



Ombudsman Initial Consideration

LEOFF Plan 2 Retirement Board

April 28, 2010

Issue Description

- Survivors of duty related deaths and members who are catastrophically disabled may not know about or where/how to apply for all benefits to which they may be entitled.

Identifying Benefits

- Multiple benefits, multiple sources, and time sensitivity
 - Pension Benefits [State]
 - Workers' Compensation Benefits [State]
 - Social Security Benefits [Federal]
 - PSOB [Federal]
 - Military/Veteran Benefits [Federal]
 - Union/Employer Sponsored Benefits [Private]
 - Personal Benefits/Insurance [Private]

Sources of Assistance

- Currently no single source of assistance
 - Rely on family, friends, coworkers, organizations
 - Individual Benefit providers
- Still may be incomplete information and overlooked benefits

Ombudsman Concept

- A person who acts as a trusted intermediary between an organization and some internal or external constituency while representing the broad scope of constituent interests
- Roles and responsibilities can be defined as broad or narrow to fit scope of problem

Ombudsman

QUESTIONS?

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Ombudsman Initial Consideration

April 28, 2010

1. Issue

Survivors of duty related deaths and members who are catastrophically disabled may not know about or where/how to apply for all benefits to which they may be entitled.

2. Staff

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3. Members Impacted

This issue could affect any LEOFF Plan 2 member disabled in the line of duty or the survivors of any member killed in the line of duty. As of June 30, 2008 there were 16,626 active members and 1,134 retirees as reported in the Office of the State Actuary's 2008 Actuarial Valuation Report.

4. Current Situation

Various benefits from multiple sources, including LEOFF Plan 2 Pension benefits, are available to the survivors of members killed in the line of duty and members who are disabled in the line of duty. There is no single resource available to these survivors and members to help identify, navigate, and obtain the various benefits. Members and survivors must rely on themselves, customer service agents of each benefit source, and volunteers (such as co-workers) to work towards obtaining all the benefits to which they may be entitled.

5. Background Information and Policy Issues

Survivors of duty related deaths and members who are catastrophically disabled may not know about or where/how to apply for all benefits to which they may be entitled.

A number of cases over the past years have demonstrated that, at one of the most emotional and challenging times in their lives, injured members or the survivors of members killed in the line of duty, have too often been left alone to deal with complex, bureaucratic systems that can deny them the disability or death benefits and other programs that are their due.

Members who are injured seriously or grieving survivors are often unprepared or unable to defend, much less promote, their benefits interests. They may be forced to accept what the system says they are entitled to because they may not have the combination of education, knowledge, determination, or perseverance necessary to pursue benefit entitlements, if necessary, for years on end, to obtain all the benefits to which they may be entitled.

Benefit Entitlement

A member who is catastrophically disabled in the course of employment or the survivor(s) of a member killed in the course of employment will be required to navigate through multiple entities and time-sensitive processes to obtain benefits to which they may be entitled at time where they are subject significant emotional distress and anxiety.

As an example of this complexity, listed below are some of the various benefits that need to be considered:

- Pension Benefits [State]
- Workers' Compensation Benefits [State]
- Union Sponsored Benefits (Pension, Insurance) [Private]
- Social Security Benefits [Federal]
- Public Safety Officer Benefits (PSOB) [Federal]
- Military/Veteran Benefits [Federal]

Researching and applying for these benefits alone can be time consuming and perplexing. Keeping in mind, that identifying and applying for these must be accomplished while dealing with the difficult circumstances surrounding a death or disability. Further, these may not be the only administrative burdens that need attention. For example, in addition to the benefit issues listed above, here are several other matters that may require a survivor's attention:

- *Wills, Trusts and Related Documents:* Locate and review will or trust documents. Other related documents may include divorce settlement documents or child support orders, if the deceased was previously married.

- **Financial Accounts, Assets and Liabilities:** Identify deceased financial assets and obligations, including checking, savings and brokerage accounts, pensions, retirement programs and life insurance. Obligations include mortgages, auto and personal loans and unpaid credit card balances.
- **Transfer Assets to Beneficiaries:** Contact all the institutions holding the financial assets identified. Each will have its own set of requirements on how to transfer assets to beneficiaries. Most will require copies of a death certificate.
- **Property Deeds, Titles and Documentation:** Locate and review property deeds and titles to real property such as cars and boats.
- **Personal Insurance Policies:** Identify and review all insurance policies (e.g., life, home, auto, and personal property) and notify the respective companies of the death. Many carry additional benefits in the event of accidental death—some life insurance policies may double the policy coverage amount. Contact the insurance companies to ensure that the property will still be covered while affairs of the deceased are being managed.
- **Tax and Legal Advice:** Meet with the estate's executor or attorney to discuss legal and tax issues associated with settling the estate.
- **Notification of Credit Card Companies:** Notify credit card companies of a death and cancel his/her cards. Many companies provide accidental death insurance, which pay off credit balances in the event of a death.

