



STATEMENT OF

EUGENE A. LUDWIG

FOUNDER AND CHIEF EXECUTIVE OFFICER,  
PROMONTORY FINANCIAL GROUP, LLC

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND  
CONSUMER CREDIT

FEBRUARY 1, 2012

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Madam Chairman, Ranking Member Maloney, members of the Subcommittee, thank you for inviting me to comment on this significant piece of legislation, which addresses important issues of balance and fairness in the supervisory process. I would like to commend you, Madam Chairman, Ranking Member Maloney and the other members of this Subcommittee, for your concern for this topic, and in particular for your giving serious consideration to the expanded use of ombudsman programs as part of the federal financial regulatory and supervisory system. I will focus my remarks today on the ombudsman issue.

America is blessed with an uncommonly capable group of financial supervisors, examiners and regulators at our Federal agencies. As Comptroller of the Currency, a member of the Board of the FDIC, and Chairman of the FFIEC, I spent five years surrounded by members of this group and had daily occasion to be impressed with their dedication, energy, and commitment to the tasks before them. Their efforts, and the efforts of their peers at other agencies, remain essential to the health of the U.S. financial system and the well-being of the American people.

Nonetheless, every human system has its flaws; people make mistakes or differ in their judgments, and regulators are no exception. At regulatory agencies, identifying and rectifying mistakes is of course important to the particular institutions and individuals affected. However, it also has an important effect on the financial system as a whole, increasing public confidence in the fairness and balance of our regulatory mechanisms.

With this in mind, in 1993, while leading the OCC, I created the first formal ombudsman program at any financial regulatory agency. The program was intended to improve communications between supervisors and supervisees, and to give banks an opportunity to present concerns about their examination findings and other supervisory matters. We appointed an especially capable, fair-minded person to head the office; gave him the discretion to supersede any agency resolution or action on an appealable matter; and most importantly, worked hard to eliminate any prejudice towards those who brought concerns to him. Four years later, when I appeared before this Subcommittee, that Ombudsman and

his staff had resolved 110 formal appeals from national banks and facilitated resolutions in 359 additional cases. In the time since, such agencies as the Federal Reserve, FDIC, FHFA, and NCUA have followed the OCC's example.

Ombudsman programs recognize the strength of the supervisory relationship—a strength that, in some ways, is even greater than the bonds of marriage. There are no divorces in banking. Without a polite, professional relationship marked by mutual respect, communication can deteriorate in a way that benefits no one. When an issue does arise, such a negative dynamic increases the time and expense of reaching a resolution, as well as the risk of an adverse event in the meantime. By keeping the lines of communication open, and by offering each party a better understanding of the other's concerns, financial agency ombudsmen make supervisory efforts all the more effective.

Ombudsman programs do not encourage laxity, nor should they. I am a very big believer in the sound regulation and supervision of our financial system. We need tough but clear and fair financial rules not just to protect consumers, but also to ensure the quality of our banks and the health of our economic system.

However, a strong ombudsman system helps to maintain consistent, high standards of conduct, a challenge that is more important now than ever. Regulatory agencies have long had tremendous discretion and power over the supervision of financial institutions, but their remit has grown steeply over the last several decades. Recent reforms, including elements of the Dodd-Frank Act, have provided regulators with new tools that can make our financial system more trusted, resilient, and innovative. But the dramatic increase in quantity and complexity of financial regulations could increase both the likelihood and the cost of regulatory error. The supervisory process sometimes leads to actions that involve re-grading loans, changing business practices, and even submitting to formal court orders. We are in the midst of great change, and it is not surprising that Congress would want to revisit ways to ensure supervisors are making the right call.

What H.R. 3461 proposes—what could be described as a “super-Ombudsman”—is a new authority to review a broad array of supervisory activities at all the banking agencies. The notion of an interagency Ombudsman is thoughtful and has considerable merit, worthy of the very serious consideration that you are wisely giving it.

I would suggest a few modifications to the concept you have proposed, to capture the advantages while avoiding excess bureaucracy and cost. Since the federal regulatory agencies already have Ombudsman programs with talented and experienced people involved, I would suggest that the new “super-Ombudsman” play a coordinating role among the Ombudsmen at the regulatory agencies and act as a “safety valve” or appeals mechanism. In such an arrangement, the super-Ombudsman would (i) work to ensure consistency and high quality of agency Ombudsman efforts, and (ii) hear cases that an agency Ombudsman refuses to hear or where an appeal is lodged.

Another way to achieve this same goal, and one that might involve less new governmental expense, would be the creation of a new, permanent Ombudsman Task Force at the FFIEC.

The task force would be made up of all the financial agency Ombudsmen, and its work, along with the work of the individual Ombudsmen, would be reportable to the Council and to Congress. The Council could help achieve the same goals of uniformity, quality control, and right of appeal as I suggest for the super-Ombudsman.

I would also suggest, Madam Chairman, that whether it be a “super-Ombudsman” or an “Ombudsman Task Force,” the new mechanism—and indeed the existing agency Ombudsman—should also have the responsibility of reviewing regulations, to try to achieve the most effective application of legislative mandates in the least burdensome fashion. This effort is important and must be continual. Times change, and rules that were once effective fall out of date or prove inefficient, and need adjustment. Involving the super-Ombudsman or the Ombudsman Task Force in this effort could inject a strong dose of regulatory harmonizing into the process.

Regulations grow like barnacles on a ship: New circumstances and new lessons learned give rise to new rules. Once those rules are established, they are rarely removed. A conscious and concerted effort to scrape away the excess can make the system safer and more efficient. Where agencies and supervisees have to comply with out-of-date or ineffective regulations or guidance, they have less time to focus on what matters most: the safety and soundness of the system. Too many barnacles on the hull of a ship can sink it. And too many rules, particularly where they do not efficiently fulfill a needed function, can hurt the financial system.

Accordingly, I very much favor the advancement of the Ombudsman concept that this legislation embodies. I urge this Subcommittee and Congress generally to think broadly along the lines of what this bill and its authors are proposing. Both Congressional leaders and the President have listed regulatory reform among their priorities, and a broader use of regulatory Ombudsmen is an effective way to achieve it, fostering a stronger financial system and a healthier American economy.

Thank you again for the opportunity to address the subcommittee on this subject; I look forward to answering your questions and hearing your comments.

**Additional Information Provided Pursuant to Subcommittee Request**

Since October 1, 2008, Promontory Financial Group, LLC ("Promontory") and its affiliates have provided consulting services to certain federal governmental bodies and representatives regarding a variety of governance, compliance and risk management issues. All services have been completed. None of these services is material to Promontory's business. Moreover, none of these services related to reforms to the examination appeals process, which is the subject of my testimony today. My testimony represents solely my own views and not those of any past or present client.

I have not personally received any Federal grants or contracts since October 1, 2008.

X



Eugene A. Ludwig

Founder and Chief Executive Officer, Promontory Financial Group, LLC

