

# 2021

## Annual Report

**OFCCP OMBUDS SERVICE**



OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS



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## I. Introduction

In 2019, OFCCP established the Ombuds Service as an external organizational ombuds office. It was designed as a conflict management resource available to workers, worker rights groups, federal contractors and subcontractors, contractor representatives, compliance groups, OFCCP staff, and anyone else connected to the work of the agency. The Ombuds offers individual consultations as well as facilitative resolution processes (such as shuttle diplomacy, facilitated dialogue, mediation, etc.) aimed at identifying interests, exploring options, establishing mutual understandings, and creating awareness for the resources available to parties in conflict.

In line with other organizational ombuds, perhaps the most central component to the operations of the program is its Standards of Practice (confidentiality, impartiality, independence, and informality). Adopted in accordance with the International Ombuds Association (IOA)<sup>1</sup> and the Coalition of Federal Ombudsman (COFO),<sup>2</sup> the Standards are principles that ensure consistency across the organizational ombuds community and enable individual programs to function ethically and effectively.

At the conclusion of each fiscal year, the Ombuds evaluates the range of services provided, to whom those services have been provided, respective outcomes achieved, and trends observed across a wide range of issues. That analysis is memorialized and made public so that opportunities to learn, improve, and strategize are shared broadly. As an office that opens its doors to all angles of OFCCP and its vast stakeholder community, it is critical that those same stakeholders are welcomed into the reflection process. For this reason, and for the second consecutive year, the Ombuds Service is pleased to present its Annual Report.

## II. Ombuds Service in Practice

The following section focuses on the operations of the program, with guidance about how and when to engage the Ombuds Service, and some of the most common practices of the Ombuds once a referral is placed.

### **ENGAGING THE OMBUDS**

The Ombuds Service welcomes individuals from within or outside of OFCCP to initiate contact whenever they would like. The concerns discussed could be about a specific individual or an entire office. They could relate to a compliance evaluation, complaint investigation, or the need for a certain type of compliance assistance otherwise not available. They could also more universally relate to OFCCP policies or procedures that, if raised with anyone else at OFCCP, an external stakeholder might worry about the ramifications, or developing a certain reputation with the agency.

At least generally speaking, conflict is best addressed as early and at the lowest level possible. Equally important is with whom issues are raised. For instance, when related to decisions made by or the communication received from an OFCCP field office employee, concerns might be handled most appropriately by initiating a conversation with the field office employee directly. If the response received is not satisfactory, perhaps their manager could assist by weighing in on the decision made or suggest an alternate approach that enhances the effectiveness of communication. In short, once the direct parties have had a realistic opportunity to respond and address concerns, and if conflict for some reason persists, that would be an ideal time to connect with the Ombuds Service.

In terms of how to make contact, there are several options, all of which are acceptable to the Ombuds. A phone call is acceptable, as is an email requesting availability for a phone or video conversation. A third and equally effective option is the Ombuds Service Referral Form<sup>3</sup>, which can be completed online within the Ombuds Service landing page of the OFCCP website. Most people who complete and submit the Referral Form prefer to raise concerns anonymously about OFCCP policies or practices, and in doing so find it important that their name and company name be withheld from future consideration of the issues identified. Still, the Referral Form is available to whoever wishes to utilize it and the Ombuds Service, if provided with contact information, will be in touch as soon thereafter as possible to further explore the most helpful direction from that point forward.

## **COMMON PRACTICES OF THE OMBUDS**

When a referral has been placed either by phone, email, or the Referral Form, what happens thereafter is based entirely on the comfort level of the person who has initiated contact with the Ombuds Service, and what the Ombuds might recommend based on experience facilitating resolution efforts. With informality being one of the Standards of Practice, flexibility is key, and a list of uniform procedures to be followed by the Ombuds and parties therefore does not exist. However, the most typical next step might be for the Ombuds and referral source to have a direct conversation. The purpose of this initial consultation would be for the Ombuds to gather information about the issue(s) or concern(s) identified, ask follow-up questions to establish a sufficient understanding of the interests and needs of the referral source and, when applicable, to prepare the Ombuds for relaying those issue(s) or concern(s) to others involved. The referral source will be afforded the opportunity to suggest what, if anything, they do not wish for the Ombuds to share with others and, in accordance with the Standards of Practice, confidentiality will be granted to the extent permissible by law.

After that initial consultation, and depending in large part on the nature of the issue(s) or concern(s), the Ombuds may need to conduct preliminary research. This could include reviewing the regulations, policies, and applicable laws for appropriate context, without engaging in independent legal analysis, which is handled exclusively by the Office of the Solicitor (SOL). Preliminary research could also include additional consultation with OFCCP Senior Leadership, relevant divisions or work teams within the agency, and/or SOL. When consultation is necessary, the identity of individuals is kept confidential to the extent permitted by law, unless assistance could not otherwise be obtained without disclosure. Even then, only the most applicable information would be shared outside of the Ombuds Service such that proper counsel can be received.

From there the Ombuds would discuss process options with the parties, and it is important that the elected approach be mutually agreed upon by all parties, as well as the Ombuds. One possibility is that the topics raised with the Ombuds are never shared elsewhere, and the referral source continues speaking confidentially with only the Ombuds Service. Meanwhile there are other, more active facilitation options, all of which would require the Ombuds to contact and welcome other involved parties into the conversation. The resolution mechanisms that have become the most common practices of the Ombuds Service are further explained below.