Currently there is no single source location that a disabled member or survivor can go to for assistance in identifying all the benefits they may be entitled to or for assistance in obtaining benefits. Often times, organizations or individuals attempt to assist these members and survivors, but often have incomplete knowledge of available benefits or processes. An Ombudsman could be one potential solution for aiding survivors and disabled members.

Definition of an Ombudsman

An ombudsman (conventional English plural: *ombudsmen*) is a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing the broad scope of constituent interests. The word 'Ombudsman' is based on a Swedish word meaning 'Agent'.¹

Common Roles and Responsibilities of Ombudsman

Usually appointed by an organization, but sometimes elected by the constituency, the ombudsman may, for example, investigate constituent complaints relating to the organization and attempt to resolve them. Ombudsmen sometimes identify organizational roadblocks

¹ The origin of the word is found in Old Norse *umbuðsmann* (accusative) and the word *umbuds man*, meaning representative (with the word *umbud/ombud* meaning *proxy*, that is someone who is authorized to act for someone else, a meaning it still has in the Scandinavian languages). The first preserved use is in Swedish. In the Danish Law of Jutland from 1241 the term is *umbozman* and means a royal civil servant in a hundred (country subdivision). From 1552, it is also used in the other Scandinavian languages such as the Icelandic "umboðsmaður", the Norwegian "ombudsmann" and the Danish "ombudsmand". <http://en.wikipedia.org/wiki/Ombudsman>, 3/26/10

running counter to constituent interests, track problem areas; and make recommendations for changes to policies or procedures. A specialty ombudsman looks at the acts of a single agency or a group of agencies that work in a single area of concern, such as benefit issues. They assist those who do not have sufficient time or who do not have sufficient knowledge about an administrative system to successfully navigate through such systems. Thus, the role of Ombudsman commonly involves the following:

Research and Provide Information: The ombudsman may provide a copy of a policy or obtain clarification of the meaning of a policy, an explanation of a management decision, or other factual information. The ombudsman may be able to provide (or help to find) information that resolves a problem in one or two contacts. Often someone under stress is less effective in searching for and obtaining such information on their own.

Coach and Evaluate Options: Often people believe they have no options or only bad ones. The ombudsman can often help frame or reframe the issues; identify or develop new and different perspectives; describe additional, responsible and effective paths from which the constituent may choose; and role play to assist the constituent in handling challenging situations.

Referral: The ombudsman understands the other resources within the organization available for persons seeking assistance and refers constituents to these resources.

3rd Party Facilitation: The ombudsman impartially works with others within the organization to address constituent issues when given permission to do so. The ombudsman may engage in shuttle diplomacy between the constituent and the party within the organization, or bring the constituent and other party together informally to resolve the problem. Or the ombudsman may agree to take a concern directly to a supervisor or even a very senior manager for review and informal problem solving. Sometimes this facilitation results in a different outcome (change) for the constituent and sometimes it does not (no change).

Listen: Listening without judgment and being gently questioned may help constituents put problems into perspective, or deal with stress so they can take the time that they need to figure out what is happening to them. Generally, listening is not tracked because in all cases the constituent wants to “be heard.”

Facilitated Resolution: The ombudsman facilitates a voluntary mediation-like process that offers the participants the opportunity to fully express their concerns, to better understand one another’s perspectives, and to explore what resolution options may be mutually acceptable.

Outside of Scope: Constituents may present issues that are not within the scope of the Ombudsman’s responsibility. When this occurs the ombudsman listens and is often able to redirect that person to an alternative.

History of the Public Sector Ombudsman²

For as long as government has existed, guaranteeing citizens fair and equitable treatment under the law has been an issue and various protections have been utilized over the years. In modern times the public sector Ombudsman, where instituted, has been a successful and valuable guarantor of citizens' rights. By impartial and independent investigation of citizens' complaints, it has provided an informal and accessible avenue of redress.

The first public sector ombudsman was appointed by the Parliament of Sweden of 1809. The Swedish Constitution divided and balanced power between the king and Parliament with the king having executive powers and Parliament retaining legislative power. The ombudsman, who was appointed by and responsible to Parliament, was to protect individual rights against the excesses of the bureaucracy.

