

TRANSPORTATION SECURITY ADMINISTRATION  
OMBUDSMAN ACT OF 2011

NOVEMBER 4, 2011.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. KING of New York, from the Committee on Homeland Security,  
submitted the following

R E P O R T

[To accompany H.R. 1165]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1165) to amend title 49, United States Code, to establish an Ombudsman Office within the Transportation Security Administration for the purpose of enhancing transportation security by providing confidential, informal, and neutral assistance to address work-place related problems of Transportation Security Administration employees, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Transportation Security Administration Ombudsman Act of 2011”.

**SEC. 2. TRANSPORTATION SECURITY ADMINISTRATION OMBUDSMAN OFFICE.**

(a) IN GENERAL.—Subchapter II of chapter 449 of title 49, United States Code is amended by adding at the end the following new section:

**“§ 44946. Ombudsman**

“(a) IN GENERAL.—

“(1) ESTABLISHMENT.—There is established an Office of the Ombudsman in the Transportation Security Administration.

“(2) OMBUDSMAN.—

“(A) IN GENERAL.—The Office shall be under the direction of the Ombudsman of the Transportation Security Administration, who shall be appointed by the Chief Human Capital Officer of the Department of Homeland Security on behalf of the Secretary of Homeland Security.

“(B) QUALIFICATIONS.—An individual appointed as the Ombudsman must have expertise in—

- “(i) labor and employment relations with Federal agencies; and
- “(ii) dispute resolution.

“(C) NOTIFICATION OF APPOINTMENT AND REMOVAL.—The Chief Human Capital Officer of the Department of Homeland Security shall notify the appropriate congressional committees within 30 days after the effective date of any of the following actions:

- “(i) The appointment of an individual as Ombudsman.
- “(ii) The reappointment as Ombudsman of an individual who is serving as Ombudsman.
- “(iii) The removal of an individual from the position of Ombudsman.

“(3) ENSURING INDEPENDENCE OF OMBUDSMAN.—

“(A) IN GENERAL.—The Ombudsman shall report—

“(i) to the Administrator of the Transportation Security Administration; and

“(ii) to the Chief Human Capital Officer of the Department of Homeland Security with respect to any dispute between the Ombudsman and the Administrator of Transportation Security Administration over matters involving the execution of the Ombudsman’s duties as set forth in subsection (b).

“(B) INSPECTOR GENERAL’S AUTHORITY TO CONDUCT INVESTIGATIONS NOT AFFECTED.—Nothing in this section shall prohibit the Inspector General of the Department of Homeland Security from initiating, carrying out, or completing any investigation.

“(b) DUTIES.—The Ombudsman shall—

“(1) conduct outreach to Transportation Security Administration employees, including publicizing a toll-free telephone number to report complaints;

“(2) evaluate each complainant’s claim objectively;

“(3) provide information, advice, and assistance to complainants and, as appropriate, initiate informal, impartial fact-finding and inquiries, on complaints or on the Ombudsman’s own initiative;

“(4) inform each complainant—

“(A) when the Ombudsman decides against conducting a fact-finding inquiry into the complaint;

“(B) on the status of the Ombudsman’s fact-finding inquiry to the complainant, on a regular basis if requested by the complainant; and

“(C) of the Ombudsman’s recommendations and information, as appropriate, for the complainant to formally complain to the appropriate authority;

“(5) work with the Administrator of the Transportation Security Administration to address issues identified through fact-finding and inquiries;

“(6) maintain confidential any matter related to complaints and inquiries, including the identities of the complainants and witnesses; and

“(7) submit an annual report to the appropriate congressional committees in accordance with subsection (c).

“(c) ANNUAL REPORT.—

“(1) IN GENERAL.—The Ombudsman shall report no later than September 30 each year to the appropriate congressional committees on the actions taken by the Office of the Ombudsman over the preceding year and the objectives of those actions.

