and encourage ADR. However, the 1996 amendments do not require the successor, the Interagency ADR Working Group, to set such standards.

¹¹The Ombudsman Committee of the ABA drafted recommended Standards for the Establishment and Operation of Ombudsman Offices. These recommended standards, put forward in July 2000, are intended to expand on a 1969 ABA resolution that identified independence, impartiality, and confidentiality as essential characteristics of ombudsmen. The committee that drafted the recommended standards was made up of experts, including representatives from ombudsman organizations—the Coalition of Federal Ombudsmen, The Ombudsman Association, The U.S. Ombudsman Association, and the University and College Ombuds Association.

¹²The U.S. Ombudsman Association and The Ombudsman Association are different organizations.

standards revolve around the core principles of independence, neutrality, and confidentiality.¹³

Independence

The Ombudsman Association Standards of Practice define independence as functioning independent of line management, with the ombudsman having a reporting relationship with the highest authority in an organization. According to the ABA Ombudsman Committee's recommended Standards for the Establishment and Operation of Ombudsmen Offices, the office of the ombudsman must be independent in its structure, function, and appearance and free from interference in the legitimate performance of duties to be credible and effective. According to the recommended standards, "In assessing whether an ombudsman is independent, the following factors are important: whether anyone subject to the ombudsman's jurisdiction or anyone directly responsible for a person under the ombudsman's jurisdiction can (1) control or limit the ombudsman's performance of duties, (2) eliminate the office, (3) remove the ombudsman other than for cause, or (4) reduce the office's budget or resources." The recommended standards also state, among other things, that the ombudsman position should be explicitly defined and established as a matter of organization policy and that the ombudsman should also have access to all information within the organization, except as restricted by law. The University and College Ombuds Association standards of practice parallel The Ombudsman Association and ABA standards, while adding that the ombuds should be placed at the highest possible level.

Neutrality

The Ombudsman Association Standards of Practice define neutrality as not advocating for any one person in a dispute within an organization but advocating for fair processes and the fair administration of those processes. The recommended standards of the ABA Ombudsman Committee state that the ombudsman does not represent complainants nor does the ombudsman defend the entity complained against. The ombudsman conducts inquiries and investigations in an impartial manner, seeking resolution for a fair outcome and making recommendations where appropriate. In addition, according to the recommended standards, the ombudsman should be an advocate for change when an investigation or

¹³The U.S. Ombudsman Association drafted a model ombudsman act for state governments for dealing with complaints from the public. Similarly, the Administrative Conference put forth a recommendation that the President and Congress support federal agency initiatives to create and fund an external ombudsman in agencies with significant interaction with the public. Both the model ombudsman act and the Administrative Conference recommendation embody the principles of independence, neutrality, and confidentiality.

inquiry identifies a systemic problem. The University and College Ombuds Association standards add that an ombuds should have no interest or personal stake in the issues handled.

Confidentiality

The Ombudsman Association standards define confidentiality as communications that are intended to be held in secret. The Ombudsman Association standards assert that there is a privilege, regarding communications, that allows individuals to come forward in a confidential setting without the risk of reprisal.¹⁴ The recommended standards of the ABA Ombudsman Committee state that confidentiality must extend to all communications with the ombudsman, including all notes and records maintained in the performance of the ombudsman's duties. The Ombudsman Association standards also state that the ombudsman must not keep case records for the organization and that any written notes the ombudsman records in handling a case should be destroyed. The University and College Ombuds Association standards require that when seeking systemic change, an ombuds should not reveal the identity of a singular situation that could be associated with a particular individual.

Accountability for Activities and Results

In addition to the core principles of independence, neutrality, and confidentiality, the recommended standards of various organizations generally state that ombudsmen should be accountable for their activities and results. The ABA Ombudsman Committee's recommended standards state that an ombudsman, to ensure the office's accountability, should issue and publish periodic reports summarizing the ombudsman office's findings and activities. Such reports may include statistical information about the number of contacts with the ombudsman and subjects that the ombudsman addressed. Likewise, the University and College Ombuds Association standards and the U.S. Ombudsman Association model ombudsman act state that ombudsmen should issue periodic reports on their activities. Furthermore, the Administrative Conference recommendations regarding the establishment of external ombudsman offices in federal agencies state that ombudsman should be required to

¹⁴Privilege is a legal term that describes a relationship that the law protects from forced disclosure.

submit periodic reports summarizing their activities and outcomes.¹⁵ Moreover, the ADR Working Group has identified evaluation as a key component of successful ADR program management and consistent with GPRA, which requires agencies to set goals and track outcomes, and has drafted guidance to that effect.¹⁶

Information on Internet locations for the various standards of practice and recommended legislation can be found in appendix I.

Objectives, Scope, and Methodology

Our overall objective was to develop information about the role of the ombudsman in dealing with workplace issues at federal agencies.

To determine the number of ombudsmen offices that address workplace issues, we reviewed (1) the membership directory of the Coalition of Federal Ombudsmen, (2) a listing of workplace ombuds developed by an expert in the field, (3) *Alternative Dispute Resolution: A Resource Guide* published by the Office of Personnel Management (OPM), and (4) the results of an ADR Working Group survey of federal agencies. From these sources, we developed a listing of ombuds offices. In consultation with members of an expert panel knowledgeable of ombudsman activities in the federal government, we identified ombuds offices dealing with workplace issues that the experts believed met the standards of practice and the core principles of independence, neutrality, and confidentiality for ombudsman offices (see app. II). To answer the question on the kinds of issues ombudsmen address, we used information from experts, literature on ombudsman in organizations, and three ombuds offices selected for case illustrations.

To identify the operating characteristics of ombudsman offices, the approaches they took to conform to professional standards of practice, and the extent to which ombudsman offices have been evaluated and the

¹⁵According to the Administrative Conference recommendation, which was made in 1990, reports from external ombudsmen should summarize (1) the grievances considered; (2) investigations completed; (3) recommendations for actions, improvement in agency operations, or statutory changes; (4) agency response; and (5) any other matters the ombudsman believes should be brought to the attention of the agency head, Congress, or the public.

¹⁶The Administrative Dispute Resolution Act had charged the Administrative Conference with compiling and maintaining data on agencies' use of ADR. The section of the act dealing with compilation of information was repealed.

results they have achieved, we primarily used information obtained from ombudsman offices selected for case illustration. In selecting ombudsman offices as case illustrations, we considered offices that experts identified as “good examples” in terms of (1) following the standards of practice advocated by The Ombudsman Association and the Ombudsman Committee of the ABA, (2) the reputation of the office within the federal ombudsman and ADR communities, and (3) the availability of information relating to case activity and outcomes. Based on our consultation with federal experts in the field, information we gleaned from the literature, and our subject matter knowledge, we selected the ombudsman offices at the International Broadcasting Bureau,¹⁷ the National Institutes of Health,¹⁸ and the Secret Service. We also considered other factors of the three agencies and their ombudsman offices in selecting them as case illustrations. For example, IBB had a large unionized and foreign-born workforce; NIH had to deal with disputes involving scientific research; and the Secret Service used collateral-duty ombudsmen to serve its global workforce. In addition to obtaining relevant documentation for each of the case illustrations, we interviewed or obtained responses to our questions from the ombudsmen, the agency officials to whom the ombudsmen report, and other officials with whom the ombudsmen have dealings, such as equal employment opportunity (EEO), employee assistance program (EAP), and human resource (HR) officials. Because of the confidential nature of ombuds offices, we did not speak directly with employees who had used the offices. However, to gain an employee perspective, we spoke with union officials at IBB.

To identify the ways in which ombudsman offices are provided with guidance and the means for sharing “best practices” and “lessons learned,” we looked to the Administrative Dispute Resolution Act, professional and federal groups, and ombudsmen we interviewed.

To assist us in this engagement, we assembled a panel of federal experts recognized within the ADR community for their knowledge of the ombudsman field (see app. III). These experts were drawn from the Coalition of Federal Ombudsmen and the Steering Committee of the Interagency ADR Working Group. We consulted with panel members in

¹⁷The IBB broadcasts nonmilitary international programming and includes the Voice of America, Worldnet Television and Film Service, and Radio and TV Marti.

¹⁸The NIH program received the OPM Director’s Award for Outstanding Alternative Dispute Resolution Programs in 2000.

designing this engagement and in selecting case illustrations. In addition, because there is no single agency responsible for ADR policy development and oversight, we obtained comments on the draft of our report from the panel. Their comments are summarized at the end of this letter. In addition, we requested comments on a draft of our report from the Attorney General in his capacity as chairman of the Interagency ADR Working Group. His comments are summarized at the end of this letter. We also obtained comments on the case illustrations from the ombudsmen at IBB, NIH, and the Secret Service about their respective agency's ombudsman program. Each of the ombudsmen provided comments of a technical or clarifying nature, which we considered in finalizing this report.

We conducted our work from August 2000 to February 2001 in accordance with generally accepted government auditing standards.