## **RESOLUTION TECHNIQUES**

To remain a facilitative, impartial, and informal resource, it is important that the procedures employed by the Ombuds work for everyone involved. People react and respond differently to conflict and demonstrate varying degrees of comfort in their responses. An ombuds shows support in a number of ways, but at least in part by offering multiple resolution mechanisms to choose from. The most typical options are referred to as individual consultation, shuttle diplomacy, facilitated dialogue, and mediation.

**FIGURE 1. Resolution Techniques Explained**

An overview of the resolution mechanisms most frequently utilized by the Ombuds Service.

RESOLUTION TECHNIQUES	EXPLANATION
Individual Consultation	Private, one-on-one conversations that need not include anyone but the referral source and the Ombuds. During individual consultation, services offered range from active listening and option exploration to a more formulaic approach like conflict coaching.
Shuttle Diplomacy	In the early stages of conflict, people have not always humanized those with whom they are in conflict, and many times still cast blame upon them. For this reason, facilitative efforts typically begin with shuttle diplomacy, or the process of using a neutral third party to relay messages back and forth.
Facilitated Dialogue	If there comes a time when the Ombuds feels that the parties could successfully engage in more direct communication, and the parties appear willing to do so, another process option is facilitated dialogue. The objective would be for the parties to share and understand perspectives, and the Ombuds would act as a neutral facilitator largely focused on ensuring that the conversation is productive.
Mediation	Mediation, like facilitated dialogue, allows parties the opportunity to engage using the facilitation skills of an impartial third party. Unlike facilitated dialogue, however, mediation typically makes use of joint (everyone together) and private (conversations with only the Ombuds) sessions. When serving as mediator, the Ombuds uses a facilitative as opposed to evaluative style of mediation.

### III. Referrals by the Numbers

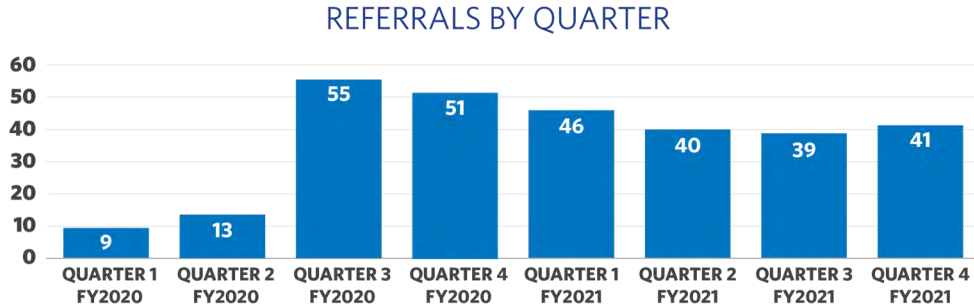
The Ombuds Service maintains records, available only to the Ombuds Service, that allow it to evaluate the extent to which the program is utilized, by whom it is utilized, and on what kinds of issues it is most frequently contacted. These records are confidential, to the extent permitted by law, and include but are not limited to the date upon which an ombuds referral was received, the source of that referral, the type(s) of issue(s) presented, the resolution technique(s) utilized to approach those issues, how many people were involved with the dispute resolution process, and, in general, the outcomes achieved. The quantitative data shared below is delivered in the spirit of transparency and will be further analyzed within the Trend Analysis section of this report.

#### QUARTERLY BREAKDOWN

Inquiries are tracked by the month and quarter during which they are received such that the Ombuds can draw parallels between those dates and other relevant events. For instance, the first quarter of fiscal year 2020 was a quiet one in terms of the volume of ombuds referrals. During that time, the framework for the Ombuds Service was still being developed and, as such, there were very few referrals placed. Once the program was formally delivered to OFCCP and the stakeholder community in May 2020, a surge of new referrals was received and, since then, the frequency has been relatively consistent from one quarter to the next. (see Fig. 2).

**FIGURE 2. Referrals by Quarter**

The x-axis shows each of the eight quarters during which the Ombuds Service has been in operation, while the y-axis displays the number of referrals received in each respective quarter.



Ombuds referrals will often carry over from one quarter to the next, particularly those that remain open several months. However, Figure 2 categorizes referrals within the period during which they were initially received. Also, referrals are often closed and later reopened as essentially the same referral despite the time elapsed. Resolution is therefore achieved only when the parties involved feel they have accomplished all that is possible through coordinating with the Ombuds, or when the Ombuds has no other services to provide.

