

November 2, 2016

Neil R. Eisner  
Chair, Committee on Rulemaking  
Administrative Conference of the United States  
1120 20<sup>th</sup> Street, NW  
Suite 706 South  
Washington, D.C. 20036

Re: Comments from the Union of Concerned Scientists on the role of ombuds in federal agencies

Dear Chair Eisner:

The Union of Concerned Scientists appreciates the care with which this report and recommendations were put together. We agree that ombuds can fulfill a crucial role in helping ensure that the public trusts federal agencies and believes their policies and practices are fair.

However, the draft recommendation does not go far enough when ensuring that Congress, agency leaders, and the public have enough information about agency ombuds to understand their role in government and their effectiveness. We also urge you to consider our other suggestions for revising the recommendation.

**A. Promoting more government-wide and publicly available information on ombuds programs in federal agencies.**

- According to the Administrative Conference of the United States (ACUS) study<sup>1</sup>, there appears no requirement for federal agencies to publicly report whether they have ombuds and for which programs, and whether the ombuds program was created by statute or regulation.
- At the very least, the federal government should be able to count and categorize this type of employee, and produce a publicly available and searchable comprehensive list of all ombuds working in federal agencies.

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<sup>1</sup>[https://www.acus.gov/sites/default/files/documents/PART%201\\_Executive%20Summary%20Final.pdf](https://www.acus.gov/sites/default/files/documents/PART%201_Executive%20Summary%20Final.pdf)

- ACUS should recommend that the Congress request the GAO to survey the role of ombuds at federal agencies, and to recommend what steps should be taken to ensure an accurate count and description of all ombuds operating within the federal government, including those holding part-time capacity.
- ACUS should encourage the General Services Administration (GSA) and the Office of Science and Technology Policy (OSTP) to mandate that all federal agencies list their ombuds programs, even their internal ombuds, on their public websites. Further, ACUS should encourage that the contact information for the ombuds office is made publicly available so that the public, as well as agency staff, can easily make contact.

## **B. Protecting ombuds from political interference**

- The current recommendation promotes the creation of an independent office within the executive branch for ombuds, charged with addressing “integrity and effectiveness issues” and developing “policies, technical standards and standards for evaluation” for ombuds programs. We are concerned that this vague recommendation may lead to this oversight role being assumed by OMB. We believe that OMB is far too politically sensitive to have the responsibility for evaluating the performance of federal ombuds.
- While OMB fulfills this role for Inspectors General (IG), with its deputy director the executive chair of the statutorily created Council of Inspectors General on Integrity and Efficiency (CIGIE), oversight of ombuds is not analogous. All IGs were created by statute with similar, if not identical missions. CIGIE also has a formal structure.
- Ombuds are not all created by statute and they have varying missions. Their independence and impartiality could be vulnerable to political interference in ways that IGs’ independence cannot. Further, the Coalition of Federal Ombudsmen (COFO) does not have a statutory mandate.
- We believe that if ombuds should have executive branch oversight, that task would best be fulfilled by OSTP, which could provide support to COFO, and advise on standards and the methods to evaluate the effectiveness of ombuds programs.
- OSTP personnel could help agency ombuds create diagnostic tools and methodologies that would give Congress, the public, and agency managers a more comprehensive understanding of how ombuds

operate. They could also work with agency ombuds to increase transparency.

- A useful parallel for the role of ombuds and hence COFO is the effort to ensure that scientific integrity policies are implemented in all agencies with a substantial science enterprise. While not required by statute, scientific integrity policies when properly implemented have been very helpful in protecting against political manipulation of scientific work. We believe OSTP should exercise greater oversight on scientific integrity including ensuring public information is available on agency implementation and cases that have been acted upon. For general agency ombuds activities, similar provisions are applicable.

### **C. Evaluating ombuds' performance**

- Surveys that ask ombuds to report their effectiveness risk being both incomplete and self-serving. Even surveys where ombuds from one agency review another agency, while helpful, are not sufficient.
- We believe that the best evaluators are an institution independent of the ombuds. The Government Accountability Office (GAO), perhaps in partnership with an academic institution, could fulfill this role by conducting an independent evaluation every two years and publicly reporting their findings.
- It is also important to get feedback from clients. For internal ombuds, who address concerns by agency employees, evaluations can be done through anonymous surveys, conducted by an independent academic institution. External ombuds can be required to ask stakeholders to fill out an anonymous survey asking them about their satisfaction with the ombuds process.

### **D. Preserving confidentiality while presenting the public and Congress with evidence that programs are valuable**

- We agree that confidentiality is crucial when internal ombuds are addressing the concerns of agency employees. But we think that some type of reporting mechanism is necessary to assess the nature of staff complaints or concerns and how they were addressed without betraying confidentiality. This also would give agency heads a better understanding of what ombuds do, and what they are able to achieve.
- Likewise, external ombuds should be accountable for documenting how many external stakeholders contacted them monthly or annually, the nature of their complaints by category, and the extent to which those complaints were resolved.

If you have any questions about these comments, you may contact my colleague Yogin Kothari, Washington Representative, at the Center for Science and Democracy at the Union of Concerned Scientists. Yogin can be reached at [ykothari@ucsusa.org](mailto:ykothari@ucsusa.org) or by phone at (202) 331-5665.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Rosenberg". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Andrew A. Rosenberg, Ph.D.  
Director, Center for Science and Democracy  
Union of Concerned Scientists