

1 Supporting Statement for the State Annual Long Term Care Ombudsman Report for FFY 2016-2018

A. Justification

1. Circumstances Making the Collection of Information Necessary

The State Annual Long Term Care Ombudsman Report is needed to:

- Comply with state and Administration on Aging (AoA) reporting requirements in the Older Americans Act (OAA);
- Carry out recommendations made by the General Accounting Office (GAO), the Department of Health and Human Services' Office of the Inspector General (OIG), and the Institute of Medicine (IOM);
- Advocate at the state and federal levels for changes needed to improve the quality of life and care in long-term care facilities; and
- Effectively manage the Long-Term Care Ombudsman Program at the local, state and federal levels.

The National Ombudsman Reporting System (NORS) was developed in response to these needs and directives and approved by the Office of Management and Budget for use in FFY 1995-96. It was extended with slight modifications for use in FFY 1997-2001 and extended with minor revisions for use in FFY 2002-2006. In 2005, AoA requested an extension with no changes for the balance of FFY 2006 through 2009. The NORS was extended, with modifications, a fourth time for use from FFY 2007-2008 and extended with no modifications from FFY 2009-2011. There was another extension with no modifications from FFY 2012-2014 and for FFY 2015-2018. This current request is to acquire new approval for FFY 2016-2018 with modifications to include organizational conflict of interest reporting as required by the reauthorized Older Americans Act and the LTC Ombudsman program rule CFR 1324.21.

The form and instructions are posted on the AOA web site at:

http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/index.aspx

Section 712(c) of the OAA requires the state agency to establish a statewide uniform reporting system to:

- (1) Collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems and

(2) Submit the data on a regular basis to the state licensing/certifying agency, other state and federal entities that the ombudsman determines to be appropriate; the Assistant Secretary for Aging; and the National Long-Term Care Ombudsman Resource Center.

Section 712(h)(1) requires the state agency to require the Office of the State Long-Term Care Ombudsman to prepare an annual report describing the activities carried out by the ombudsman office in the year for which the report is prepared. The report is to contain

- The data and an analysis of the data collected under Section 712(c);
- Evaluation of the problems experienced and the complaints made by, or on behalf, of residents;
- Recommendations for improving quality of care and life and protecting the health, safety, welfare and rights of residents;
- Analysis of the success of the program, including success in providing services to residents of board and care facilities and other similar adult care facilities;
- Identification of barriers that prevent the optimal operation of the program; and
- Policy, regulatory and legislative recommendations to solve identified problems; resolve the complaints; improve the quality of care and life of residents; protect the health, safety, welfare and rights of residents; and remove the barriers.

Section 712 (h) (B) requires the state agency to require the Office of the Ombudsman to make the annual report available to the public and submit it to the Assistant Secretary for Aging, the chief executive officer of the state, the state legislature, the state agency responsible for licensing and certifying long-term care facilities, and other appropriate governmental entities.

Older Americans Act – Ombudsman Reporting Requirements for AoA

Title II of the OAA requires the Assistant Secretary to compile an annual national ombudsman report. The report must:

- Summarize and analyze the data collected by the states under Section 712(c) and (h) for the most recently concluded fiscal year;
- Identify significant problems and issues revealed by such data (with special emphasis on problems relating to quality of care and residents' rights);

- Discuss current issues concerning the Long-Term Care Ombudsman programs of the states; and
- Make recommendations regarding legislation and administrative actions to resolve such problems.

The Assistant Secretary is required to submit the report to the congressional committees of jurisdiction for the OAA and to the Director of the Centers for Medicare and Medicaid Services, the Office of the Inspector General of the Department of Health and Human Services, the Administrator of the Veterans' Administration, and agencies which house the state ombudsman office.

The Older American's Act as amended through P.L. 114-144, Enacted April 19, 2016, requires in Section 712(f)(2) that organizational conflicts of interest be identified by the State agency; disclosed by the State agency to the Assistant Secretary in writing; and remedied.