Some Agencies Use Ombudsmen to Deal With Workplace Issues

Based on our research, and in consultation with a panel of federal ADR experts, we identified 22 ombuds offices in 10 federal agencies dealing with workplace issues (see app. II).¹⁹ We cannot be sure, however, that this is a complete list because there may be other workplace ombuds offices in federal agencies that did not come to our attention. For example, two of the sources we used to identify the universe of federal ombudsman offices—OPM's *Alternative Dispute Resolution: A Resource Guide* and the ADR Working Group survey—relied on voluntary reporting by agencies and therefore did not provide a complete and verified census of federal agency ADR practices. At the time of our study, the ADR Working Group had begun a governmentwide survey to determine, among other things, the number of offices that call themselves ombuds, whether they deal with external or workplace issues, to whom they report, and their organizational location.

Federal ombuds offices deal with a wide range of workplace issues. Ombuds can help employees get answers to questions about agency policies and to cut through "red tape." They also can listen to employee concerns, counsel them on alternatives at hand, and coach them in managing situations. This assistance may be provided in an in-person visit or through a telephone inquiry. Ombudsmen also handle more serious

¹⁹In addition, there are two external ombudsmen offices (FDA and EPA) that deal with workplace disputes on an ad-hoc basis.

situations, including allegations about employment discrimination, other prohibited personnel practices, and workplace safety issues. With a client's permission, they often act as a go-between, employing shuttle diplomacy to help employees deal with their managers and supervisors as well as to help managers and supervisors handle situations with employees. If the parties agree, ombuds may also mediate the dispute. The goal of the ombudsman is to intervene early in the dispute before positions harden, working relationships deteriorate, and matters end up in a formal process.

We were not able to identify any governmentwide data discussing the various issues ombudsmen deal with and the frequency of these issues. Of the three ombudsman offices we studied as case illustrations, only NIH tracked statistics on the issues raised and the frequency with which they were raised. According to the NIH ombudsman's annual report for 1999, the office categorized most of the issues it dealt with as "work environment" (e.g., relationship with coworkers, safety), "management" (e.g., leadership behavior and judgment), and "personnel" (e.g., promotion, job classification). The ombudsmen at IBB and Secret Service did not track the issues their offices handled. However, the IBB ombudsman said that in addition to cultural misunderstandings involving foreign-born staff, his cases included issues relating to promotions, work hours, disputes with supervisors, and allegations of discrimination. The Secret Service ombudsman said that he most often deals with complaints over managerial style and assignments.

The Case Illustrations: Varied Approaches to a Shared Goal

In their shared goal of handling workplace issues in an efficient and nonadversarial way, the three agencies took varied approaches in establishing, structuring, funding, and staffing their ombuds offices (see apps. IV, V, and VI). Nonetheless, the three offices shared broad responsibility and authority to deal with almost any workplace issue as well as to bring systemic issues to management's attention. Ombudsmen at all three agencies were an integral part of their agency's dispute resolution system and all three worked with other agency offices that dealt with employee complaints and provided employee assistance. The three offices described the approaches they took to adhere to the standards of practice for ombudsmen and the core principles of independence, neutrality, and confidentiality. However, the three agencies gave only limited attention to evaluating their ombuds programs and accounting for their activities. Still, officials at the three agencies generally viewed the ombudsman programs as beneficial, particularly in resolving conflict and lightening the

workloads of other offices dealing with employee complaints and concerns.

Varied Approaches in Structuring, Funding, and Staffing the Ombuds Offices

The varied approaches the three agencies took in structuring, funding, and staffing their ombuds offices were influenced by conditions related to their mission as well as perceived inadequacies in agency grievance processes. After starting as pilot programs, the ombuds offices each took different shapes as they matured and were made permanent.

- At NIH, officials were dealing with disputes arising out of the agency's scientific research mission, such as credit for authorship and intellectual property rights, for which there was no grievance process. In addition, NIH's post-doctoral students involved in research were not covered under redress processes available to regular federal employees. NIH officials also recognized the ineffectiveness of the traditional administrative dispute resolution processes, and they found that many cases not involving discrimination were burdening the EEO complaint system. The NIH ombudsman office, which was established in 1997, had grown to four full-time ombuds (the ombudsman and three assistants) and one support staff member by 2000. The office serves the NIH workforce of 17,000 plus about 3,000 post-doctoral students, most of whom work at NIH's main campus in Bethesda, MD. Organizationally, the NIH ombudsman's office is a component of the NIH director's office. The office has its own budget for which it must submit a business plan that lays out the ombudsman's objectives, goals, and resource requirements. In fiscal year 2000, the ombudsman's budget was \$800,000 for the office's dispute resolution, conflict prevention, and other activities.
- At IBB, management established its ombuds office because of employee discontent over grievance processes. In addition, about one-third of IBB's workforce was made up of foreign-born employees involved in the agency's foreign-language broadcasts. Cultural differences led to workplace conflict and some of the foreign-born staff were not afforded the same range of redress options as permanent federal workers. The IBB ombudsman's office grew from a part-time position in 1988 to two full-time ombudsmen (the ombudsman and an assistant ombuds) serving the agency's approximately 1,900 employees, almost all of whom are in Washington, D.C. The ombudsman is a component of the IBB director's office and depends on that office for its budgetary needs.
- At the Secret Service, management was faced with a rising number of EEO complaints among the agency's Uniformed Division officers. Management

found that many of the complaints were not EEO problems per se, but that they reflected distrust of management. These disputes ended up in the EEO process for a lack of an alternative forum. At the Secret Service, the ombudsman program, which started in 1987, is staffed by one full-time ombudsman and a corps of nine collateral-duty ombuds to serve 5,600 employees at the agency's Washington, D.C., headquarters and field locations across the United States and abroad. The ombudsman's office is a component of the Secret Service's Office of Human Resources and Training, and depends on that office for its budgetary needs.

Each of the ombudsmen at the three agencies was a high-level manager, and the ombudsmen at NIH and the Secret Service had defined or limited terms. Assistant ombudsmen were full-time permanent positions at two offices (NIH and IBB) while being a part-time collateral duty position at the Secret Service. Two of the offices (IBB and Secret Service) identified ombudsman candidates from within their ranks while the NIH ombudsman recruited dispute resolution practitioners from within and outside NIH.

- At NIH, the agency conducted a nationwide search to recruit a nationally respected ombudsman acknowledged for his skill and talent. The NIH ombudsman, who had been an ombudsman in academia and past president of both The Ombudsman Association and the University and College Ombuds Association, is a senior-level executive working under a renewable 5-year contract. The ombudsman recruited dispute resolution practitioners from within and outside the agency, which helped to achieve some measure of racial, gender, and ethnic diversity. The assistant ombuds are GS-14s.
- At IBB, the ombudsmen have been recruited from within the agency. The first ombudsman, a GS-15 who took office in 1988 and remained until his retirement in December 2000, was the former director of administration. He was selected because of his reputation as a knowledgeable and impartial manager. His successor was also selected from within the agency because of the value the agency placed on the need for the ombudsman to know the IBB's operations and culture. The agency's assistant ombuds, a GS-13, was recruited from IBB's broadcaster ranks to enhance the office's ability to meet the needs of the broadcaster staff and to add gender diversity.
- The Secret Service has recruited full-time ombudsmen from the ranks of the agency's special agents. The Service's director has appointed GS-15 special agents who understand the agency's structure, processes, and culture to fill the ombudsman position under the agency's rotation

process. The appointment is renewable on a yearly basis. The nine collateral duty ombuds were selected from the ranks of special agents, Uniformed Division officers, and mission support staff. The collateral ombuds corps, in addition to making ombuds services more available outside of headquarters, has helped to provide for gender, racial, and ethnic, as well as occupational diversity.

Although the ombudsmen at IBB and the Secret Service were not trained dispute resolution practitioners when selected for their assignments, officials told us that all had since received training in conflict management, including training offered by The Ombudsman Association.

Broad Authority to Deal With Workplace Issues

The three ombudsman offices we studied had broad responsibility and authority to deal with almost any workplace issue as well as to bring systemic issues to management's attention. Of the three offices studied, the program at NIH—called The Office of the Ombudsman, Center for Cooperative Resolution—was the broadest in scope. In addition to addressing individual and multiparty and group conflict, the NIH ombudsman's office was also involved in training, conflict prevention, and dispute systems design initiatives. Among the initiatives was a seminar series for executives on a variety of conflict resolution topics, training a pool of collateral duty mediators for EEO disputes, and training facilitators and panelists for a peer resolution pilot.²⁰ In addition, the office has been developing dispute resolution protocols for teams that would be in place from the beginning of scientific collaborations.