“(2) CONTENTS.—Each such report shall, for the period covered by the report, include—

“(A) statistical information, by region, on the volume of complaints received, general nature of complaints, general information on complainants, and the percentage of complaints that resulted in a fact-finding inquiry;

“(B) a summary of problems encountered by complainants, including information on the most pervasive or serious types of problems encountered by complainants;

“(C) policy recommendations that the Office of the Ombudsman made to the Administrator of the Transportation Security Administration;

“(D) an inventory of the items described in subparagraphs (B) and (C) for which action has been taken, and the result of such action;

“(E) an inventory of the items described in subparagraphs (B) and (C) for which action remains to be completed; and

“(F) such other information as the Ombudsman considers relevant.

“(3) REPORT TO BE SUBMITTED DIRECTLY.—Each report under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment by the Administrator of the Transportation

Security Administration. However, the Ombudsman shall seek comment from the Administrator to be submitted by the Ombudsman together with the annual report.

“(4) OTHER REPORTS.—Nothing in this subsection shall be construed to preclude the Ombudsman from issuing other reports on the activities of the Office of the Ombudsman.

“(d) CONTACT INFORMATION.—The Administrator of the Transportation Security Administration shall make publically available on the Internet site of the Administration information about the Office of the Ombudsman, including regarding how to contact the Office.

“(e) APPROPRIATE CONGRESSIONAL COMMITTEE DEFINED.—In this section the term ‘appropriate congressional committee’ means the Committee on Homeland Security of the House of Representatives and any committee of the House of Representatives or the Senate having legislative jurisdiction under the rules of the House of Representatives or Senate, respectively, over the matter concerned.”

(b) CLERICAL AMENDMENT.—The analysis at the beginning of such chapter is amended by adding at the end the items relating to subchapter II the following new item:

“44946. Ombudsman.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2012, 2013, and 2014 \$575,000 for implementing section 44946 of title 49, United States Code, as amended by this section.

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PURPOSE AND SUMMARY

The purpose of H.R. 1165 is to amend title 49, United States Code, to establish an Ombudsman Office within the Transportation Security Administration for the purpose of enhancing transportation security by providing confidential, informal, and neutral assistance to address work-place related problems of Transportation Security Administration employees, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In May 2008, the Department of Homeland Security Office of the Inspector General released a report entitled, “Transportation Security Administration’s Efforts to Proactively Address Employee Concerns.” The report found that many employees were unaware of, or lacked trust and confidence in the Transportation Security Administration’s Office of Ombudsman. The report also found that airport site visits conducted by the Office could be more effective in increasing its visibility within the agency, acquainting employees with its functions, and responding to requests for intervention.

H.R. 1165 statutorily establishes the Ombudsman Office within the Transportation Security Administration (TSA) and requires that the Ombudsman have certain expertise and clearly defined responsibilities in order to provide assistance to address work-place related issues of TSA employees. The Ombudsman office already exists at TSA but until now has not received direction from Congress.

#### HEARINGS

No hearings were held on H.R. 1165.

#### COMMITTEE CONSIDERATION

The Subcommittee on Transportation Security met on May 12, 2011, to consider H.R. 1165, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The Subcommittee adopted H.R. 1165, as amended.

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MS. JACKSON LEE (#1); was AGREED TO by voice vote.

The Committee on Homeland Security met on September 21, 2011, to consider H.R. 1165, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The Committee adopted H.R. 1165, as amended, by voice vote.

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MS. JACKSON LEE (#1); was AGREED TO by voice vote.

An Amendment offered by MS. RICHARDSON to the Amendment in the Nature of a Substitute (#1A); was AGREED TO by voice vote.

Page 8, after line 6, insert the following (and redesignate the subsequent subsection accordingly):

“(d) CONTACT INFORMATION.—The Administrator of the Transportation Security Administration shall make publically available on the Internet site of the Administration information about the Office of the Ombudsman, including regarding how to contact the Office.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1165, the Transportation Security Administration Ombudsman Act of 2011,

would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 26, 2011.*

Hon. PETER T. KING,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1165, the Transportation Security Administration Ombudsman Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF,  
*Director.*

Enclosure.