Additionally the Long-Term Care Ombudsman Programs final rule §1324.21 requires that the Ombudsman identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

The General Accounting Office (GAO), U.S. Department of Health and Human Services OIG (OIG) and Institute of Medicine (IOM) Recommendations Regarding State Ombudsman Reporting to AoA:

A May 1992 GAO report entitled "The Older Americans Act: Access to and Utilization of the Ombudsman Program" stated:

We believe that, at a minimum, there is a need to modify AoA's annual data collection instrument to correct its defects and to allow measurement of utilization rates of the ombudsman program. The latter would involve collecting information on (1) the total number of complaints received, by type of facility (nursing home or board and care facility), and (2) the total number of nursing home and board and care residents (or, at a minimum, beds). To appropriately evaluate the ombudsman program, a standard definition of what constitutes the resolution of a complaint should be developed. In addition, we conclude that sufficient data to measure the impact of the program are not being collected at the national level.

In a three-part report issued in June 1991, the OIG recommended that AoA develop standards for State ombudsman programs in the following areas: frequency of facility visits; staff-to-bed ratios; volunteer-to-bed ratios; complaint response time; complaint resolution percentages; and recruitment, training and retention of staff and volunteers. The OIG also recommended that AoA develop and implement a system for rating the progress of States in developing their ombudsman systems and providing needed

technical assistance.

In January 1995 the IOM issued a report on its evaluation of the ombudsman program. The report contained several recommendations regarding data and information systems.

The NORS reporting system is responsive to the GAO, OIG and IOM recommendations.

Consultation with State and Local Ombudsmen and State Agencies on Aging

From the beginning of the NORS, AoA has worked with state and local ombudsmen to develop and improve the reporting system. Representatives of the state and local national ombudsman associations worked with AoA staff to develop changes in the reporting form and instructions for the 2006 submission. AoA staff and the National Ombudsman Resource Center continue to provide training and technical assistance on the NORS definitions, codes and effective uses of data.

2. Purpose and Use of Information Collection

The information will be provided to the legislative and executive branch officials cited in the OAA, state directors on aging, state ombudsmen, national organizations involved in residential long term care issues, and private citizens who request it. It will be posted in the AGging Integrated Database (AGID) <http://www.agid.acl.gov> and the ACL/AoA website.

Information from the national reports will be used:

- By AoA to advocate within the Department on specific issues affecting persons living in long-term care facilities. For example, in CMS' NPRM of Long-Term Care facilities, https://www.federalregister.gov/articles/2015/07/16/2015-17207/medicare-and-medicare-programs-reform-of-requirements-for-long-term-care-facilities?utm_content=header&utm_medium=slideshow&utm_source=homepage
- By AoA as a quality assurance tool to ensure that conflicts of interest are identified and remedied;
- CMS cited Ombudsman data as a factor for regulatory changes regarding resident transfer, discharge and eviction. AoA also uses the data to identify areas where technical assistance and program direction to the states are indicated, and to prepare planning and reporting documents, including budget justification, outputs and outcomes measures and indicators;
- By state and area-level managers of aging programs to compare operation of their ombudsman programs with those in other states and make changes which may be needed as a result of the comparison;

- By state and local Ombudsmen to determine problems that residents experience in order to plan training, technical assistance and public education programs to address these problems; and
- By other agencies, researchers and the general public in all manner of inquiry related to residential long-term services and supports.
- By states and local Ombudsman entities to determine program objectives and outcome measures

3. Use of Improved Information Technology and Burden Reduction

Beginning in 2008 states were required to submit their annual Ombudsman reports to AoA on a computer version of the NORS form, the Ombudsman Reporting Tool (ORT), a software program developed by Harmony Information Systems, Inc. under contract with ACL/AoA.