Working With Other Offices to Resolve Issues

The ombudsmen at the three offices studied, along with officials at their respective agencies, said that the ombudsman office is an integral component of the agency dispute resolution system. The ombudsman offices we studied provided an additional resource to employees and did not replace other agency offices that deal with employee complaints and other human capital issues, including the EEO, EAP, and HR offices. Ombudsmen and other officials with whom we spoke described regular information sharing and cross referrals of cases as appropriate. For example, the NIH ombudsman office reported that about 12 percent of the cases it handled in fiscal year 1999 were referred to a formal process, such

²⁰In the peer pilot program, grievances will be heard and decided by a panel of employee peers.

as the EEO complaint process. Also, the ombuds and EEO offices at NIH and the Secret Service were closely allied because the ombuds offices provided ADR services in EEO cases, thereby helping the EEO offices at these agencies meet the requirements of regulations that ADR be available to employees alleging employment discrimination. At IBB, the ombudsman, in addition to the routine dealings with other offices, was a member of the agency's EEO Advisory Committee, comprised of the agency's human capital-related offices and employee representatives, that meets monthly to address organizationwide issues.

Additionally, the ombudsman at IBB faced a different situation, compared with NIH and the Secret Service, because about 80 percent of the IBB workforce belonged to collective bargaining units represented by three unions.²¹ According to both the ombudsman and union officials, the IBB ombudsman's office, in dealing with employees belonging to bargaining units, respected the representational rights of the unions (provided for in the Federal Service Labor-Management Statute) and the provisions of their labor agreements with the agency and did not intervene without consent from the client and the union.²²

²¹There were no bargaining units at the Secret Service. Only a small number of the NIH workforce belong to a bargaining unit and the NIH ombudsman will not intervene without the union's consent.

²²When there is union representation at an agency, like there is at IBB and NIH, management and the ombudsman need to be mindful of the Federal Service Labor-Management Relations Statute when establishing and operating an ombuds program. The General Counsel of the Federal Labor Relations Authority has issued guidance in this regard. The guidance points out, for example, that the establishment of ADR programs designed to resolve EEO complaints and EEO procedures constitute a condition of employment that cannot lawfully be implemented or changed without fulfilling the statutory bargaining obligation with an exclusive representative (the union). Additional guidance discusses types of situations where a bargaining unit employee has a right to representation by the exclusive representative at a meeting, and where the union, as the exclusive representative of all bargaining unit employees, has a right to be represented at a meeting. This applies to "formal" discussions involving EEO complaints and may also include "informal" discussions about informal EEO complaints that concern a personnel policy or practice or general condition of employment. The General Counsel advises that the most effective means to avoid disputes over representation at discussions involving EEO complaints is for the union and the agency to work together in establishing their ADR program and EEO processes that satisfy the institutional interests of the agency and the union, as well as respecting an individual's right to file, and have processed, an EEO complaint.

Ombudsman Offices Took Similar Approaches to Provide for Independence, Neutrality, and Confidentiality

We selected the three ombuds offices for case illustration in part because our expert panel told us that these offices conformed to the standards of practice for ombudsmen. Accordingly, the program literature, agency policy, and the ombudsmen with whom we spoke said that they met the standards of practice for ombudsmen, including the core principles of independence, neutrality, and confidentiality. Information from the three ombudsman offices specifically stated that they follow The Ombudsman Association code of ethics and standards of practice.

One way in which the ombudsman offices said that they meet the independence standard is by having a reporting relationship with the agency head. The ombudsmen at NIH and IBB report directly to the office of their agency head. The NIH principal deputy director said that the independence of the ombudsman's office is enhanced by the fact that the ombudsman is not part of the management team, does not participate in setting policy or making managerial decisions, except in the case of ADR, and has no other assigned duties. The IBB ombudsman said that his office's independence is enhanced because he has no managerial or operational line authority. The situation at Secret Service changed in 2000 as a result of a reorganization following an efficiency review. Previously, the ombudsman had been a special assistant to the director. Under the reorganization, the ombudsman's office was consolidated into the human resources and training office along with other human capital-related offices, including the EEO and EAP offices. Secret Service officials said that although the ombuds office had become a component of the human resources and training office, the ombudsman would still have "unfettered" access to the director's office.

All three of the ombudsman offices and their program literature also said they assert their neutrality by not taking sides in disputes but by being advocates for resolution. In addition, although the ombudsmen will make recommendations when appropriate, they cannot require that the recommendations be adopted. As the former IBB ombudsman said, he worked "through persuasion."

Literature of each of the ombudsman offices and the three ombudsmen were explicit about providing for confidentiality in their dealings. The offices maintain confidentiality in all but rare situations, such as when a person may be a danger to themselves or others. The ombudsmen said that they do not act on behalf of an individual without that person's permission. The offices also help to promote confidentiality by being located in remote areas and by meeting or speaking to clients off site, if necessary. In addition, none of the offices kept formal case records.

However, the three ombudsmen said that they keep informal notes as memory joggers but that these notes are eventually destroyed. None of the offices kept a log of visitors' or callers' names, although the NIH ombudsman tracked the number of complaints handled, kinds of issues involved, and the types of resolutions achieved for statistical purposes.

Evaluation Limited but Officials Perceived Ombuds Offices as Beneficial

As previously discussed, the ombudsman offices we studied did not keep formal records, and their agencies gave only limited attention to evaluating the programs, including determining user satisfaction. However, agency officials generally viewed the ombudsman programs as beneficial, particularly in helping to resolve conflicts and lighten the workloads of other offices that handle complaints and grievances or provide other assistance to employees. In addition, agency officials said that the work environment had improved as a result of the ombudsman offices, allowing employees to be more focused on accomplishing the agency's mission. The ombudsmen and other officials also identified lessons they learned in establishing and operating an ombuds office.

The ability to evaluate ombudsman offices is limited because of the constraints of confidentiality. As discussed earlier in this report, several organizations' standards for ombudsmen stipulate the need for confidentiality while also recommending that ombudsmen ensure their office's accountability by issuing periodic reports on their activities and outcomes. These reports, however, can only contain data of a statistical nature and not report any kind of case-related information that could divulge the identity of complainants. Of the three ombuds offices studied, only one—NIH—tracked statistical information on the number of complaints handled and types of resolutions achieved and prepared an annual report.²³ According to the NIH ombudsman's first annual report, which covered 1999, the office handled 328 cases, achieving full or partial resolution in 65 percent of them.²⁴ The ombudsman also reported that the office closed about 40 percent of the cases within 2 weeks and 60 percent within 6 weeks. Although NIH has not evaluated the Office of the Ombudsman, officials were unanimous in their views that the office had

²³In addition, the NIH ombudsman office prepares an annual business plan that includes objectives, goals, and performance measures.

²⁴The three ombuds offices used the term "resolution" to describe cases in which the ombudsmen believed that part or all of the concerns of individuals were successfully addressed.

helped to both resolve and prevent disputes. For example, NIH's acting director said that the ombudsman's intervention in scientific disputes saved important scientific projects from near-certain dissolution. Two offices that handle workplace disputes—the Office of Intramural Research and the Office of Equal Opportunity—saw a drop in their caseloads after the ombudsman office was established. Officials in those offices said that they believed that at least some of the decrease was a result of the ombudsman office.

Of the three offices that we studied, NIH was the only ombudsman office that had attempted to measure user satisfaction and the effect of the processes used on consumers. However, this initiative was abandoned because of low response rates to questionnaires. The office is working with an expert to develop measures of ombudsman effectiveness. To help determine perceptions of the ombudsman function and its effectiveness, the plan for future evaluation calls for assessing complaints processed using ombudsman services compared with those processed by standard EEO complaint counseling, with feedback to be obtained from complainants and respondents.

Data about case activity and outcomes at IBB were less precise compared with NIH. Except for a report he sent annually to the director of IBB's Office of Civil Rights about EEO-related cases, the ombudsman did not prepare reports of his office's activities.²⁵ However, he kept a rough tally of cases that he and his assistant handled. He estimated that their combined workload was between 150 and 175 cases in 1999, not including "numerous" routine telephone calls and policy questions. The ombudsman estimated that his office resolved between 60 and 70 percent of the cases handled. In fiscal year 2000, resolutions included 25 cases that the ombudsman believed were EEO related, according to his report to the Civil Rights Office director. Other IBB officials perceived that the ombudsman office added value by preventing some issues from growing to formal complaints and grievances or having a greater adverse effect on the workplace. The personnel director said that the ombudsman helped in preventing some cases from rising to a formal grievance. The former senior advisor to the IBB director said that the ombudsman alerted the director's office to emerging workplace problems. Union officials said that

²⁵The IBB ombudsman periodically prepared Ombudsman Advisory Papers for IBB management to report perceived systemic problems or recurring conflicts.

the ombudsman had helped to resolve “many cases” before they grew into EEO complaints or formal grievances.