*H.R. 1165—Transportation Security Administration Ombudsman Act of 2011*

H.R. 1165 would establish an Office of the Ombudsman within the Transportation Security Administration to conduct outreach to employees of that agency and carry out certain activities related to employee complaints. The bill would authorize the appropriation of \$575,000 in each of fiscal years 2012 through 2014 for the cost of those activities.

Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1165 would cost \$1.725 million over the 2012–2014 period. Enacting H.R. 1165 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1165 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1165 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation aims to enhance transportation security by providing confidential, informal, and neutral assistance to address work-place related problems of Transportation Security Administration employees by strengthening and refining the role of the TSA Office of Ombudsman. This legislation also requires the Om-

budsman to report to the appropriate congressional committees on the actions taken by the Office of the Ombudsman over the preceding year and the objectives of those actions.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1165 does not preempt any State, local, or Tribal law.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section provides that bill may be cited as the “Security Administration Ombudsman Office.”

##### *Section 2. Transportation Security Administration Ombudsman Office*

###### *Establishment*

Establish an Office of the Ombudsman in the Transportation Security Administration.

###### *Ombudsman*

The Office of Ombudsman will be under the direction of the Ombudsman of TSA, who must be appointed by the Chief Human Capital Officer of the Department of Homeland Security on behalf of the Secretary of Homeland Security. To be appointed as the Ombudsman an individual must demonstrate expertise in labor and

employment relations and dispute resolution. The Chief Human Capital Officer of DHS must notify the appropriate congressional committees within 30 days after the effective day an Ombudsman is appointed, reappointed, or removed from the position.

*Duties*

The Ombudsman must conduct outreach to TSA employees; evaluate each complainant's claim objectively; and provide information, advice, and assistance to complainants. The Ombudsman must notify a complainant if the Ombudsman decides against conducting a fact-finding inquiry into the complaint; the status of a fact-finding inquiry; and of the Ombudsman recommendations related to how to make a formal complaint to the appropriate authority.

*Ensuring independence of Ombudsman*

The Ombudsman must report to the TSA Administrator and to the Chief Human Capital Officer of DHS with respect to any dispute between the Ombudsman and the TSA Administrator over matters involving the execution of the Ombudsman's duties.

*Annual report*

The Ombudsman must submit by September 30 of each year, an annual report to the appropriate committees on the actions taken by the Office of the Ombudsman over the preceding year. The report must include statistical information by region, the volume of complaints received, general nature of complaints, and the percentage of complaints that resulted in a fact-finding inquiry; a summary of problems encountered by complainants; and policy recommendations that the Office of the Ombudsman made to the Administrator.

*Appropriate congressional committee defined*

The term appropriate congressional committee refers to the House Committee on Homeland Security and any other committee in the House or Senate that has legislative jurisdiction over the Office of Ombudsman under the rules of the House and Senate.

*Authorization of appropriation*

There are authorized to be appropriated for each of FY 2012, 2013, and 2014, \$575,000 for implementing section 44946 of title 49, United States Code, as amended by this section.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**TITLE 49, UNITED STATES CODE**

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**SUBTITLE VII—AVIATION PROGRAMS**

\* \* \* \* \*

**PART A—AIR COMMERCE AND SAFETY**

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**SUBPART III—SAFETY**

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**CHAPTER 449—SECURITY**

SUBCHAPTER I—REQUIREMENTS

Sec.

44901. Screening passengers and property.

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

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44946. *Ombudsman.*

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

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**§ 44946. Ombudsman**

(a) *IN GENERAL.*—

(1) *ESTABLISHMENT.*—*There is established an Office of the Ombudsman in the Transportation Security Administration.*

(2) *OMBUDSMAN.*—

(A) *IN GENERAL.*—*The Office shall be under the direction of the Ombudsman of the Transportation Security Administration, who shall be appointed by the Chief Human Capital Officer of the Department of Homeland Security on behalf of the Secretary of Homeland Security.*

(B) *QUALIFICATIONS.*—*An individual appointed as the Ombudsman must have expertise in—*