All state ombudsman programs use software to collect their case, complaint and program information from the local ombudsman programs, and two-thirds of the states use Ombudsmanager. This and other software programs enable states to collect state-specific data, in addition to the data they collect for their NORS reports, to more efficiently manage their ombudsman programs and to readily transmit their data to the ORT.

4. Efforts to Identify Duplication and Use of Similar Information

All information in the ombudsman report is unique to the Ombudsman Program except for the numbers of long term care facilities and beds in the state.

Per OMB instructions in FFY 1995, states are not required to provide the number of nursing facilities certified by Medicare and Medicaid because this information is available from the Centers for Medicare and Medicaid Services. While some studies have provided estimates on the number of board and care and similar facilities and beds, the annual AoA ombudsman report, based on the state reports, provides the only consistent national data on the number of homes and beds classified as board and care or similar adult care homes, including assisted living.

If the names and descriptions of types of board and care and similar facilities covered by their programs have not changed since the previous annual ombudsman report, states are instructed to write "no change since previous report."

5. Impact on Small Businesses or Other Small Entities

No small businesses will be involved in this study.

6. Consequences of Collecting the Information Less Frequent Collection

If collection were less frequent than annual, neither the states nor AoA would be able to meet reporting requirements in the OAA; and both advocacy and program management functions dependent on the information in the NORS would suffer from lack of current data.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

None of the listed circumstances applies to this submission.

8. Comments in Response to the Federal Register Notice/Outside Consultation

A notice was published in Federal Register / Vol. 81, No. 126 / Thursday, June 30, 2016 Notices, Pages 42712-42713 announcing that AoA was requesting modification of the current form and instructions to incorporate conflict of interest reporting requirements, directing readers to the AoA website where these documents are posted and providing an opportunity for public comment. One comment was received by the National Association of Ombudsman Programs (NASOP).

NASOP members disagreed with the burden estimate by AoA stating:
Because an overwhelming majority of state long-term care ombudsman programs designate local ombudsman entities, those circumstances lead to a greater likelihood of organizational conflicts of interest. The burden is compounded by the number of local ombudsman entities within a state and will have multiple sources of reporting organizational conflicts at local or regional levels up to the states before states can report via NORS. Further, because approximately half of state long-term care ombudsman programs are housed within an umbrella agency, this also increases the likelihood that state programs have multiple organizational conflicts that must be identified, remedied or removed, and reported via NORS.

NASOP also requested additions to the instructions such as the ability to certify that there was no change in conflicts/remedies from the previous reporting year; and to allow for the ability to report a conflict and remedy that applies to many entities as on reporting entry. These suggestions were helpful and were incorporated into the instructions.

NASOP also recommended that AoA/ACL add a reporting option in a check box to indicate a state has identified a conflict, but the conflict has not been remedied. We do not intend to take this recommendation because it would be contrary to the rule and law. ACL is providing on-going technical assistance to states on implementation of the Ombudsman program rule, including technical assistance on conflicts of interest and steps to remedy any identified conflicts.

9. Explanation of any Payment/Gift to Respondents

Not applicable.

10. Assurance of Confidentiality Provided to Respondents

Individuals are not identified in the report. Ombudsman data collection programs are designed to protect the confidentiality of residents and complainants, in accordance with the disclosure provisions of section 712(d) of the Older Americans Act and §1327.13 (5) (e) of the LTC Ombudsman program rule.

11. Justification for Sensitive Questions

The report does not include questions of a sensitive nature.

12. Estimates of Annualized Burden Hours (Total Hours & Wages)

12A. Estimated Annualized Burden Hours

The hour burden is based on the number of cases managed by the nationwide Long-Term Care Ombudsman Program (consisting of 50 states plus DC and Puerto Rico=52) in the most recent year for which data is available. Closed cases reported by the 52 states for FFY 2013 was 123,666. Based on average time required by early pilot states to document a case by computer (10 minutes), total documentation time is calculated by multiplying total cases by 10 minutes, totaling 1,236,660 minutes, divided by 60 = 20,611 hours of paid ombudsman time. However, about two-thirds of the information entered for a typical case is for use at the state level and is not required for the AoA report. Therefore, only 6,870.3 hours (one-third of the 20,611) are required to document data needed for the AoA report.