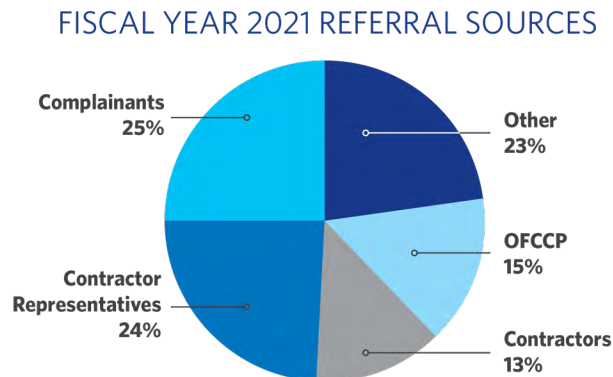
During fiscal year 2021, the Ombuds Service received a total of 166 referrals, an increase from the 128 received during its first year in operation, an encouraging indication that people have grown more comfortable raising their concerns. Also noteworthy is how steadily referrals were placed in fiscal year 2021, with each of the four quarters attributing no less than 39 and no more than 46 new referrals received. It is the expectation of the Ombuds that fiscal year 2020 is less representative and fiscal year 2021 more representative of the referral expectancy for fiscal year 2022. The spring 2020 announcement of the Ombuds Service made an immediate impact, and increased exposure to the Ombuds through virtual platforms in 2021 likely influenced the consistency from one quarter to the next. Based on preliminary plans for the Ombuds Service in fiscal year 2022 (further explored in the What the Future Holds section of this report), there is reason to believe that the referral rate will remain stable.

**SOURCES OF REFERRALS**

Equally of interest to the Ombuds is where those referrals are coming from. Tracking and regularly evaluating referral sources is beneficial in the short term (while implementing an outreach campaign) as well as the long term (when analyzing trends and conducting a systemic review). As with all other sections of this report, Figure 3 will not disclose the identities of individuals, and instead provides general data about the sources of referrals.

**FIGURE 3. Fiscal Year 2021 Referral Sources**

The 166 referrals received in FY2021 displayed in correspondence to who initiated them.

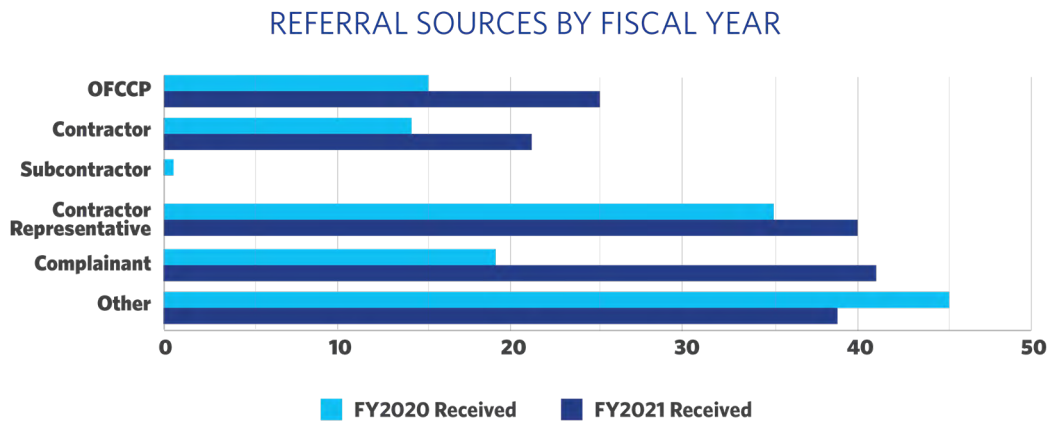


The Ombuds could be working with OFCCP staff, a contractor, the contractor’s attorney or consultant, and an employee of that contractor’s establishment, all in one referral. While each are considered parties to the dispute resolution process, only one person contacted the Ombuds and initiated that referral. Therefore, Figure 3 does not represent with whom and how many people (for this information, see Figure 10) the Ombuds Service has worked, but instead who placed the referrals.

As demonstrated by Figure 3, those received from OFCCP offices accounted for roughly 15% of all referrals, an increase from just 12% in fiscal year 2020. This is a promising sign for the Ombuds Service, as one of the program’s goals is to be accessible to all potential constituencies and, when sharing observations, include reference to issues presented from a variety of perspectives. Contractors placed approximately 13% of referrals, and a much larger group of those who initiated contact were contractor representatives, or the consultants and outside counsel representing federal contractors in their coordination with OFCCP, placing 24% of all referrals handled by the Ombuds. Complainants accounted for the largest observed increase in referrals received from one source. Potential, current, and former employees of federal contractors placed 25% of all ombuds referrals in fiscal year 2021, compared to just 14% in fiscal year 2020. This is also a reassuring indication that workers both have access to and are comfortable discussing issues with the Ombuds. The category listed as “Other” includes those inquiries made by individuals whose issues fall entirely outside of OFCCP’s jurisdiction.

**FIGURE 4. Referral Sources by Fiscal Year**

A side-by-side comparison of the referral sources from FY2020 to FY2021.



In some situations, the Ombuds might refer matters elsewhere. Over the past year, there were 19 times that an inquiry was referred to the OFCCP Help Desk<sup>4</sup>, typically when the referral source needs technical assistance of some kind. On those occasions, the Ombuds confirms what the referral source is hoping to achieve and, with their permission, forwards the inquiry to the Help Desk accordingly. When an inquiry falls entirely outside of OFCCP’s jurisdiction, the Ombuds responds to the referral source, explains the mission and authority of OFCCP, and provides guidance about other available resources, when applicable. In some circumstances, a resource outside of OFCCP, the Department of Labor (DOL), or the federal government as a whole may be of assistance to the inquirer and, when aware of an alternative resource, the Ombuds can point them in that direction.