Data about the operations of the Secret Service ombudsman were scant. The ombudsman kept only a tally sheet of the number of cases he handled. During his first 2 months as ombudsman (August and September 2000), he said that he handled 48 cases, of which 3 or 4 had “EEO overtones.”²⁶ He had no data on the number of cases the collateral duty ombuds handled; however, one collateral duty ombuds with whom we spoke estimated that she handled about 30 cases a year. The ombudsman said that he expects that his office will resolve about 70 percent of the cases, an estimate consistent with that of a former Secret Service ombudsman. Although the Secret Service has not evaluated the ombudsman office, perceptions of the directorate that the office is “very effective” and helps to improve morale were reinforced during the efficiency review conducted in 2000. In addition, the EAP coordinator said he believed that the ombuds office might have lightened his office’s workload.

Some Lessons Learned

The ombudsmen and other officials commented on lessons learned in establishing and operating an ombuds office. Chief among these lessons is the need for top-level support in not only establishing an office but also in establishing the office’s credibility among senior managers and employees alike. The NIH principal deputy director said that the fact that NIH leadership promotes a program that is independent, neutral, and confidential imparts a crucial message to the entire NIH community.

In order to build support, officials at NIH and IBB learned the importance of collaborating with stakeholders on an ombuds program design. At NIH, a working group of practitioners knowledgeable about dispute resolution collaborated in developing and later piloting the ombudsman concept. In contrast, IBB management unilaterally established that agency’s ombuds program without consulting the unions. According to the ombudsman, the unions consequently viewed the ombuds office as a “management tool” and resisted cooperating with him. The ombudsman said that it took several years of “fence mending” to develop credibility with the unions.

Officials at NIH and IBB said that it is important that the ombudsman and EEO offices work closely to protect the redress rights of potential EEO

²⁶This total is in line with an estimate provided to us in 1996 by a former Secret Service ombudsman. He said that he handled about 300 cases per year (i.e., 25 cases per month).

complainants. According to EEO complaint process regulations, an employee must contact the EEO office within 45 days of the alleged discrimination. Therefore it is important that an ombudsman inform employees of this requirement and make clear that contacting the ombudsman's office does not satisfy this requirement.

Another lesson that officials at the three agencies reported they learned is that it takes time to develop respect and credibility. One Secret Service official said that the frequent turnover of ombudsmen (there have been six ombudsmen since the agency's program was established in 1987) detracts from the ombudsman's ability to establish his credibility. However, other officials said that the short tenure of ombudsmen at the Secret Service helps to provide fresh perspectives and guard against "burnout."

Officials said it was also important to publicize the services of the ombuds office. Each of the offices we studied had brochures and took other steps to bring their services to the attention of their agency's workforce. For example, the NIH ombudsman office made numerous briefings to groups within NIH and later developed a Web site. The IBB ombudsman wrote a column in the agency's bimonthly newsletter. At the Secret Service, the ombudsman made presentations at training sessions and management meetings and distributed a poster featuring the names, pictures, and contact numbers for the entire ombuds corps.

A final lesson that officials at each of the three agencies reported was the importance of the diversity of the ombuds staff. Ombudsmen said that it is important for some employees that there be an ombuds with whom they can identify. For example, the IBB ombudsman said that some employees tended to seek the assistance of his female assistant ombuds.

Forums Exist for Sharing Best Practices and Lessons Learned

The federal ombuds community has several forums it can turn to for sharing information about best practices and lessons learned. Outside the federal government, there are professional groups, such as The Ombudsman Association, which have developed and published standards of practice for ombudsmen and also provide forums for information sharing. Within the federal community, the Coalition of Federal Ombudsmen and the Interagency ADR Working Group provide venues for

information sharing and training.²⁷ The ombudsmen from the three offices selected for case illustration are actively involved in these information-sharing networks. Some federal ADR experts expect the number of federal ombudsman offices to grow and, at the same time, they are concerned that there are dispute resolution practitioners or activities describing themselves as ombuds or ombuds offices but that do not generally conform to the standards of practice for ombudsmen, particularly with regard to independence and neutrality. Consequently, the Coalition and the ADR Working Group can play an important role in disseminating information on guidelines for ombudsmen.

A frequently mentioned resource for information sharing outside the federal government is The Ombudsman Association. The three ombudsmen in our study said that they are members of The Ombudsman Association, a professional association for practicing ombudsmen that provides a forum for sharing professional experiences and knowledge. The Ombudsman Association, as noted earlier, established a Code of Ethics and Standards of Practice for ombudsmen. The association is also a source of continuing professional education. Other professional organizations similar to The Ombudsman Association include the U.S. Ombudsman Association and the University and College Ombuds Association.²⁸

For federal ombuds, the primary vehicle for sharing information is the Coalition of Federal Ombudsmen. The Coalition is an informal working group that was formed by federal ombuds to provide a means for information sharing and coordination. The Coalition's membership, which included the three offices we studied, is made up of workplace and external ombuds as well as other dispute resolution practitioners

²⁷OPM's *Alternative Dispute Resolution: A Resource Guide* is another source of information for the federal dispute resolution community. The guide, available on OPM's Web site, provides descriptions of various ADR techniques, summaries of workplace ADR programs and program contacts, sources of ADR training, and an annotated bibliography. Information in the guide is limited, however, to those agencies that responded to OPM's invitation to submit information about their ADR programs for the guide.

²⁸The chairman of the Coalition of Federal Ombudsmen is past president of The Ombudsman Association and the University and College Ombuds Association. Another member of the Coalition, who also serves on the Interagency ADR Working Group Steering Committee, is past president of the University and College Ombuds Association and is a member of The Ombudsman Association Board of Directors. She also served on the ABA's Ombudsman Steering Committee. Another coalition member, besides serving on the Interagency ADR Working Group Steering Committee, was a member of the ABA's Ombudsman Steering Committee.

interested in ombuds operations and practices. The members, most of whom are located in the Washington, D.C. metropolitan area, meet bimonthly. Meeting topics have included discussions on steps agencies take in establishing an ombuds office; the relationship between ombuds and unions under the Federal Service Labor-Management Relations Statute; how to handle sensitive situations, such as harassment; and training opportunities for ombudsmen. During our study, the Coalition was developing a charter, which, the chairman said, would help ensure that ombuds offices conform to standards of practice for ombudsmen. He also said that the Coalition was considering developing guidance that would follow the standards of practice put out by outside professional organizations. He said that such guidance is needed because he believes that the term ombudsman is being used loosely among the Coalition's membership. Other experts also told us that there are dispute resolution practitioners or activities that call themselves ombuds but who, in their opinion, do not generally conform to the standards of practice for ombudsmen. They said that some ombuds may lack independence because they do not have a reporting relationship to the agency head. They also pointed to an ombudsman position at one agency that is called "employee advocate" that, in their view, was in conflict with the core principle of neutrality.

Another vehicle for sharing information is the Interagency ADR Working Group. The Working Group's Steering Committee, whose membership includes the chairman and other members of the Coalition of Federal Ombudsmen, serves as the central forum for the advancement of ADR in the federal government by coordinating multiagency ADR initiatives, promoting best practices for federal ADR, conducting discourse and disseminating information regarding federal policy on ADR, and providing recommendations for policy guidance. The ADR Working Group, which is chaired by the U.S. Attorney General, has no regulatory power, and its role is to issue policy guidance on issues in dispute resolution that have a governmentwide impact. At the time of our study, the Steering Committee had undertaken a governmentwide survey to determine, among other things, the number of offices that call themselves ombuds, whether they deal with external or workplace issues, to whom they report, and their organizational location. Members of the Steering Committee said that this survey may lead to guidance on standards of practice, suggesting opportunities for expanding the number of ombuds offices, and disseminating information about best practices for establishing an ombuds office.

Federal ADR experts said that providing guidance and information resources within the federal government is important because they believe that more ombudsman offices will be established in the future. This will occur for several reasons, they said. One reason agencies may consider establishing an ombuds office is to meet the requirements of laws and regulations calling for the availability of ADR. Another reason is that agencies may recognize that many complaints brought into the EEO complaint system do not really stem from unlawful discrimination issues. Still another reason is that there are gaps in coverage by grievance and redress processes at agencies, which become more evident when agencies adopt “zero tolerance” policies about behaviors and situations not covered under existing processes. Similarly, the experts believe that agencies will see an ombudsman as an essential component of an integrated conflict management system, providing an informal and confidential resource to employees and management alike.²⁹

Conclusions

Modern human capital policies and practices offer the federal government a means to improve its economy, efficiency, and effectiveness to better serve the American people. Ombudsman offices can offer a useful option for agencies to consider in developing their overall human capital management policies and practices. In line with this tenet, federal agencies are using ADR processes in response to legal and regulatory requirements as well as to deal pragmatically with workplace conflict, particularly allegations of discrimination. The three federal agencies we studied established ombuds offices because other agency processes were not effectively dealing with conflict and because agency personnel had no place to turn to for assistance in some situations. Informality and flexibility characterized the approach of the ombudsmen to dispute resolution, and they worked with other offices to bring coherency to the agency’s dispute resolution strategy. Ombudsmen were also in the position of being able to alert management to systemic problems and thereby help correct organizationwide situations or develop strategies for preventing conflict.