Based on reports from state Ombudsman programs obtained in 1995 and 2005, states estimate that they spend anywhere from 4 hours to 4 days checking and verifying data from the local programs and compiling their annual report to AoA. The introduction of the ORT in 2008 has increased reporting consistency; the software is routinely updated but maintains the familiar report format. State Ombudsmen report few, if any problems with the reporting tool and based on the years of experience, the actual burden to states might be less now than when the ORT was first implemented. Importing data is very rapid and the import fills in all complaint, activity and FTE numbers on the 17 pages, the state Ombudsman (or staff) must then write, copy and paste in a narrative description and complete the funds expended section. Eighteen (18) states manually entered their data in the ORT FFY 2014 and 34 imported their data through Ombudsmanager or other software import formats. Importing data takes a few minutes while entering the data manually requires about one hour for a typical state. Writing the narrative and correcting mistakes require additional time. A fair estimate for an average state is 17 hours of staff time. Seventeen hours times' 52 states total 884.

Thus, total hours are estimated as 6,870.3 for collecting plus 884 for entering = 7,754.3
 Average burden hours per state are calculated by dividing 7,754.3 by 52 = 149.1

The additional estimated burden hours for conflict of interest reporting are based on the following:

- Burden time is calculated based on how long it takes to write a summary of the conflict and remedy, not to identify and take steps to remedy. Typically a conflict and remedy can be described in a paragraph or two.
- All 52 states will need to report on whether there are any organizational conflicts of interest and remedies at the State Office of Long-Term Care Ombudsman. Some of these states may indicate that there are no organizational conflicts due to their organizational placement.
- 20 State Ombudsman programs are centralized and will not have reporting related to local Ombudsman entities.
- 32 State Ombudsman programs have local Ombudsman entities (local/regional programs) and are required to report conflict of interest at the local entity level. NASOP expressed concerns about the burden to report on numerous entities and NORS FFY 2015 data indicates that there are a total of 547 local entities. However if a remedy applies to multiple entities, it only needs to be reported once, thus a state with 52 local Ombudsman entities – all Area Agencies on Aging, for example, will not have to report on 52 individual entities, but rather the types of conflicts and the remedies used to address the conflicts. In other words, remedies can be “bundled” by type of conflict and the number of entities which it applies. Not all of these entities will have organizational conflicts.

Affected Public	Instrument	No. of Respondents	No. Responses per Respondent	Average Burden per Response (in hours)	Total Burden Hours
State, Local, or Tribal Governments	Annual State Ombudsman Report	52	1	148.1	7702.3
	Additional Conflict of Interest Reporting	52	1	1	52

	Revised annual total	52	1	149.1	7754.3
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12B. Costs to Respondents

Documentation (local level)

6,870.3 burden hours \ 52 states = 132.1 hours per state
 132.1 hours x \$44.64 per hour (22.32 per hour estimated average local salary¹ plus estimated benefits and overhead of \$22.32 per hour) = \$5,896.94 per state
 \$5,896.94 x 52 states = \$306,641

Preparing AoA Report (state level)

884 burden hours/52 states = 17 hours per state
 17 hours per state x \$67.30 (\$33.65 (median hourly wage of 37 state salary sampling² reported in August 2015) plus estimated benefits and overhead of \$33.65) = 1144.10 per state x 52 states = 59,493

Type of Respondent	Total Burden Hours	Hourly Wage Rate	Overhead and benefits	Total	Total Respondent Costs
Local Ombudsmen	132.1	\$ 22.32	\$22.32	\$44.64	\$5,896.94
State Ombudsman Staff	17	\$33.65	\$33.65	\$67.30	\$1,144.10
Total Cost per Respondent	149.1				\$7,041.04