## FREQUENCY OF RESOLUTION TECHNIQUES UTILIZED

Of the 407 individuals who worked with the Ombuds in fiscal year 2021, 63% (142 times out of 227) of them did so through individual consultation. This could include an employee of a federal contractor or subcontractor confidentially sharing their concerns, to which (if those concerns referenced allegations of discrimination or other violations) the Ombuds would explain OFCCP's complaint investigation process and provide information about how to file a complaint, should that individual decide to do so. Individual consultation could also include OFCCP staff, complainants, contractors, and contractor representatives contacting the Ombuds Service in search of one-on-one or small group conflict coaching, a process employed by a neutral third party who supports individuals' abilities to proactively resolve conflict. Examples could be preparing for a difficult conversation, managing a high conflict person, organizing thoughts about an upcoming negotiation, exploring various perspectives, and brainstorming options and/or resources available to pursue. Occasionally, and when someone needs guidance about OFCCP policies, procedures, or compliance assistance tools, the Ombuds can refer them to the appropriate resources. Individual consultation might also be an opportunity for stakeholders to express farther reaching concerns about the operations of the agency, or inconsistencies from one field office to the next. In those situations, the Ombuds makes note of the issues presented in a confidential database and shares the concern itself (not who it came from) with the applicable offices or divisions.

### **FIGURE 5. Frequency of Resolution Techniques Utilized**

A single referral might include multiple resolution mechanisms and, as such, the total number of services provided does not equate to the total number of referrals received and handled by the Ombuds Service.

RESOLUTION TECHNIQUES UTILIZED	FREQUENCY
Individual Consultation	142
Shuttle Diplomacy	64
Mediation/Facilitated Dialogue	21

About 28% of the time (64 times out of 227), resolution processes evolved beyond individual consultation to specifically include shuttle diplomacy. The Ombuds most often used shuttle diplomacy on situations that included communication breakdowns, transparency concerns, or complaints about lengthy investigations conducted by OFCCP. On a few occasions, the communication (between OFCCP and either complainants, contractors, or contractor representatives) had become so problematic that the parties delivered all messages, at least temporarily, through the Ombuds. When these and similar requests have been made, the Ombuds strives to return the parties to a space where direct communication can resume. It is not always practical for the Ombuds to entirely control all coordination efforts for the duration of a review, nor would doing so help the parties to overcome the barriers that, once lifted, can put them back on track to establishing and maintaining necessary degrees of trust. Regardless of when or why shuttle diplomacy was utilized, the number of conversations with each party and how many people were involved in those conversations varied from one case to the next.

Meanwhile, when it appears that shuttle diplomacy has led to progress and the parties seem capable of speaking directly, the Ombuds might recommend engaging with those parties through an informal mediation or facilitated dialogue. In fiscal year 2021 this transition from shuttle diplomacy to either mediation or facilitated dialogue occurred 21 times, or on approximately 33% of the referrals during which shuttle diplomacy was utilized. In those instances, the goal is to help the parties bridge any remaining gaps that exist through an organized concession-making process, doing so in a way that models collaboration, effective communication, and a commitment to moving beyond differences. There are also matters that



either an external stakeholder or an OFCCP employee has, from the start, specifically referred to mediation. The Ombuds Service mediated contractor and OFCCP disputes both within and outside of the Pre-Referral Mediation Program,<sup>5</sup> as well as complaint mediations between contractors and complainants committed to negotiating private settlement of employee discrimination allegations. Thus far, the use of mediation during both compliance evaluations and complaint investigations has been successful and will continue to be offered by the Ombuds moving forward.

It is important to keep in mind that the above referenced methodologies are part of a conflict resolution toolkit and are only implemented when it seems appropriate to do so. Each conflict is unique and must be managed in a way that accounts for the current state of affairs, the individuals involved, and their respective needs. No matter which of these resolution mechanisms are drawn upon throughout the course of an ombuds referral, the Standards of Practice are closely adhered to, and the Ombuds stays squarely within the lane of advocating for fair processes and amicable resolution, rather than for an individual or organization's preferred outcome.

## IV. Trend Analysis

In addition to facilitating the resolution of individual issues and concerns, ombuds are tasked with tracking, evaluating, and understanding the overall landscape of organizational challenges. When a pattern is observed, that also means a system of conflict has been identified, and the best way to rid the agency and its stakeholders of that system is to conduct a trend analysis. It is also typical practice for those results to be shared with all who work for, with, and have an interest in OFCCP, not to ostracize or cast blame on any one person or group, but to allow the entire OFCCP and stakeholder communities an ability to learn and grow. As such, below are some of the observations of the Ombuds related to both primary and secondary issues.

### **PRIMARY ISSUE TYPES**

The 2020 Ombuds Service Annual Report<sup>6</sup> distinguished between primary and secondary issue types. When someone is asked how they are hoping the Ombuds can assist them, their response usually points to the primary issue, or what prompted them to contact the Ombuds. The Ombuds regularly evaluates the frequency of all primary issues identified. Doing so spotlights the most commonly referenced concerns and, when appropriate, they are reported to OFCCP Senior Leadership.

Given that a referral can be initiated either from within or outside of OFCCP, the primary issue data displayed in Figure 6 below is representative of concerns that have been expressed by both external stakeholders and OFCCP staff, unless otherwise noted in the Explanation column. For example, the nine instances of communication as a primary issue include concerns raised by both external stakeholders and OFCCP employees. Similarly, the Ombuds Service was contacted by both OFCCP and external stakeholders requesting assistance with overcoming negotiation impasses, the need for guidance and additional information, transparency concerns, and issues related to the conduct of personnel with whom the referral source was working.