We believe that it is important that ombudsmen, like those in other professions, conform to professional standards of practice. In the absence

²⁹ As a resource, experts pointed to *Guidelines For The Design Of Integrated Conflict Management Systems Within Organizations* prepared by the ADR in the Workplace Committee of the Society of Professionals in Dispute Resolution (SPIDR).

of clearly defined and transparent federal standards specific to ombudsmen, the three ombuds offices we studied followed procedures that they said allowed them to conform to standards of practice that are advocated by professional organizations and built around the core principles of independence, neutrality, and confidentiality. However, experts are concerned that the standards of practice for ombudsmen are not consistently followed among those within the federal dispute resolution community who call themselves ombuds; specifically, they say that some practitioners may lack the independence and neutrality expected of an ombudsman. Accountability, in addition to being a cornerstone of performance management principles embodied in GPRA, is another recommended standard that we believe is important for ombudsman offices to follow. Although the three offices we studied as case illustrations are not representative of the entire federal ombuds community, we found it noteworthy that only one of the studied offices kept statistics on the number of cases handled, issues presented, and outcomes or prepared an annual report summarizing activities and accomplishments. Moreover, each of the three offices fell short in evaluating results. In this regard, we believe that the Interagency ADR Working Group's draft guidance on evaluating ADR programs is necessary and timely. In addition, with experts expecting more ombuds offices to be established in the future, the Working Group's study of federal ombudsmen it is undertaking is all the more important because it may lead to guidance on standards of practice and dissemination of information on best practices. It is our experience that the value of such guidance that the Working Group may develop would be enhanced if it is clearly defined and transparent and includes information on how the guidance can be consistently applied.

Recommendation to the Attorney General

As the Interagency ADR Working Group moves forward with its study of federal ombudsmen, we recommend that the Attorney General, as chairman of the Working Group, see that any resulting guidance on professional standards of practice that the Working Group develops be clearly defined and transparent and, in addition to including the core principles of independence, neutrality, and confidentiality, include standards for accountability and contains information about how this new guidance can be consistently applied within the federal ombuds community.

Comments of Experts

Because there is no single agency responsible for ADR policy development and oversight, we obtained comments on a draft of our report from a panel

of federal experts recognized within the ADR community for their knowledge of the ombudsman field. Overall, they were in agreement with our presentation. We considered comments they offered of a technical or clarifying nature and made changes as appropriate in finalizing this report. In addition, one of the experts pointed out the importance unions play in agency efforts to establish an ombuds program. She said that in some cases there have been union concerns about an ombuds office encroaching on the institutional rights of unions under the Federal Service Labor-Management Relations Statute, while in other cases unions and ombuds offices have worked collaboratively to resolve these kinds of concerns. We agree that agencies and ombuds need to be mindful of statutory requirements, especially in light of the fact that 60 percent of federal workers belong to bargaining units represented by unions. In this regard, we added a discussion about guidance issued by the General Counsel of the Federal Labor Relations Authority. Also, two members of the panel provided comments with regard to evaluating ombuds programs. They said that this task is made difficult because some ombuds results are intangible and therefore difficult to assess. One of the experts said that the ombuds community needs to address how outcomes could be assessed. This is a matter that we believe the Interagency ADR Working Group could take up in its study of federal ombuds.

Comments from the Attorney General

We received comments on a draft of this report from the Attorney General in his capacity as chairman of the Interagency ADR Working Group. In his letter, the Attorney General said that the Department of Justice had no substantive comments on our report, and that, as chairman of the Working Group, he will ensure that the group's ongoing study of federal ombudsmen will include guidance as we have recommended.

As agreed with your office, we plan no further distribution of this report until 30 days after its issuance, unless you publicly release its contents earlier. We will then send copies of this report to Senators Thad Cochran, Joseph I. Lieberman, and Fred Thompson; and Representatives Dan Burton, Danny K. Davis, Joe Scarborough, and Henry A. Waxman in their capacities as Chair or Ranking Members of Senate and House Committees and Subcommittees. We are also sending copies to The Honorable John Ashcroft, Attorney General; The Honorable Ida L. Castro, Chairwoman, Equal Employment Opportunity Commission; The Honorable Steven R. Cohen, Acting Director, Office of Personnel Management; The Honorable Mitchell E. Daniels, Jr., Director, Office of Management and Budget; and

other interested parties. We will make copies of this report available to others on request.

If you or your staff have any questions concerning this report, please contact me or Assistant Director Stephen Altman on (202) 512-6806. Other major contributors to this report were Anthony P. Lofaro and Katherine Brentzel.

Sincerely yours,

A handwritten signature in black ink that reads "Carlotta Joyner". The signature is written in a cursive style with a large initial 'C' and a long, sweeping tail on the 'y'.

Carlotta C. Joyner
Director, Strategic Issues

Appendix I: Ombudsman-Related Internet Resources

The following is a list of selected ombudsman-related resources that can be found on the Internet.¹ These sites also have links to other sites providing information on ombuds and alternative dispute resolution.

The Ombudsman Association
<http://www.ombuds-toa.org/index.html>

The Ombudsman Association Code of Ethics and Standards of Practice
http://www.ombuds-toa.org/toa_code&std.html

The United States Ombudsman Association
<http://www.usombudsman.org/>

The United States Ombudsman Association Model Ombudsman Act for State Governments
<http://www.usombudsman.org/References/modelombudact.htm>

The University and College Ombuds Association
<http://www.colorado.edu/Ombuds/UCOA/>

The University and College Ombuds Association Standards of Practice
<http://www.colorado.edu/Ombuds/UCOA/SOP.html>

Administrative Conference of the U.S. Recommendation for Ombudsmen in the Federal Government
<http://www.law.fsu.edu/library/admin/acus/305902.html>

American Bar Association, Ombudsman Committee Homepage
<http://www.abanet.org/adminlaw/ombuds/home.html>

The Interagency ADR Working Group, Workplace Section
<http://www.financenet.gov/financenet/fed/iadrwg/workplace.htm>

Society of Professionals in Dispute Resolution Guidelines for the Design of Integrated Conflict Management Systems Within Organizations
<http://www.spidr.org/article/icmsD.html>

¹The Web addresses were valid at the time of our study.

Appendix I: Ombudsman-Related Internet Resources

Office of Personnel Management's *Alternative Dispute Resolution: A Resource Guide*

<http://www.opm.gov/er/adrguide/toc.htm>

NIH Office of the Ombudsman, Center for Cooperative Resolution

<http://www4.od.nih.gov/ccr/>

Coalition of Federal Ombudsmen (e-mail contact)

gadlinh@od.nih.gov

Appendix II: Federal Workplace Ombudsman Offices as of January 16, 2001

Federal Workplace Ombudsman Offices

1. Department of Agriculture/Food and Safety Inspection Service (FSIS)^a
 2. Department of Energy (DOE)
 3. DOE/Bonneville Power Authority
 4. Department of Health and Human Services (HHS)/Public Health Service (PHS) – National Institutes of Health (NIH)
 5. HHS/PHS/NIH/National Library of Medicine/Agency for Healthcare Quality and Research
 6. HHS/PHS/Centers for Disease Control/National Center for Health Statistics
 7. Department of Justice (DOJ)
 8. DOJ/Bureau of Prisons
 9. DOJ/Federal Bureau of Investigation
 10. Department of Labor
 11. Department of the Navy/Bethesda Naval Hospital
 12. Department of State
 13. International Broadcasting Bureau
 14. Department of Treasury/Bureau of Alcohol, Tobacco and Firearms
 15. Department of Treasury/Federal Law Enforcement Training Center
 16. Department of Treasury/Secret Service
 17. Department of Veterans Affairs/Office of Resolution Management
 18. Department of Veterans Affairs/Inspector General
 19. Central Intelligence Agency
 20. Federal Deposit Insurance Corporation
 21. Smithsonian Institute
 22. U.S. Capitol Police
-

^aFSIS is setting up its office; the ombudsman position has yet to be filled.

Appendix III: GAO's Panel of Federal Experts Recognized for Their Knowledge of the Ombudsman Field

Howard Gadlin, Ombudsman and Director of the Center for Cooperative Resolution, National Institutes of Health; member, Steering Committee, Interagency Alternative Dispute Resolution Working Group; Chairman, Coalition of Federal Ombudsmen; past president of The Ombudsman Association and the University and College Ombuds Association.

Carole Houk, ADR Counsel, Department of the Navy; member, Coalition of Federal Ombudsmen; member, Steering Committee, Interagency Alternative Dispute Resolution Working Group; member, ADR in the Workplace Committee, Society of Professionals in Dispute Resolution.

D. Leah Meltzer, Deputy Dispute Resolution Specialist, U.S. Securities and Exchange Commission; member, Coalition of Federal Ombudsmen; member, Steering Committee, Interagency Alternative Dispute Resolution Working Group; member, Ombudsman Steering Committee, American Bar Association.

Jeffrey M. Senger, Deputy Senior Counsel for Alternative Dispute Resolution, U.S. Department of Justice.