(i) *labor and employment relations with Federal agencies; and*

(ii) *dispute resolution.*

(C) *NOTIFICATION OF APPOINTMENT AND REMOVAL.*—*The Chief Human Capital Officer of the Department of Homeland Security shall notify the appropriate congressional committees within 30 days after the effective date of any of the following actions:*

(i) *The appointment of an individual as Ombudsman.*

(ii) *The reappointment as Ombudsman of an individual who is serving as Ombudsman.*

(iii) *The removal of an individual from the position of Ombudsman.*

(3) *ENSURING INDEPENDENCE OF OMBUDSMAN.*—

(A) *IN GENERAL.*—*The Ombudsman shall report—*



(i) to the Administrator of the Transportation Security Administration; and

(ii) to the Chief Human Capital Officer of the Department of Homeland Security with respect to any dispute between the Ombudsman and the Administrator of Transportation Security Administration over matters involving the execution of the Ombudsman's duties as set forth in subsection (b).

(B) *INSPECTOR GENERAL'S AUTHORITY TO CONDUCT INVESTIGATIONS NOT AFFECTED.*—Nothing in this section shall prohibit the Inspector General of the Department of Homeland Security from initiating, carrying out, or completing any investigation.

(b) *DUTIES.*—The Ombudsman shall—

(1) conduct outreach to Transportation Security Administration employees, including publicizing a toll-free telephone number to report complaints;

(2) evaluate each complainant's claim objectively;

(3) provide information, advice, and assistance to complainants and, as appropriate, initiate informal, impartial fact-finding and inquiries, on complaints or on the Ombudsman's own initiative;

(4) inform each complainant—

(A) when the Ombudsman decides against conducting a fact-finding inquiry into the complaint;

(B) on the status of the Ombudsman's fact-finding inquiry to the complainant, on a regular basis if requested by the complainant; and

(C) of the Ombudsman's recommendations and information, as appropriate, for the complainant to formally complain to the appropriate authority;

(5) work with the Administrator of the Transportation Security Administration to address issues identified through fact-finding and inquiries;

(6) maintain confidential any matter related to complaints and inquiries, including the identities of the complainants and witnesses; and

(7) submit an annual report to the appropriate congressional committees in accordance with subsection (c).

(c) *ANNUAL REPORT.*—

(1) *IN GENERAL.*—The Ombudsman shall report no later than September 30 each year to the appropriate congressional committees on the actions taken by the Office of the Ombudsman over the preceding year and the objectives of those actions.

(2) *CONTENTS.*—Each such report shall, for the period covered by the report, include—

(A) statistical information, by region, on the volume of complaints received, general nature of complaints, general information on complainants, and the percentage of complaints that resulted in a fact-finding inquiry;

(B) a summary of problems encountered by complainants, including information on the most pervasive or serious types of problems encountered by complainants;

(C) policy recommendations that the Office of the Ombudsman made to the Administrator of the Transportation Security Administration;

(D) an inventory of the items described in subparagraphs (B) and (C) for which action has been taken, and the result of such action;

(E) an inventory of the items described in subparagraphs (B) and (C) for which action remains to be completed; and

(F) such other information as the Ombudsman considers relevant.

(3) *REPORT TO BE SUBMITTED DIRECTLY.*—Each report under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment by the Administrator of the Transportation Security Administration. However, the Ombudsman shall seek comment from the Administrator to be submitted by the Ombudsman together with the annual report.

(4) *OTHER REPORTS.*—Nothing in this subsection shall be construed to preclude the Ombudsman from issuing other reports on the activities of the Office of the Ombudsman.

(d) *CONTACT INFORMATION.*—The Administrator of the Transportation Security Administration shall make publically available on the Internet site of the Administration information about the Office of the Ombudsman, including regarding how to contact the Office.

(e) *APPROPRIATE CONGRESSIONAL COMMITTEE DEFINED.*—In this section the term “appropriate congressional committee” means the Committee on Homeland Security of the House of Representatives and any committee of the House of Representatives or the Senate having legislative jurisdiction under the rules of the House of Representatives or Senate, respectively, over the matter concerned.

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