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Good Regulators Make Mistakes, Hence Ombudsmen



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Congress has begun to consider ways to enhance the ombudsman programs at the federal financial regulatory agencies. These programs are an especially important part of the regulatory process, and are deserving of thoughtful ways to increase their efficacy.

The ombudsman programs were established about two decades ago as a way to strengthen the supervisory relationship and provide an opportunity to settle disputes with minimal confrontation and maximum thoughtfulness. I remember telling my own examiners at the Office of the Comptroller of the Currency that matters before the ombudsman must be considered and settled promptly. It was in no one's interest to let them fester, and I

made clear that retribution for contacting the ombudsman would not be tolerated.

The OCC, like the other federal financial regulatory agencies, is filled with an uncommonly high caliber of talented examiners and supervisors. But like all human beings, they can make mistakes. A system that identifies and repairs those mistakes — and does so openly — not only minimizes the harm they cause, but also strengthens the agencies that make them, enhancing the integrity of their decision-making in the public's eyes.

Congress has expressed concerns about the current regulatory appeals structure. Some representatives are concerned that bankers don't bring matters to the ombudsman for fear of retribution in the next exam cycle, and cite the low number of appeals as evidence that the ombudsman programs are not meaningful.

To address these concerns, the House of Representatives is considering the creation of a super ombudsman to hear examination-related appeals from all the federal financial agencies. I have suggested a variant on the House proposal: a Federal Financial Institutions Examination Council task force, with a chair that rotates among the agency ombudsmen. The task force could hear appeals of disputes not resolved at the field, district, and agency ombudsman levels. The agency head would retain the right to overturn the decision of the task force, since the entity bearing

ultimate responsibility for safety and soundness should have the final call.

However, an independent task force cannot overcome banker fears by itself, no matter how rigorous and fair it is. At its core, the problem is one of perception. The banking agencies hold life-or-death powers over the companies they supervise. It's understandable that banks would hesitate to bring a complaint to a third party—even the smallest prospect of harming the supervisory relationship makes filing an appeal feel like "betting the ranch." Supervisors must reach out to bankers to fight this perception, encourage appeals where the bank and the agency's front line are at an impasse, and hammer out procedures that give bankers no reason to fear retribution.

Another way to improve ombudsman programs is to ensure that they can hear all manner of complaints. Efforts to wall off the ombudsman from pending or threatened enforcement actions are a mistake, unless a failure to act quickly will put the public at risk. Expanding the right of review can only make these programs, and the supervisory relationships they help maintain, even stronger.

Congress could also task ombudsmen with periodically reviewing agency rules, regulations, and agency practices to reduce burden and enhance efficacy. The new FFIEC Ombudsman Task Force could perform this job for matters in which the agencies have acted jointly.

Regulations accumulate like barnacles on a ship. Every new problem elicits a new regulation. Some work well. Some do not. Some were necessary once, but are now obsolete.

Needless burden weighs down our financial system and actually makes it less safe and sound, just as too many

barnacles threaten a ship's seaworthiness. Excessive, ineffective rules cause the regulatory agencies to misdirect precious resources.

Congress should be commended for considering how to enhance ombudsman programs, just as the agencies should be commended for developing

these programs and nurturing them over the last 20 years. Every human endeavor can be improved, and the time is right to improve this one.

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