This first ombudsman's office, since its creation, has been the model for the public sector ombudsman, and set the definition that is still accepted today: a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government. These acts may or may not include the administrative acts of the judiciary or the legislature, depending upon the statute.

The ombudsman concept spread through Europe, and to the United States with the first offices being established in the United States in the mid 60's. This was a time in the United States when exposure of government secrecy and scandal, and when movements such as civil rights and good government created a political atmosphere more favorable to openness, and to establishing recourse for the aggrieved.

Hawaii established the first public sector office in 1967. Since then a number of states, counties and municipalities have followed suit by establishing offices of general jurisdiction.

The ombudsman movement in the United States has also been characterized by offices that represent a departure from the Swedish model. These variations would include offices with general jurisdiction but appointment by a governor or mayor, legislative offices with special jurisdiction such as corrections, and single agency ombudsman with statutory authority.

The job description for State Offices of Ombudsmen invariably involves the trouble-shooting function of investigating citizen complaints concerning specific acts by government agencies.

For example, in Nebraska the ombudsman's duties are as follows:

- receive complaints from the public and from persons working in government;
- investigate;
- negotiate remedial action with the agencies involved;
- answer questions and assist people with problems relating to government.³

² http://usoa.non-profitsites.biz/en/About_Us/history.cfm. Viewed 3/26/10

³ Kent M. Weeks, *Ombudsmen Around the World: A Comparative Chart*, 2d. ed. (Berkeley: University of California, Institute of Governmental Studies, 1978), p. 162.

However, many Ombudsman Offices only provide coaching and assistance in identifying and evaluating options to address constituents concerns rather than taking on complaint resolution or investigative matters.

Ombudsman Examples in Washington State Government

Washington currently has several examples ombudsman organizations ranging from family services to education to open government. These examples help demonstrate the breadth and depth of the roles and responsibilities that an Ombudsman may fulfill. The examples provided below include:

- Governor's Committee on Disability Issues and Employment
- WA Office of the Family and Children's Ombudsman
- WA Office of the Education Ombudsman
- WA Open Government Ombudsman
- WA Statewide Health Insurance Benefits Advisors (SHIBA)
- King County (WA) Ombudsman's Office

Governor's Committee on Disability Issues and Employment

The Governor's Committee on Disability Issues and Employment advises the governor, legislature and other policy-makers on issues important to people who have disabilities. Created in 1987 by Executive Order 87-08, committee members volunteer to benefit Washington state citizens with disabilities by:

- Advising the governor, the legislature and state agencies on policies issues affecting persons with disabilities;
- Recognizing employers who demonstrate leadership in employing people with disabilities;
- Monitoring legislation to assure equal opportunity and access for employment, education, health care and public services;
- Providing training and technical assistance to the business community, thereby promoting employment opportunities and awareness of disability issues;
- Promoting understanding of the needs and potential of people with disabilities, offering information and awareness training to the public;
- Conducting all activities in barrier-free environments, using appropriate auxiliary aids and services to ensure effective communication.

The mission of the committee is to serve as a disability minority advocate. It identifies issues and concerns pertaining to the rights and needs of all persons of disability and works to empower such individuals to take control over their own lives.

The committee advises the governor, legislature, state agencies, the business community, organized labor, other public and private organizations, and the general public on disability issues and concerns, and makes recommendations to address those concerns, with emphasis on increasing opportunities for independence and employment.

WA Office of the Family and Children's Ombudsman

The Office of the Family and Children's Ombudsman (OFCO) was created in 1996⁴ within the office of the Governor. The office was created to promote public awareness of family and children's services as they pertain to the placement, supervision, and treatment of children in the state's care, or in facilities licensed by the state. OFCO is to identify systemic issues for the Governor and the legislature to act upon, and to ensure agency compliance with its own policies, regulations, and statutes. OFCO duties include providing information to those receiving services from family and children's services, investigate complaints, monitor the delivery of services, periodically review facilities, recommend changes in procedures, and submit an annual report with recommendations.

WA Office of the Education Ombudsman

The Office of the Education Ombudsman (OEO) was established in 2006 within the Office of the Governor. The OEO is responsible for providing information to parents, students, and others regarding their rights and responsibilities within the public school system and advocating on behalf of K-12 students.

The OEO's authorizing statutes provide various powers and duties, including: (1) developing parent involvement materials; (2) providing information to students, parents, and the public about the public school system; (3) identifying obstacles to greater parental involvement in schools; (4) recommending strategies for improving the success rates of groups of students with disproportionate academic achievement; and (5) facilitating the resolution of complaints made by parents and students regarding the public school system.