**FIGURE 6. Frequency and Explanations of Primary Issue Types**

The initial concerns and issues presented to the Ombuds.

PRIMARY ISSUE TYPES	FREQUENCY	EXPLANATION
Need for Guidance	36	Includes questions and/or requests for clarification about contractor reporting requirements, certification of AAPs, Executive Order or other OFCCP mandates, requirements as they pertain to certain types of contractor establishments (i.e. construction, higher education, etc.), the complaint investigation process, requests for mediation, etc.
Policy and/or Operational Concerns	21	Primarily expressed by external stakeholders about OFCCP policies or practices.
Disputed Determinations	13	Often initiated by complainants dissatisfied with the results of a complaint investigation upon receipt of a Notice of Results of Investigation (NORI).
Negotiation Impasses	12	Presented to Ombuds at various points in time, from early in the life of a compliance evaluation to much later in the process, but often during unsuccessful conciliation efforts.
Concerns about the Conduct of Personnel	12	When referral sources described others as difficult to work with.
Investigation Concerns	11	Expressed by complainants, contractors, and contractor representatives concerning the length and/or efficiency of OFCCP investigations.
Communication	9	Ranged from delayed replies to lack of correspondence to incompatible communication styles.
Jurisdiction Disputes	6	Includes contractor requests for administrative closure of compliance evaluations, complainants arguing their employer is a federal contractor and requesting that OFCCP conduct additional jurisdiction research, etc.
Transparency	5	Concerns regarding the withholding of information that would otherwise be relied upon within OFCCP processes.
Scope of a Review	5	When a contractor and/or contractor representatives disagree with the proposed focus of an OFCCP investigation, usually during the early stages of a compliance evaluation.
Extension Requests	3	Raised primarily by contractors and/or contractor representatives when deadlines for submission of data or other information cannot be agreed upon by working directly with the applicable OFCCP office.
Other	33	
<b>Total</b>	<b>166</b>	

**SECONDARY ISSUE TYPES**

In addition to identifying and accumulating statistics on primary issues, the Ombuds evaluates secondary issues, or those others which may contribute to the primary issue. For instance, once someone's reasons for contacting the Ombuds Service have been sufficiently understood, and a primary issue type has been identified, the conversation usually expands and introduces a host of additional issues and concerns held by the referral source. Then, if the referral expands beyond individual consultation, and the Ombuds has been authorized or specifically asked to contact other involved parties, those other parties likely have their own explanation for the history, status, and escalators of the conflict. With each ensuing conversation, the list of issues typically grows, and each of those that are unique to the primary issue are tracked as secondary issues.

**FIGURE 7. Total Issues**

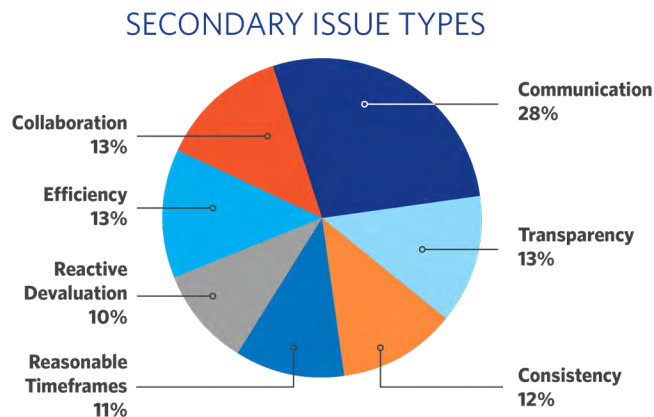
The number of primary versus secondary issues as well as the overall total.

ISSUE TYPE	FREQUENCY
Primary Issues	166
Secondary Issues	205
<b>Total</b>	<b>371</b>

As previously discussed, a primary issue type was attributed to each of the 166 referrals received in fiscal year 2021 (see Fig. 6), but those only accounted for about 45% of the total issues discussed with the Ombuds. It is common to observe multiple issues per conflict, not only at OFCCP, but generally speaking. Most often, the parties in dispute are focused on a very positional, one-sided view of what led to the current situation, which may or may not account for the sometimes-long list of contributing factors. Some of those factors are indirectly referenced while speaking with the Ombuds, who then works with the parties to identify how each issue influences their interests and objectives. While handling the 166 ombuds referrals placed in fiscal year 2021, there were a total of 371 primary and secondary issues tracked (see Fig. 7).

**FIGURE 8. Secondary Issue Types**

The secondary issues tracked along with their frequency.



Communication issues accounted for approximately 28% of all secondary issues. It should not be surprising that difficulty exchanging information is one of the driving forces behind most disputes. Communication and conflict styles are not stagnant and might change depending on the setting or with whom someone is working. Still though, referral sources usually reference communication difficulties indirectly instead of leading with them as the source of conflict, which helps to explain why communication was the primary issue only nine times, but a secondary issue 58 times.

