Ombudsman Program Funding/Fiscal Policies
Source: Older Americans Act (2006); AoA Program Instruction PI-94-02

1. Sources of ombudsman program funding

Federal funding: Federal funding constitutes 60% of Long-Term Care Ombudsman Program funding.

a. Title III-B -- The largest portion of federal funds consists of Title III-B supportive services funds under the Older Americans Act (the “Act”) (32% of total program funding in 2009):

- Section 303(a)(2) authorizes use of Title III-B funds for ombudsman activities,
- Section 321(a)(10) permits use of supportive services money for "services of an ombudsman at the State level to receive, investigate and act on complaints by older individuals who are residents of long-term care facilities and to advocate for the well-being of such individuals."
- Section 304(d)(1)(B) specifies that “such amount . . . as the State agency determines to be adequate for conducting an effective ombudsman program under section 307(a)(9) shall be available for conducting such a program.”

A state may use Title III-B funds to support activities of the ombudsman program, as defined in section 712 of the Act, at either the state level or at the local level. Area agencies on aging may also use Title III-B money that they receive through the intrastate funding formula to support ombudsman activities.

b. Title VII -- Older Americans Act Title VII-2 (ombudsman activities) and Title VII-3 (elder abuse prevention) allocations to the states are increasingly important sources of program funding (20% and 3%, respectively, in FY 2009).

c. Other -- Other federal funding includes Medicaid administrative funds and Money Follows the Person funds, which some state ombudsman programs receive to augment services for Medicaid recipients.

State funding: State funding is the second largest source of ombudsman program support (32% in FY 2009).

Other funding: Local and private funding provided 8% of the total program funding in FY 2009.

2. Minimum funding levels for states and area agencies on aging

Section 307(a)(9) of the Act reads:

*The (state) plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 712 and this title [III], and will expend for such purpose an amount that is not less than an amount expended by the State agency with funds received under*
The area agency ombudsman minimum funding requirement in Section 306(a)(9) states:

[The area plan must] provide assurances that the area agency, in carrying out the State Long-Term Care Ombudsman Program under section 307(a)(9), will expend not less than the total amount of funds appropriated under this Act and expended by the agency in fiscal year 2000 in carrying out such a program under this title.

In Title VII, Section 705(a), Congress clarified its desire that Title VII funds be used to supplement and not supplant other funds:

In order to be eligible to receive an allotment under this subtitle, a State shall include in the State plan submitted under section 307. . .

(4) an assurance that the State will use funds made available under this subtitle for a chapter in addition to, and will not supplant, any funds that are expended under any Federal or State law in existence on the day before the date of enactment of this subtitle, to carry out each of the vulnerable elder rights protections activities described in this chapter.

The Senate Committee report elaborated on that body's intent relative to the funding provisions for ombudsman programs:

It is the committee's intent for a State to expend in subsequent years, at a minimum, the amount spent by the State on its Long Term Care Ombudsman Program in FY 2000, in addition to any increase in funding provided for ombudsman activities in each fiscal year under Title VII. (The Senate Committee on Health, Education, Labor and Pensions [HELP] report "Older Americans Act Amendments of 1999," Senate Committee Report 106-399, page 5)

Together, these provisions mean that states must expend on their statewide ombudsman programs no less than they expended in Title III funds (federal) for FY 2000, plus provide increases in funding when Title VII ombudsman program appropriations increase. This amount should be expended annually on ombudsman services to residents of long term care facilities (“residents” is defined at §711(6) and “long-term care facility” is defined at §102(a)(35) of the Act. All of the Title VII ombudsman funding appropriated by Congress and allotted to a state for a specific year should be expended on direct costs of the ombudsman program.

Area agencies must expend on activities of the ombudsman program, as defined in Section 712 of the Act, not less than the total amount of Title III funds received under §304(d)(1)(D) and expended by the area agency in carrying out the ombudsman program under Title III in FY 2000.

3. Title VII funds to be used for program (as opposed to administrative) costs.

States may not use Title VII funds for administration of state plans or include any Title VII funding in their calculation of funds available for state plan administration or for cost-allocation purposes.
Explanation: The programs under Title VII, unlike most of the programs under Title III, are established and operated as direct advocacy services by the state agency on aging and/or agencies with which the state agency contracts or provides grants to operate the programs. Thus, Title VII funds are used to pay for program costs such as ombudsman staff, offices expenses, travel, etc.

There is no reference in the Act to Title VII allotments in calculating funding for administration of state plans or use of Title VII funds for state plan administration. On the other hand, it is quite clear that the Act authorizes States to allocate five percent, or $500,000, whichever is greater, of their cumulative total Title III allotments for meeting administrative costs. Since Congress made no provision for the use of Title VII funds for administrative costs, Title VII money must be expended for the direct support of the programs for which it is appropriated and not for indirect administrative costs or for cost-allocation purposes.

A major funding principle to which states need to adhere with regard to Title VII is that all funding allotted for a particular Title VII chapter must be used to carry out the requirements and activities specified for that chapter in the Act. Funds allotted for any chapter under Title VII should not be included in the calculation for State plan administration funding.

Title VII funds allotted to the states should not and may not be included in the base amount used to calculate the ten percent limitation on the use of funds for area plan administration under the provisions of Section 304(d)(1)(A). There is no legislative basis for inclusion of Title VII funding in the calculation for determining area agency funding for administration of area plans.

4. The intrastate funding policy does not apply to Title VII funds.

The intrastate funding formula applies to Title III funds under §304(d)(1)(D) of the Act, but does not apply to Title VII funds. Therefore, states may use alternate allocation formulas to distribute Title VII-2 ombudsman activities funds to the area agencies on aging or other entities designated as a local Ombudsman entity.

5. There is no matching requirement for Title VII funding.

Provisions in the Act regarding matching funds, Sections 304(d)(1)(D) and 308(a)(1), apply to Title III funds. There is no statutory requirement that states must match federal funding they receive under Title VII; therefore, there is no federal matching requirement for Title VII funds. States, however, are not precluded from requesting a match to Title VII funds which they award by grant or contract to another agency or organization.

6. There is no cost sharing requirement for Title VII programs.

Cost sharing is a process by which non-low-income elders will be asked to share in the cost of their federally funded services. States may implement cost sharing except for specific services, including ombudsman services (§315(a)(2)(B)). Although cost sharing is not permitted, voluntary contributions for ombudsman services may be solicited and retained to supplement funds for ombudsman services so long as the method of solicitation is not coercive. Services cannot be denied to any elder who does not make a donation.
7. **States may use Title VII, Chapter 3 abuse prevention funds for ombudsman activities.**

States may use any portion of their Title VII abuse prevention allotment to fund specific, identifiable activities conducted by any public or private non-profit program or agency, including adult protective services and ombudsman programs, which directly correspond to the abuse prevention activities outlined in Section 721(b) of the Act.

8. **Title VII funds limitations**

Use of Title VII funding is prohibited for involuntary services to, or coerced participation in, Title VII-funded programs by alleged victims, abusers or their households.

Use of any of the Title VII ombudsman allotment to fund activities which are not authorized under Section 712 of the Act and conducted by the ombudsman program or a grantee or contractor of the ombudsman program is prohibited. This includes, but is not limited to, ombudsman services in settings other than long term care facilities as defined at §102(a)(35) of the Act. Title VII-2 (ombudsman activities) funds cannot be used to provide services performed by individuals or agencies other than the ombudsman or ombudsman program, or the ombudsman's grantee or contractor.