Peter R. Steenland, Jr., Senior Counsel for Alternative Dispute Resolution, U.S. Department of Justice.

Ella Phillips Wheaton, Ombudsperson, U.S. Department of Justice; member, Coalition of Federal Ombudsmen; past president of the University and College Ombuds Association; member, Board of Directors, The Ombudsman Association; member, Ombudsman Steering Committee, American Bar Association.

Appendix IV: Case Illustration: Ombudsman's Office, International Broadcasting Bureau

The International Broadcasting Bureau (IBB), headquartered in Washington, D.C., broadcasts nonmilitary international programming to various countries around the world. IBB is composed of the Voice of America, Worldnet Television and Film Service, Radio and TV Marti, and other elements that support IBB's broadcasting entities.¹ The Bureau employs a multinational workforce to produce its foreign language programming; approximately one-third of the Bureau's 1,880 employees were not born in the United States.² The IBB's Ombudsman Office was created in May 1988 to provide a neutral, informal, and confidential alternative dispute resolution resource to all employees, about 80 percent of whom belong to collective bargaining units represented by unions.

Origins and Operating Characteristics

The impetus for creating the IBB ombudsman's office came from the Voice of America director, at the time, in response to employee discontent over formal grievance and redress processes at the agency. The office, which has grown from one part-time ombuds to two full-time staff—the ombudsman and an assistant ombuds—does not replace or circumvent formal grievance complaint or appeal processes at the agency. The ombudsmen receive a variety of cases, ranging from employee questions about promotions and work hours to disputes between peers and perceived discrimination cases. A particular focus of the ombudsman's office is to respond to the issues and concerns of IBB's large foreign-born population, such as cultural misunderstandings and questions about visa procedures. In addition to conflict resolution, the ombudsman acts as a "troubleshooter" or "trend alerter." He publishes Ombudsman Advisory Papers for IBB management on an ad-hoc basis to report what he sees as systemic problems or recurring conflicts. He also writes a column called "Advice from the Ombudsman" in the bimonthly employee newsletter, "Tune In." The office publicizes its services through these columns, a program brochure, and through word-of-mouth referrals.

The ombudsman's office, which is organizationally placed within the IBB's director's office, has no formal budget of its own. A management budget is tapped for the ombudsmen's travel or office administrative costs. The ombudsman is a General Schedule (GS) grade 15. The former VOA

¹IBB reports to the Broadcasting Board of Governors, an independent federal agency.

²The IBB Personnel Office reported that as of December 2000, IBB had 1,880 employees, including 607 who were not born in the United States. Of the foreign-born staff, 452 were naturalized U.S. citizens, 155 were not.

director selected the first IBB ombudsman from within the agency for his past experience as Director of Administration and for his reputation as a knowledgeable and impartial manager. There is no term limit for the position; the first ombudsman remained in the job from the start of the office in May 1988 until December 2000. His successor was also selected from within IBB, with the belief that knowledge of the organization is important to perform the ombudsman duties. When the ombudsman's office was first established, the position of ombudsman was part time because the workload was initially small. After about a year, the position became full time. An assistant ombuds (a GS-13) was added in 1997. A female former broadcaster was chosen for the post because she brought both gender and occupational diversity. The ombudsman said that some employees feel more comfortable talking to a female ombuds. Both ombudsmen's performance is rated on their ability to assist employees informally and confidentially and to communicate systemic problems to management.

The ombudsman's office works in tandem with other offices at IBB that handle employee matters, such as the Advisory Referral and Counseling Service (ARCS), the Office of Personnel, the Office of Civil Rights (OCR), as well as employee unions. The ombudsman reported that he interacts on a regular basis with the ARCS and Personnel offices to share information and to make and receive client referrals. The Director of Civil Rights said that in addition to arranging meetings as case needs dictate, she and the ombudsman are members of an EEO Advisory Committee that meets monthly to address organizationwide issues.

Because 80 percent of IBB's workforce belong to collective bargaining units,³ the ombudsman interacts frequently with union officials. In dealing with the unions, the ombudsman's office brochure states that the office respects the representational rights of the unions and the provisions of their labor agreements. The ombudsman said that he does not encroach on issues within their domain without consent from the client and union. The ombuds told us that he believes in keeping union officials informed at all times when an employee approaches the ombuds with a case in which the union should be involved, he will notify the union, with employee consent.

³The three unions at IBB are the American Federation of Government Employees Local 1812, the American Foreign Service Association, and the American Federation of State, County and Municipal Employees Local 1418.

Although IBB has three unions, the ombudsman said that he interacts primarily with the largest of them—the American Federation of Government Employees, which covers approximately 60 percent of IBB's workforce, including most of the foreign-born employees. That union's vice-president reported that she and the ombuds meet about once a week to discuss employee disputes, with union officials usually initiating the contact. In fact, union officials stated that they themselves have utilized the ombudsman to act as a facilitator for union-management disputes.

Approach to Independence, Neutrality, and Confidentiality

The IBB ombudsman said that his office adheres to the fundamental ombudsman principles of independence, neutrality, and confidentiality. The Ombudsman's Office program brochure states that the office is a member of the U.S. Ombudsman Association and the Coalition of Federal Ombudsmen and that it "subscribes to the code of ethics and rules of professional conduct for membership in those organizations." The ombudsman said that his office maintains its independence because he has no managerial or operational line authority. He reports directly and only to the IBB director's office. Moreover, as an example of how he avoids any conflicts of interest, the ombudsman told us that he does not accept invitations to socialize with IBB management. According to the program brochure, the ombudsman's neutrality is supported by the fact that he does not function as an advocate or representative of either management or employees; rather, the ombudsman facilitates communication between all parties. The brochure states that all interactions between the ombudsman and employees are confidential except in the case of physical threat to the IBB, its employees, or to U.S. national security. To help ensure this confidentiality, the ombudsman's office is located on a different floor from the IBB director's office so it will not be obvious who is meeting with the ombudsman. Employees can also reach the ombudsmen through two private telephone lines that are either answered personally by one of the ombuds or by a confidential and private answering machine, according to the program brochure. The ombudsman said that he and the assistant ombudsman keep informal, confidential case notes. The ombudsman said that he retains his notes until he is certain that the case is closed and that the employee will not be a repeat client; then the notes are destroyed.

Evaluation and Outcomes

In 1999, the ombuds estimated that he and the assistant ombuds had together handled approximately 150 to 175 cases. The ombudsman did not include in this count the numerous telephone calls and policy questions they routinely answer. Of the 150 to 175 cases, he said that they

successfully resolved 60 to 70 percent. He considered a case successful if “all parties in the case achieved at least some degree of satisfaction or partial accommodation regarding the outcome.” He reported that the cases varied widely in the length of resolution time—from 1 day to several months. The ombudsman’s office does not prepare formal reports of its activities.

IBB has not formally evaluated the ombudsman program. However, officials perceive that cases that are resolved successfully by the ombudsmen lessen the burden of other dispute resolution bodies at IBB. The ombudsman reported to the director of OCR that in the fiscal year ending September 30, 2000, there were 25 potential EEO-related cases that were handled and resolved by the ombudsmen. The OCR Director told us that she believes that 25 cases is an understatement. She thinks the number could be as high as 75. The Director of Personnel said that he could not say whether the ombudsman had lessened Personnel’s caseload. However, he said that the ombudsman has “definitely helped some cases from becoming administrative grievances.” The ombudsman also helped the Director’s Office save time. The former Senior Advisor to the IBB Director, with whom the ombudsman interacted every couple of weeks, reported that the ombuds was able to give her background information on disputes and provide her with early warnings about upcoming problems.

Union officials said that they and the ombudsman had resolved “many cases” together before they became formal EEO cases or administrative grievances. Although the officials expressed concern that the ombudsman’s neutrality might be compromised by his reporting relationship to the IBB director, they both stated that the ombudsman had done an excellent job.

The only oversight mechanism over the ombudsman’s office is the IBB director’s office. IBB had not formally evaluated the ombudsman’s office, other than the performance evaluations of the two ombuds, which are conducted by the director’s office. No IBB officials had estimated cost savings as a result of the ombudsmen, although with a staff of two handling a high volume of cases, the former Senior Advisor to the Director contended that the ombudsman’s office “must be cost-effective.”

Lessons Learned

In citing lessons that they had learned about establishing and operating an ombudsman’s office, IBB officials were unanimous in stating that the ombudsman must be someone who is credible to both management and employees. The Director of Personnel and union officials said that the

personal skills and abilities of the ombudsman are crucial to the success of the office. "It's not the office, it's the person in the office that makes it what it is," said union officials. The ombudsman himself concurred, stating that a respected senior employee should fill the position. The Director of OCR stressed the importance of communication between offices responsible for conflict management.

The ombudsman said that management should never establish an ombudsman program without the support of unions and employee groups. Initially, the relationship between the ombudsman and the three unions at IBB was volatile because management had established the position without seeking union buy-in. According to the ombudsman, the unions feared that management had created a tool to take power away from them. The ombudsman said he worked very hard to establish his credibility and demonstrate that he would work with the unions to solve disputes and not work against them.