Similarly, transparency was observed as the primary issue only five times but as a contributing secondary issue 27 times, and concerns were discussed by not only external stakeholders but OFCCP staff as well. When OFCCP expresses transparency concerns, it is often times due to the information it has received (or not received) from an external stakeholder, or in response to the external stakeholder raising their own transparency concerns. Meanwhile, and perhaps the reason for a large discrepancy between the frequencies of primary and secondary issues, external stakeholders are far more likely to introduce primary issues related to investigations, the scope of a review, disputed determinations, or the conduct of personnel they are working with rather than concerns about transparency. Regardless of where they originate, responses

to transparency concerns typically suggest that there are times when the free and open sharing of information is appropriate, and other times where it might be premature. Even when this has been acknowledged and appreciated by both parties, contractors and/or their representatives are eager to prove compliance, complainants are hopeful that OFCCP immediately agrees with their allegations, and OFCCP wants access to everything needed to thoroughly investigate. From those perspectives, anything short of complete candor might be viewed by some as a lack of transparency, and by others as simply not being entirely ready to respond.

Still, the overall rate of occurrence between communication and transparency is important. Accounting for about 27% of the 371 total issues identified (which was 24% in fiscal year 2020), communication and transparency remain common contributors to conflict. Five additional secondary issues – consistency, reasonable timeframes, reactive devaluation, efficiency, and collaboration – are also common contributors (see Figures 8 and 9). The Ombuds witnessed these factors with similar regularity to transparency, but always as additional concerns underlying primary issues. The rise from 223 total issues identified in fiscal year 2020 to 371 in 2021 is in all likelihood the result of the Ombuds’ developing familiarity with OFCCP policies and procedures, and the stakeholder community’s increased comfort level with the Ombuds Service.

#### **FIGURE 9. The Nature of Secondary Issues**

The types of underlying issues and concerns that were revealed when continuing to work with one or more parties, along with explanations of each.

<b>SECONDARY ISSUE TYPES</b>	<b>EXPLANATION AND CONNECTION TO PRIMARY ISSUES</b>
Communication	Most often tied to Investigation Concerns and/or the Concerns about the Conduct of Personnel primary issue types. Examples include long gaps in communication during a review, slow replies to inquiries, and/or accusations of counterparts employing aggressive or passive aggressive communication styles and either avoidant or competitive conflict styles.
Transparency	Usually referenced as additional support for why someone held Concerns about the Scope of a Review, Investigation Concerns, or the Need for Guidance primary issue types.
Consistency	Frequently tied to the Policy and/or Operational Concerns primary issue type and raised most often by contractor representatives who observed different practices from one OFCCP region to the next, or from one office to another within the same region. Also occasionally raised by complainants who received conflicting information from different OFCCP employees.
Reasonable Timeframes	Raised from within and outside of OFCCP, and most often when the initial focus of an ombuds referral was Extension Requests, Communication Issues, and Concerns about the Conduct of Personnel. Examples include OFCCP making what external stakeholders referred to as burdensome or unreasonable information requests after long periods of no communication between the parties, or a stakeholder suggesting it needed more time to produce requested information when OFCCP felt the information should be readily available.
Reactive Devaluation	A tendency to disagree with, disregard, or question certain individuals or their ideas as a learned reaction to a prior dispute. This was observed during interactions with both external stakeholders and OFCCP, and most often in connection to the Communication Issues, Investigation Concerns, and Concerns about the Conduct of Personnel primary issue types.

**FIGURE 9. The Nature of Secondary Issues , cont'd.**

The types of underlying issues and concerns that were revealed when continuing to work with one or more parties, along with explanations of each.

SECONDARY ISSUE TYPES	EXPLANATION AND CONNECTION TO PRIMARY ISSUES
Efficiency	Expressed by complainants, contractors, and contractor representatives when OFCCP requested information that had previously been made available, or gave explanations that according to external stakeholders did not appear helpful or forthcoming, or when a policy or practice of the agency seemed inefficient from the perspective of a stakeholder.
Collaboration	Commonly affiliated with the Negotiation Impasses and Communication Issues primary issue types. Examples include what either OFCCP or an external stakeholder might refer to as bad faith negotiating, an apparent lack of desire to work together, and declined requests for the initiation of a resolution process such as Early Resolution Conciliation Agreements, Pre-Referral Mediation, or some other facilitative technique that could be offered by the Ombuds.

## V. Reach of the Ombuds Service

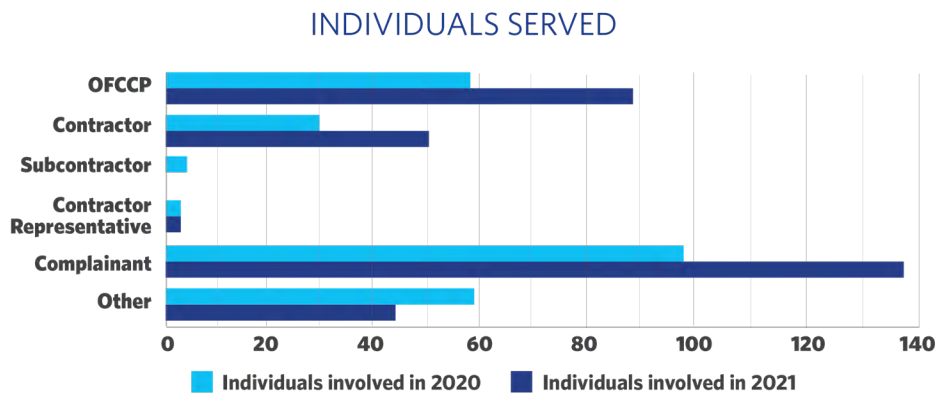
While the profession continues to grow, ombuds are constantly tasked with educating their constituencies about the services they can and cannot provide. Even within organizations that have long employed an ombuds, constant reminders are essential to the workforce and, for the OFCCP Ombuds, to the stakeholder community as well. During its first two years in operation, a chief objective of the Ombuds Service was to connect far and wide through a marketing and outreach campaign. Some of the campaign’s details are shared below.