Total Annual Costs to All Respondents: Total Annual Costs to All Respondents:
 \$7,041.04 x 52 states = \$366,134.29

13. Estimates of other Total Annual Cost Burden to Respondents or Record keepers/Capital Costs

¹ National Ombudsman Resource Center (NORC) (AoA grantee) - Local Long-Term Care Ombudsmen Salary Analysis August 2015
 From NORC: "The information for this report was gathered via an online survey that was sent to Local Long-Term Care Ombudsmen (LLTCO). 281 LLTCO provided data regarding their salaries and local programs. The LLTCO were given the option to keep the information they disclosed confidential; therefore, this report will include only salary ranges and aggregate data. For more details about this resource, contact NORC at ombudcenter@theconsumervoice.org".

² National Ombudsman Resource Center (NORC) (AoA grantee) - State Long-Term Care Ombudsmen Salary Analysis August 2015 BLS data removed – contractor used old data from 2002. Current BLS salary data was too high and not in alignment with recent salary survey.
 From NORC "The information for this report was gathered via an online survey that was sent to all 52 State Long-Term Care Ombudsmen (SLTCO). Thirty-eight SLTCO provided data for their programs. The SLTCO were given the option to keep the information they disclosed confidential; therefore, this report will include only salary ranges and aggregate data. The report will be retained as a resource document and distributed to the SLTCO, and will not be published to the NORC website or released publicly."

There are no other costs to respondents or record keepers or capital costs.

14. Annualized Cost to Federal Government

The table below describes the annualized cost to the federal government. Cost to the federal government includes staff time to review data for accuracy, analysis for trends, and costs associated with the contractor and oversight of contract. The cost below is based on the General Schedule Locality Pay Table for the Washington-Baltimore-Northern Virginia area.

GS Grade/Step	Percent Time	Estimated Cost
GS 15-4	2%	\$2,777.42
GS 13-8	5%	\$5,600.70
GS 13-4	10%	\$9,990.50
	Contract Cost	\$172,500
	Annualized Cost to Federal Government	\$190,868.62

15. Explanation for Program Changes or Adjustments

As noted in the response to question 12, the overall burden hours for State, local, or tribal governments under the current data collection decreased from 8,569 hours to 7,702 hours due to a decrease in the number of cases. However, this decrease is partially offset by the addition of the new element on conflict of interest. This added an additional 52 hours for a revised total annual burden of 7,754.3.

16. Plans for Tabulation and Publication and Project Time Schedule

States collect their data from October 1 through September 30 of the fiscal year. They submit the data and narrative to the Ombudsman Reporting Tool (ORT).

The due date for the State reports is January 31 for the previous fiscal year. The data is reviewed by the contractor, inconsistencies are noted and, when needed, states are asked to correct and resubmit their reports. AOA staff conducts a final review based on the findings of the contractor and certifies the report as final when all corrections have been made. This process typically takes three to four months. When the national data is finalized, the tables are posted on the ACL/AOA website. States can access charts and graphs in the ORT for any fiscal year. The report to Congress is prepared in the summer months and submitted as soon as it is approved, typically in the early fall.

AoA prepares reports, a fact sheet and other information based on the data and posts the data tables on its website at:

<http://www.agid.acl.gov>

http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/index.aspx

17. Expiration Date

The expiration date will be displayed in the header; the expiration date is July 31, 2017

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.

B. Collection of Information Employing Statistical Methods. If statistical methods will not be used to select respondents and item 17 on Form 83-I is checked “No” use this section to describe data collection procedures.

These collections do not employ statistical methods. The Older Americans Act requires all states to submit an annual ombudsman report to AoA and AoA to submit an annual report to Congress and others.

As explained in item 3, states have their own data collection systems, which they use statewide for collection throughout the reporting year. They submit this data on software provided by an AoA contractor.

Supplementary Documents