WA Open Government Ombudsman

Attorney General Rob McKenna created the Open Government Ombudsman position when he took office in January, 2005. The Ombudsman assists citizens and agencies with Public Records Act and Open Public Meetings Act compliance. Here are some common examples of what the Ombudsman does:

- A citizen emails a question to the Ombudsman and whether an agency's response (or lack of a response) violates the Public Records Act. If the Ombudsman has enough information in the email (a copy of the request and the agency's response), he might provide a short analysis of the law and apply it to the facts presented by the citizen.
- A state or local agency calls the Ombudsman to ask if its approach to providing public records is correct or not. The Ombudsman might agree with the agency or suggest an alternate approach.
- A citizen or agency asks the Ombudsman if an agency meeting must be open to the public. The Ombudsman would analyze the issue and provide an informal opinion by phone, email, or sometimes by letter.

⁴ Chapter 43.06A RCW

WA Statewide Health Insurance Benefits Advisors (SHIBA)

Statewide Health Insurance Benefits Advisors (SHIBA) are volunteers that can help with health care coverage questions. The SHIBA advisors provide free health care coverage education, assistance, and advocacy. The SHIBA Help Line assists consumers with choices and problems involving private health insurance as well as many government programs, such as:

- Medicare
- Medicaid
- Basic Health
- Children's Health Insurance Program
- Washington State Health Insurance Pool

King County (WA) Ombudsman's Office⁵

The King County Ombudsman's Office was created by the voters of King County, WA, in the Home Rule Charter of 1968, and operates as an independent office within the legislative branch of King County government. The Office investigates complaints regarding the administrative conduct of King County agencies, and alleged violations of county codes dealing with employee ethics, whistleblower protection, and lobbyist disclosure. The King County Ombudsman is appointed to a renewable five-year term by the King County Council and is removable mid-term only for cause.

Ombudsman Example in Federal Government

The Federal government also maintains its share of Ombudsman office covering everything from student aid to regulatory enforcement to insular affairs. The most relevant example may be the Medicare Beneficiary Ombudsman, which is described below.

Medicare Beneficiary Ombudsman

As part of the Medicare Modernization Act of 2003, Section 923, Congress mandated the creation of the Medicare Beneficiary Ombudsman position to ensure that people with Medicare get the information and help they need to understand their Medicare options and to apply their rights to protections.

An "Ombudsman" is a person who reviews the performance of an organization or program, and helps to resolve problems that are found. Congress requires that Medicare have a Beneficiary Ombudsman to help people with Medicare.

The Ombudsman makes sure information is available about the following:

- Medicare benefits
- Need to know information to make health care decisions
- Rights and protections under Medicare
- Issues resolution

⁵ <http://en.wikipedia.org/wiki/Ombudsman>, Viewed 3/26/10

Ombudsman Concept Challenges

Consideration may be given to challenges that might be raised against the Ombudsman concept in order to navigate any similar potential hazards for potential legislative recommendations. *A Comprehensive Overview With Recommendations For Efficient Ombudsman Services*⁶, a public report published by the Minnesota Ombudsman Roundtable, details why legislative proposals for Ombudsman services/changes have met opposition or been unsuccessful in Minnesota.

The Minnesota Roundtable concluded that it was clear those ombudsmen are misunderstood on many levels. Misunderstandings which hampered proposals included:

- an inadequate understanding of the role and function of an ombudsman;
- an inadequate awareness of the various state ombudsman; including the clientele they serve, reason for their establishment, funding and uniqueness of service they provide to designated clients;
- an inadequate method to get information about ombudsman services;
- and an inadequate understanding of what these proposed changes would mean to stakeholders.

The participants identified concerns that had been raised in the various discussions and proposals and then discussed them thoroughly. The concerns were then separated and ranked by their perceived importance. They are listed in the order discussed:

- *Duplication of services:* Although not consistent with the experience of the ombudsmen, there is a perception that the different ombudsmen may duplicate services and constituents.
- *Lack of understanding:* Some members of the public and the legislature do not know who the ombudsmen are, their duties and how they are similar and/or different.
- *Reorganization of government:* Some wish to change the various ombudsman's offices because of the general need to reorganize government and not because of a specific need to reorganize the ombudsmen offices.
- *Functions, powers and authorities:* Among the different ombudsman offices, the functions, powers and authorities differ. The legitimate differences need to be understood by legislators and those that are not legitimate need to be corrected.
- *Conflicts of interest:* These conflicts result when ombudsmen investigate the people who appoint them, are housed in the same buildings or who are not considered independent from those they investigate.
- *Inequities among ombudsman offices:* Funding, resources, powers, etc., among the different offices vary, creating inequities. Different offices have different resources and

⁶ <http://www.ombudmhd.state.mn.us/reports/govresp.htm>, viewed 4/6/2010

different powers when they receive or investigate complaints. The reasons for this need to be understood and if not appropriate based on the populations served, then corrected.