### INDIVIDUALS SERVED

One goal of the Ombuds Service was to increase its footprint in fiscal year 2021, not only in terms of the number of referrals received, but the number of people with whom it has worked. Widely attended events might be the best way to reach large audiences, but the most genuine forms of confidence and trust are built while collaborating, and that is most directly possible through ombuds referrals.

**FIGURE 10. Individuals Served**

The number of individuals involved with ombuds referrals, arranged according to who placed the initial inquiry, with fiscal years 2020 and 2021 in comparison.



Looking only at the number and types of referrals (see Fig. 2) does not properly account for the total or average number of people involved. Likewise, accounting for the total or average number of people involved does not exactly explain their level of participation. As previously mentioned, a referral might not involve anyone other than the source of that referral but, when it does, the Ombuds tracks how many others were involved with the resolution process, categorized by the referral source who originally placed that referral. The goal is to measure the reach of the Ombuds Service, and how or through what type of engagement those individuals were involved so that the Ombuds can determine the average size of the conflicts presented by those referral sources. Figure 10 demonstrates a significant rise in the total number of individuals involved with ombuds referrals, and particularly within those which were placed by OFCCP employees, contractors, contractor representatives, and complainants. This is in line with the increased use of conflict resolution group work such as facilitated dialogue and mediation, processes which are typically comprised of not only primary points of contact but also subject matter experts, legal counsel, and the parties' respective decision makers.

## **GROUP ENGAGEMENT**

The individuals involved with ombuds referrals are perhaps best prepared to evaluate the effectiveness of the program, but they only represent a fraction of those who have engaged with the Ombuds. It is difficult to track the number of federal contractors, subcontractors, their attorneys and consultants, worker groups, contractor employees, OFCCP employees, and other interested third parties who also interacted with the Ombuds through large group arrangements. The Ombuds Service took advantage of the virtual nature of 2021 and connected with its sizeable audience as often and interactively as possible.

External presentations were delivered to workers' rights, affirmative action, and compliance groups such as the American Association for Access, Equity and Diversity (AAAED) and the Center for Workplace Compliance (CWC). The Ombuds Service connected with a number of Industry Liaison Groups (ILG) by presenting during 13 ILG chapter meetings, as well as board meetings and the annual conference of the National Industry Liaison Group (NILG). OFCCP also hosted an orientation for the Federal Mediation & Conciliation Service (FMCS) during which the Ombuds introduced FMCS mediators to the mission and basic operations of OFCCP while discussing the Pre-Referral Mediation Program. The goal was to provide those mediators with a foundational understanding of the types of disputes that might possibly be referred to FMCS through the pre-referral mediation option available to OFCCP and contractors.

In addition to presentations, the Ombuds developed and delivered two conflict resolution skills trainings to OFCCP field offices. The first was a Collaborative Communication course designed to assist agency employees with engaging in more collaborative dialogue when working with external stakeholders. The second course was a Negotiation Skills workshop intended to demonstrate that negotiations with external stakeholders do not need to assume a zero-sum game or win-lose mentality, but can instead rely on the interest-based negotiation framework as a way of achieving good outcomes for everyone involved. Both trainings were delivered to employees from all six OFCCP regions. The Ombuds will provide refresher courses when needed and continue to identify new conflict resolution training needs based on observations from ombuds referrals handled as well as feedback and/or requests from either external stakeholders or OFCCP.

The Ombuds Service participated in several other large group DOL events. In April 2021, the Ombuds served as moderator of the department's *Advancing Racial & Social Equity in Employment for People with Disabilities* online dialogue, facilitated a listening session in May on *Racial and Social Equity in Federal Contracting*, and moderated the online dialogue, *Women and Work: Reinvestment, Return and Recovery* in June. These events are not only opportunities to collaborate

with individuals both within and outside of DOL, but chances for the Ombuds Service to provide value using the facilitative conflict resolution background it was founded upon.

## **RECEPTION**

Measuring the impact of the Ombuds Service is more complicated than simply calculating how many people and through which platforms it has connected. Learning about people's satisfaction with the services being provided, as well as recommendations for how those services might be improved, are instrumental to the continued success of the program, so the Ombuds always makes space for and even encourages feedback. In fiscal year 2021, a significant amount of qualitative and quantitative data was reviewed and considered by the Ombuds Service. Some of it resembled praise for the Ombuds and the program as a whole, yet others relayed varying degrees of disappointment. In the spirit of transparency, this section will share examples of both.