Appendix V: Case Illustration: The Office of The Ombudsman, Center For Cooperative Resolution, National Institutes of Health

The National Institutes of Health (NIH), one of the eight health agencies of the U.S. Public Health Service, within the U.S. Department of Health and Human Services, is the federal focal point for medical research in the United States. NIH is comprised of 26 Institutes and Offices, and is primarily located in Bethesda, MD. In addition to 17,000 federal employees, the NIH workforce includes more than 3,000 post-doctoral students engaged in medical research. NIH's Office of the Ombudsman, Center for Cooperative Resolution, which began as a pilot program in 1997 to serve five institutes, became permanent in 1999 and now serves the entire NIH community.¹ According to its mission statement, the Office of the Ombudsman, Center for Cooperative Resolution, is committed to providing expert, neutral, confidential, and independent assistance in resolving workplace disputes and improving conflict management at NIH.

Origins and Operating Characteristics

The directors of the Offices of Human Resource Management and Equal Opportunity provided the initial impetus for an ombudsman when they recognized the ineffectiveness of the traditional administrative dispute resolution processes, including that many nondiscrimination cases were burdening the equal employment opportunity (EEO) complaint system. The Office of Intramural Research later became a partner in this initiative, believing that an ombudsman might offer a better way to deal with disputes arising from NIH's scientific research, such as disputes over credit for authorship and intellectual property rights.

By fiscal year 2000, the Office of the Ombudsman had become the focal point for conflict management at NIH, with a budget of \$800,000. As of December 2000, the office had five full time staff.² The office is authorized to work with all members of the NIH community to resolve problems and its responsibilities include developing and coordinating conflict management initiatives. As part of NIH's integrated conflict management system, the ombudsman office is to complement, but not replace, the agency's formal dispute resolution processes. The office has publicized its services through a Web site; brochures; presentations before special

¹Employees belonging to a bargaining unit represented by a union are not eligible to participate in the alternative dispute resolution (ADR) program until the union has been informed of the ADR program and provided an opportunity to negotiate any negotiable issues. Contractors working at NIH are excluded and referred to their employers, except when a dispute involves NIH staff.

²The Office of the Ombudsman is considering establishing a collateral duty ombudsman at one NIH institute site with about 800 employees in Raleigh, NC.

interest, professional, and other groups; as well as through articles appearing in the *NIH Record*.

The five-person ombudsman office staff consists of the ombudsman, three associate ombudsmen, and a support person. The ombudsman said that he considers the staff to be “reasonably” diverse in its makeup. The ombudsman, who was recruited following a nationwide search, is a senior level employee operating under a 5-year renewable contract. The associate ombudsmen are mid-level—General Schedule (GS) grade 14—permanent federal employees hired from within and outside NIH. The ombudsman’s office has developed performance elements and standards for the associate ombudsmen. The elements and standards include responsibilities to act as a neutral in resolving disputes and to develop appropriate conflict resolution programs or initiatives.

Staff of the ombudsman office work in conflict intervention, conflict prevention, and internal education on ways to manage individual and group conflict. Most of their time—about 65 percent—is spent addressing individual and multiparty and group conflicts and concerns using a wide variety of dispute resolution techniques. Staff routinely coordinate with other offices dealing with workplace disputes and in making and receiving referrals. In particular, the Office of the Ombudsman serves as the on-site provider of alternative dispute resolution services to the Office of Equal Employment Opportunity in EEO matters. The ombudsman’s office is also involved with training, conflict prevention, and dispute systems design initiatives. Among these initiatives was the Executive Seminar Series for institute and scientific directors and other senior executives on a variety of conflict resolution topics. In addition, the office will administer and conduct training to develop a pool of collateral duty mediators to mediate EEO cases. The ombudsman’s office will be administering and training facilitators and panelists for a peer resolution panel pilot to have grievances heard and decided by a panel of employee peers. Further, the office is developing a model for “partnering agreements” to establish dispute resolution protocols at the beginning of scientific collaborations.

Approach to Independence, Neutrality, and Confidentiality

The brochure for the Office of the Ombudsman states that the office operates under the code of ethics and standards of practice of The Ombudsman Association and, accordingly, adheres to the core values of independence, neutrality, and confidentiality. The ombudsman’s office said that it conforms to the independence standard because (1) it is an organizational unit within the NIH director’s office, with the ombudsman reporting directly to NIH’s acting director; (2) the ombudsman is not part

of the management team, does not participate in setting policy or making managerial decisions, except in the case of ADR, and has no other assigned duties other than ombudsman; and (3) the ombudsman's office has its own budget financed through the NIH Management Fund. The office said that it practices neutrality by serving as a facilitator to resolution and not as the person who will make the final judgment. The office said that it supports its commitment to confidentiality by not maintaining official records of visitors' names, affiliations, or grievances. The ombudsman staff will not identify or pass on a client's confidences without permission. The ombudsman said that any informal notes are destroyed. To track its activities and outcomes, the office maintains statistical information on the number of complaints handled, processes used, and types of resolutions achieved.

Evaluation and Outcomes

For accountability purposes, the Office of the Ombudsman prepares annual reports of its activities and accomplishments, including the number of cases, issues involved, outcomes, and processing time. According to the first annual report covering 1999, the office handled 328 cases, many with multiple issues. The office categorized 32 percent of the issues as work environment (e.g., relationship with coworkers, safety), 27 percent as management (e.g., leadership behavior and judgment), and 15 percent as personnel (e.g., promotion, job classification). Other issues were categorized as discrimination/harassment (7 percent), research-related disputes (6 percent), ethics (4 percent), discipline (4 percent), benefits (3 percent), and policy (2 percent). The annual report showed that the Office of the Ombudsman achieved full or partial resolution in 65 percent of the 328 cases handled in 1999. In addition, 12 percent of the cases were referred to formal processes (e.g., the Equal Opportunity Office). The ombudsman also reported that despite the office's intervention, 4.5 percent of the cases were not resolved. Further, the ombudsman found that not all those who sought assistance wanted the office to intervene on their behalf, as was true in 14 percent of the cases. In providing assistance, the annual report states that ombudsman staff used coaching (54 percent of the cases) and facilitation (23 percent of the cases) as the primary modes of intervention.³ However, the ombudsman said that most cases involved multiple forms of intervention. The ombudsman reported that the office closed about 40 percent of the cases within 2 weeks and 60 percent

³Coaching involves working with individuals to develop options and devise strategies to address their issues directly. Facilitation is a less formal intervention than mediation.

within 6 weeks. Cases that took longer than 6 weeks to close involved multiple parties or numerous complex or contentious interpersonal relationship issues, according to the annual report.

NIH has not evaluated the Office of the Ombudsman. An earlier attempt to measure user satisfaction and effect of the processes used on consumers during the pilot was abandoned because of low response rates to questionnaires. The office is working with an expert to develop measures of ombudsman effectiveness. To help determine perceptions of the ombudsman function and its effectiveness, the plan for future evaluation calls for assessing complaints processed using ombudsman services compared with those processed by standard EEO complaint counseling, with feedback to be obtained from complainants and respondents.

Although there has been no evaluation of the ombudsman office, NIH officials were unanimous in their views that the office had helped to both resolve and prevent disputes. For example, NIH's principal deputy director said that "In many instances the ombudsman's intervention in a scientific dispute saved an important scientific project from near-certain dissolution...Many of these projects represent an investment of hundreds of thousand or even millions of dollars." Two offices that handle workplace disputes—the Office of Intramural Research and the Office of Equal Opportunity—saw a drop in their caseloads since the ombudsman office was established. Officials in those offices said that they believed that at least some of the decrease was a result of the ombudsman office. For example, the Office of Intramural Research reported that during a 43-month period before the ombudsman office was established, it received an average of 2.8 cases a month. During an 18-month period after the ombudsman office became permanent, the average declined to 1.9 cases per month, with fewer mentoring, authorship, or property issue disputes. Data from the Office of Equal Opportunity showed that the number of counseling contacts declined from 178 in fiscal year 1997 to 104 in fiscal year 1999, when the ombudsman office began to serve all of NIH. Similarly, the number of formal EEO complaints declined from 94 to 72 during the same period.

Lessons Learned

NIH officials identified several lessons they learned. Chief among these is that there must be top-level support for the program, with NIH leadership promoting the program while respecting its autonomy. Also important was the planning process that involved collaboration of different constituencies and piloting the idea, which convinced people that the ombudsman's office could be effective and created buy-in for its

expansion. The officials also learned that it is important that the staff of the ombudsman's office be trained, experienced professionals in order to command respect from top administrators and scientists. Similarly, the ombudsman office staff needs to be diverse in order to respond to the needs of a diverse workforce. Officials also learned the importance of early, informal intervention to address potentially difficult conflicts in early stages before they become intractable and working relationships irreparably harmed. Officials also learned that while the program needs to be marketed to the workforce, they found that the "build it and they will come" principle held true; that is, build a credible process and employees will take advantage of it in more than expected numbers. One final lesson that the officials learned is the importance of top administrators understanding that it does not reflect adversely on them if they ask the ombudsman for assistance.