- *Administrative efficiencies:* While it has not been demonstrated, some observers believe administrative efficiencies could be achieved by combining or facilitating the combination of administrative services for ombudsman.
- *Service differences:* People do not understand the separate jurisdictions of ombudsman and that each ombudsman does not accept complaints about any administrative act of any state government agency but only from those areas as described in their legislation.
- *Enough ombudsman:* Some observers may believe there are enough ombudsman and no more are needed. This may be the result of increased numbers of ombudsman rather than an assessment of their functions.
- *Inefficiencies in government:* Some citizens are fed up with government and wish to do something based on their dissatisfaction. They seek reforms such as “one-stop shopping” to make government more efficient.
- *Structural policy concerns:* Some legislators are concerned about the structure of ombudsman offices; where they are located, who they can investigate, and the different powers of each office.
- *Proper role:* Some observers question whether it is a proper role of the ombudsman to advise citizens of their right to sue state government. While the main role of the ombudsman is to resolve disputes and complaints in an informal manner, some citizens may only be able to obtain justice through civil court action. That decision rests with the citizen and not with the ombudsman. In some ombudsmen legislation, the work of the ombudsman may not be brought into court action. What cannot be measured are the number of legal actions that have been prevented through the efforts of the ombudsmen.
- *Service justification:* The service some ombudsmen offices offer has not been clearly justified in the minds of various legislators. For example, some wonder why the state should provide ombudsman services to inmates. Is it justified to spend money on a program and an ombudsman for the same program? These observers question whether the program shouldn't be done so well that an ombudsman is not needed, especially when resources are scarce. While theoretically this should be true, the services are provided by humans who can and sometimes do make mistakes or interpret rules in a way that was not intended nor is favorable to the citizen. The ombudsmen serve as part of a quality control system for the state, providing checks and balances to bureaucracies.
- *Common definition of ombudsman:* Should all ombudsman offices be governed by the same language and have the same powers? Some observers believe that should be the case. New ombudsman should have the same powers as already existing offices. Offices that do similar kinds of work should be coordinating their efforts.
- *Community concerns:* Some legislators and other observers may not understand community concerns that helped create some of the ombudsman offices. These communities may include communities of color, of mental disabilities, of small

businesses, of taxpayers, of the criminal justice system and of older Minnesotans. This has a potential political impact if the offices are going to be changed by legislation.

- *Legislative institutional memory:* When an ombudsman office successfully eliminates or solves problems, the legislative institutional memory may not remember what the situation was like before the office was created. The ombudsman is an insurance policy so that these problems do not recur.
- *Equity among ombudsmen:* Achieving equity should not reduce services to any group.
- *Access and publicity:* Should the various ombudsmen offices have the same access to all private and confidential information needed to execute their functions? Should they have the same ability to publicize the results of investigations?
- *Accountability:* To whom are ombudsmen accountable? Who watches the watchdogs? While some ombudsmen offices do not appear to have a direct line of accountability, they actually have a delicate web of controls that keep them from abusing the powers of the office. They must first be responsive to the citizen groups they represent. If they are not satisfied, the legislature may hold them accountable through the legislative and funding process. And in all cases there is a process to remove an ombudsman who demonstrates just cause for removal.
- *Legal and financial counsel:* Should ombudsmen have the same legal counsel as the state and/or agency especially those agencies that it might investigate? Does the attorney general's Code of Ethics prevent this? Should they have the same finance officer as those they investigate? Or should all ombudsmen have the same legal counsel and financial counsel as each other? Is the answer the same for both subjects?

Additionally, the roundtable ranked the various concerns to reflect what they felt most reflected the concern of the legislative and executive branches of government. These were then grouped into two tiers:

First Tier

- Lack of understanding of ombudsmen roles and responsibilities
- Administrative efficiencies
- Inequities among ombudsman offices
- Service justification
- Accountability
- Conflict of interests

Second Tier

- Belief that ombudsmen duplicate and/or overlap services.
- Differing functions, powers, authorities of ombudsmen.
- Equity among ombudsmen should not reduce services.
- Lack of knowledge by lawmakers about the specific citizen and/or community concerns.
- One-stop government shopping to re-invent or re-engineer government.