Contractor representatives, contractors, and complainants all expressed frustration with what the Ombuds could not assist them with. There were attorneys and also complainants who asked the Ombuds to put them in touch with certain National Office employees (most often the Branch of Expert Services or the OFCCP Director) after establishing that they were dissatisfied with a determination made by or a message received from a Regional or District Office. Other attorneys and consultants requested that the Ombuds instruct the applicable field office that OFCCP was required to share preliminary indicators. There were also complainants who requested that, due to their difficulties communicating with OFCCP, the Ombuds become their one and only point of contact and advocate for the complainant, at least in part because they were unrepresented. There were other complainants who requested that the Ombuds investigate the conduct of the agency and specific personnel within it. In each of these situations, explanations were provided about the role of the Ombuds. The Standards of Practice explored earlier in this report do not allow the Ombuds Service to unilaterally override a decision made by field office staff, initiate and/or conduct investigations, or offer representation of any kind. Instead, and even when someone is dissatisfied, the Ombuds must and will remain committed to providing a confidential, impartial, independent, and informal service.

Fortunately, there was a great deal of more positive qualitative data in the form of testimonials.

***"I've appreciated your patience, honesty and humor so much throughout the process. Thank you for the important role you played in getting us through a challenging situation that we'd been trying to resolve for more than two years."***

— Outside counsel for a federal contractor after a complainant and contractor successfully reached a private, monetary agreement and resolved the complaint through mediation.

***"We have officially agreed to all other terms with (contractor), and the CA has been signed by both parties. Thanks for all of your help getting us there. We couldn't have done it without you."***

— OFCCP field office employee after utilizing the Ombuds Service to facilitate stalled conciliation negotiations.



*“Thank you for calling me and following up on my initial complaint. It was a pleasure talking with you and I appreciate the active listening skills that you exhibited during our conversation. You finally assured me that my discrimination claims are understood and are being addressed by your agency.”*

— Complainant who contacted the Ombuds with concerns about the thoroughness of an investigation as well as difficulties communicating with OFCCP.

Quantitative data is also important to the Ombuds Service, and surveys that provide feedback are another way to gauge people’s reception to the program. The Ombuds Service Evaluation Form<sup>7</sup> is available online and provides a confidential outlet to assess the services provided by the Ombuds. Overall, 100% of those who submitted an evaluation confirmed that they would work with the Ombuds Service again should there be an opportunity to do so. Of those same individuals, 93% responded that coordination with the Ombuds Service met their needs and expectations, and 90% suggested that they were happy with the outcome of their coordination with the Ombuds. Whether it was praise, constructive criticism, or advice on how to further develop the program, the Ombuds Service is grateful for everyone who shared their assessments either with the Ombuds directly or through the evaluation form. Feedback of any kind is invaluable and always appreciated.

## VI. What the Future Holds

It would be complicated to project how many new ombuds referrals will be received and handled next year, or from whom they might come. There are now two years of data to analyze, but the first six months were focused on preparing the program for its official launch, and the 18 months that followed were consumed by a global pandemic that made people reevaluate the platforms through which they communicate, and prevented the Ombuds from embarking on an outreach campaign using in-person conferences and speaking engagements to more traditionally introduce the program. No one can be certain what the future holds, particularly after what the world has experienced over the past two years, but the Ombuds Service looks ahead regardless. A safe assumption might be that the referral rate observed in fiscal year 2021 (see Fig. 3) will hold steady over the next few quarters, with a realistic possibility that the public’s acclimation to online communication allows the Ombuds to stay connected and engage more widely with the OFCCP and external stakeholder communities.

Within that virtual environment, the Ombuds Service will continue to evaluate trends, the variety of issues revealed within them, and any additional conflict resolution skills training that could be developed to address those issues. Advanced negotiation concepts, active listening skills, engaging in difficult conversations, and communicating with high conflict people are examples of other courses that are well suited for organizational settings. It is important to the Ombuds Service that not only OFCCP employees, but also external stakeholders have access to these offerings.

Those who have an individual interest in the topics featured within this report are encouraged to contact the Ombuds. Larger groups who would like to discuss some of the issues they have experienced or learn more about the possibilities to collaborate with the Ombuds are also welcomed to reach out. Although much of this report has focused on the use of various conflict resolution techniques, the Ombuds Service stands for more than the resolution of individual disputes. Being an agent of positive change, expanding the agency’s tolerance for difference, helping it to exist with more resilience, identifying risks, and more constructively engaging in conflict are additional goals that cannot and will not be achieved unless all lines of communication are open and utilized.



The services offered are untraditional. Not everyone is accustomed to transparently discussing issues with someone who they may not know, and then trusting that sometimes sensitive information will not be repeated. The process can be both confusing and uncomfortable, but so can conflict. Allowing it to linger is more dangerous than having a confidential conversation with a neutral third party. Nothing is forfeited, nothing is lost, yet a host of opportunities could present themselves. The invitation is open and, at the very least, the Ombuds hopes that this Annual Report generates thought, conversation, and eventually change that might benefit all who are involved with the work of OFCCP.

## VII. Resources and References

The following resources referenced in the Annual Report are potentially of service to its readers. If a topic of interest is not featured in this report or on the resources and references list below, please contact the Ombuds, who will refer you to the information or service required.

<sup>1</sup> [International Ombuds Association](#)

<sup>2</sup> [Coalition of Federal Ombudsman](#)

<sup>3</sup> [Ombuds Service Referral Form](#)

<sup>4</sup> [OFCCP Help Desk](#)

<sup>5</sup> [Pre-Referral Mediation Program](#)

<sup>6</sup> [2020 Ombuds Service Annual Report](#)

<sup>7</sup> [Ombuds Service Evaluation Form](#)