For further information, visit the Office of the Ombudsman, Center for Cooperative Resolution, Web site at <http://www4.od.nih.gov/ccr>.

Appendix VI: Case Illustration: The Ombudsman Program, U.S. Secret Service

The U.S. Secret Service, a Department of Treasury bureau, is a federal law enforcement agency responsible for (1) protecting the President, Vice President, and other U.S. and foreign dignitaries and (2) conducting criminal investigations into counterfeiting, financial institution fraud, and other fraud. The agency's 5,600 employees, including 2,800 special agents and more than 1,000 uniformed division officers, are located in its Washington, D.C. headquarters and in over 125 offices throughout the U.S. and abroad. The Secret Service piloted its ombudsman program in 1987 for uniformed division officers. In 1989, the Director opened the program to all Secret Service employees—special agents, uniformed officers, and support staff.

Origins and Operating Characteristics

Secret Service top management established the ombudsman's office because of the large number of equal employment opportunity (EEO) complaints and grievances in the uniformed division. On study, the agency determined that many of the complaints were not EEO problems but instances of distrust between management and the officers. The Secret Service found that the EEO complaint process was sometimes used for non-EEO issues because employees did not have a place to take these issues.

The ombudsman's office serves all Secret Service employees. The program is publicized through a program brochure, a poster with photographs and contact information for all the ombudsmen, and information sessions the ombudsman holds during new employee and supervisor training and management meetings. The program's brochure states that the ombudsman assists employees with work-related questions and disputes and that he provides "unfiltered feedback to management by reporting issues and trends—without discussing names." The ombudsman's services are not intended to replace or circumvent formal grievance procedures.

The ombudsman's office is organizationally within the Secret Service's Office of Human Resources and Training and draws its budgetary resources from that office. Until 2000, however, the ombudsman position had been a special assistant to the director of the Secret Service. Following an efficiency review, the ombudsman's office, along with the employee assistance program (EAP) and EEO offices, was placed within the human resources and training office in an effort to bring human capital-related activities under one roof.

The ombudsman's office has one full-time ombudsman in Washington, D.C. and nine collateral-duty ombuds who work at headquarters or in field

offices. The current ombudsman—a General Schedule (GS) grade 15—is the sixth to hold that position since the program began in 1987. All have been male special agents, typically serving in the position as a final assignment. Applicants for the position bid on the job as part of their rotational process, and the appointment is renewable yearly. According to the Deputy Assistant Director, Office of Government Liaison and Public Affairs, who represented the Secret Service director’s office, the director selects a respected senior agent who has had a variety of assignments and who understands the agency’s structure, processes, and culture.¹ This official said that special agents are selected as ombudsmen because most of the issues the ombudsman handles come from law-enforcement staff. The nine collateral-duty ombudsmen bring gender, racial, and occupational diversity to the program staff. Currently, there are special agent, uniformed division, and support staff performing collateral-duty ombuds work. Clients can choose which ombuds they would like to contact. The ombudsman said that candidates for the collateral-duty positions bid on the job and are selected for their seniority, the respect they receive from their coworkers, and their work experience. Once selected, there is no term limit. In addition, the ombudsman said that he is a member of The Ombudsman Association and the Coalition of Federal Ombudsman and that all ombuds staff have attended training provided by The Ombudsman Association.

The ombudsman said that collateral-duty staff spends approximately 10 to 30 percent of their workweek on ombuds duties. One collateral ombuds with whom we spoke concurred, stating that she spends, on average, 4 hours a week on ombuds tasks. She said that she has weekly telephone contact with the ombudsman to report basic case statistics and to inform him of any cases with which she is having difficulty. Furthermore, she said that, in the past, the ombudsman and the collateral staff have met annually to discuss cases they handled, as well as to receive notice of upcoming training and seminars. The ombudsman often brings a representative from The Ombudsman Association with him.

The ombudsman program is part of the total conflict management strategy at Secret Service, and the ombudsman works together with the EAP and EEO offices to share information and cross-refer cases. Similarly, a collateral-duty ombuds said that collateral-duty staff make and receive

¹A position description for the ombudsman was not available; the ombudsman told us that the agency is currently developing a “functional statement of responsibility.”

referrals to the EAP and EEO offices. The EEO specialist said that his office refers cases to the ombudsman's office, which satisfies requirements under the EEO complaint process regulations to make ADR services available. He said that approximately half of all initial EEO contacts are referred to the ombudsman.

Approach to Independence, Neutrality, and Confidentiality

The Secret Service ombudsman said that his office operates under the Code of Ethics and Standards of Practice of The Ombudsman Association, thus adhering to the basic ombudsman tenets of independence, neutrality, and confidentiality. Although the ombudsman's program is now housed in the Office of Human Resources and Training, the ombudsman said that his independence would not be compromised. The ombudsman said that while he nominally reports to the assistant director for human resources and training, he would continue to meet with the Secret Service Director and Deputy Director on an as-needed basis. The Deputy Assistant Director of Public Affairs said that the ombudsman continues to have complete and unfettered access to the Director's office. Similarly, the ombudsman said his neutrality is still intact. The ombudsman said that he is not an advocate for either management or employees—he said that he remains neutral and promotes improved communication between parties and shared solutions.

A former ombudsman told us that “confidentiality is the crux of the ombudsman program” and that employees need to be 100 percent certain that their interaction with the ombuds is confidential. The program brochure states that “Confidentiality is the rule. No formal written records are kept. Ombudsmen take no action without permission unless criminal behavior is involved, or a life has been threatened.” In an effort to provide confidentiality, the ombudsman's office is windowless and located on a different floor from the Director's office. A former ombudsman reported that he also accepted client calls at his home telephone number after work hours.

The collateral-duty ombudsmen maintain the same standards of practice as the ombudsman. One collateral ombuds said that she did not have a problem maintaining her independence, neutrality, or confidentiality and that no one had ever challenged her ability to do so.

Evaluation and Outcomes

The ombudsman said that his office keeps no formal records, which is consistent with the program's brochure and with the Secret Service's Administrative Procedures Manual. He informally tracks his cases for statistical purposes, and in the future, he plans to create a computer

database to record the number and nature of cases. The ombudsman, who took office in August 2000, said that during his first 2 months as ombudsman, he worked on 48 cases, 3 or 4 of which had “EEO overtones.”² Other cases typically involved disagreements over management styles and questions about promotions and job rotations. The collateral-duty ombuds said that she usually handles 2 to 3 cases a month for a total of about 30 cases a year. Both the ombudsman and the collateral-duty ombuds reported that the program works well and that they have been able to detect systemic problems at the agency and encourage management to make comprehensive changes. The ombudsman considers himself to be the frontline of dispute resolution and hopes to resolve 70 to 80 percent of his cases so that they do not reach the EAP, EEO, or Inspections³ offices. The current ombudsman’s predecessor said that he believed the program saved the Secret Service money, especially because of the ombudsman’s ability to deflect or diffuse conflicts before they escalated.

The Secret Service has not formally evaluated its ombudsman program, but the Deputy Assistant Director for Public Affairs stated that the perception in the Director’s Office is that the program is “very effective” and that it helps improve employee morale. He said that this perception was reinforced during a recent efficiency review. Although he could not make an estimate of cost savings, he thinks the program saves the agency money by resolving issues early, before they become formal EEO cases or administrative grievances.

The EAP Coordinator said that he recognized some positive results stemming from the ombudsman program but that these results are difficult to measure. He said that the ombudsmen’s services might have lightened EAP’s caseload.

Lessons Learned

In citing lessons that the Secret Service has learned about the establishment and operation of an ombudsman program, officials voiced different opinions. A former ombudsman and the Deputy Assistant

²This total is in line with an estimate provided to us in 1996 by a former Secret Service ombudsman. He said that he handled about 300 cases per year (i.e., 25 cases per month), resolving about 70 percent of them.

³The Inspections Office handles any internal complaints or criminal violations by any Secret Service employee.

Director for Public Affairs agreed that the ombudsman must be a credible, trusted, and respected senior employee who knows the agency and its policies. The Deputy Assistant Director stressed the value of the gender, racial, and occupational diversity that the collateral-duty ombuds bring to the program, as well as the additional insight they offer from being stationed in the field.

There were differing views on the value of continuity in the ombudsman position. The EAP Coordinator said that the frequent turnover of ombudsmen detracts from the ombudsman's ability to establish personal credibility and a reputation for effective dispute resolution. He said that "As soon as he [the ombudsman] knows the job, he leaves." The Deputy Assistant Director for Public Affairs and the ombudsman did not concur. They said that the length of terms served helps provide fresh perspectives for the program and helps avoid ombudsman burnout.

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