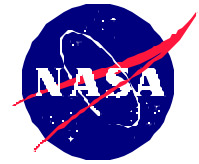


National Aeronautics and
Space Administration

Office of Inspector General
Headquarters
Washington, D.C. 20546-0001



Reply to Attn of: **W**

July 21, 2000

TO: B/Chief Financial Officer
F/Associate Administrator for Human Resources and Education
G/General Counsel

FROM: W/Assistant Inspector General for Inspections, Administrative
Investigations, and Assessments

SUBJECT: Intergovernmental Personnel Act Assignments to NASA, G-99-018,
Final Report

The NASA Office of Inspector General (OIG) reviewed the Intergovernmental Personnel Act¹ (IPA) Mobility Program as it relates to assignments to NASA. Through the IPA Program, NASA temporarily brings individuals from academia and state and local governments to the Agency to provide scientific, administrative, and managerial expertise. We found that while many individuals assigned to NASA under this program hold key decision-making positions, they are not by law or Agency practices required to file financial disclosure reports. Also, they are neither required by law or Agency practices to attend ethics briefings nor to discuss their financial issues and outside activities with an Agency Ethics Counselor. In addition, we found that one NASA Center funds its IPA positions through a fund source designated for civil servants even though the IPA assignees generally remain employees of their parent organizations. Using monies designated for civil servants to fund IPA positions may have created shortfalls in other important programs.

I. BACKGROUND

The Intergovernmental Personnel Act generally provides for the assignment of employees from academia and state and local governments to positions within Federal agencies for work of mutual concern. The period of assignment may not exceed 2 years; however, the head of a Federal agency may extend this period for not more than an additional 2 years.

¹ Title 5 of the United States Code (U.S.C.), sections 3371 *et seq.* set forth the requirements and provisions of the Act.

Title 5 U.S.C. provides that an employee may be assigned to a Federal agency under the IPA in one of two ways. First, the individual may be given an excepted appointment in that agency for the agreed upon period of the assignment without regard to the provisions governing appointment in the competitive service. Second, an individual may be detailed to the Federal agency. An employee given an IPA appointment is covered by Federal government rules and regulations of the Federal agency for almost all purposes in contrast to an individual on detail. In July 1999, NASA had over 90 non-Federal employees assigned to the agency under the IPA program. Almost all of these individuals were on detail to NASA. Individuals detailed to NASA include the Ames Research Center (Ames) Director; the Director of the Astrobiology Institute; the Assistant Associate Administrator for Strategic and International Planning, Office of Space Science; the Manager, Polar Program, Office of Earth Science; the Director of Aeronautics, Ames; and the Associate Director for Information Technology, Ames.

The Office of Personnel Management (OPM) issued guidelines regarding the use of IPA assignments. OPM indicates that a non-Federal employee on assignment to a Federal agency, whether by appointment or on detail, is subject to a number of provisions of law governing the ethical and other conduct of Federal employees. Title 18 U.S.C. lists prohibited activities that are applicable to both appointed and detailed employees. Non-Federal employees, either on appointment or detail, are also subject to the Ethics in Government Act of 1978, which regulates employee responsibilities and conduct as well as agency standards of conduct regulations. Individuals on an IPA detail are also subject to provisions of the Procurement Integrity Act and the Hatch Act Amendments. NASA has several reasons for using detail assignments rather than appointments to fill its IPA positions. For instance, non-Federal employees on detail to NASA essentially remain employees of their parent organizations. Many individuals prefer this option because of tenure and benefits considerations which they retain while on detail. Another reason is that unlike IPA appointments made to a position classified by OPM within the Federal employee grade structure, IPA details can be assigned ad hoc, unclassified duties. NASA often finds that the individual is not intended to perform the full range of duties of a position under an OPM classification, but rather will perform a set of defined duties. Also, OPM has indicated that the IPA assignment should not cause an individual to lose any compensation. Assignment by detail enables the individual to be paid by the non-Federal organization at a rate of pay based on the individual's non-Federal job. This is often higher than the Federal salary schedule. The Federal agency may then reimburse the non-Federal organization for all, some, or none of the costs of the assignment.

II. IPA FINANCIAL DISCLOSURE REQUIREMENTS

A non-Federal employee on detail is not governed by all the Federal government rules and regulations applicable to civil servants or IPA's on appointment. While an IPA on detail must adhere to Federal criminal conflict of interest provisions as well as certain provisions of the Ethics in Government Act, the detailed employee is not required to file federal

financial disclosure forms.² Additionally, individuals on detail are not required to attend ethics briefings or to discuss their financial holdings with an Ethics Counselor or other official.

Financial disclosure reports are important in ensuring that individuals do not have a financial interest or outside activity that conflicts with their Federal duties. The process of completing the report, having the report reviewed by ethics officials in the Office of General Counsel, and periodic employee attendance at ethics briefings helps to ensure that potential conflicts of interest or ethics violations are avoided.

Chapter 2 of NASA Policy Guidance (NPG) 1900.3, Financial Disclosure Reports, lists positions that are subject to financial disclosure reporting requirements. Employees above the GS-15 grade level are required to file a public financial disclosure report (SF 278). For others, the requirement to file a confidential financial disclosure report (OGE 450) is determined by the position and authorities they hold. For example, NPG 1900.3 requires the filing of the OGE 450 form for those employees whose duties and responsibilities require that the employee participates personally and substantially in making a Government decision or taking Government action in the contracting or procuring of goods and services; the administering of grants; the regulation of any non-Federal entity; and the exercising of judgment in making Government decisions or taking actions having a direct and substantial economic impact on the interests of any non-Federal entity.

Many IPA detailees to NASA hold positions of supervisory or managerial responsibility. As an indicator of the positions held by IPA detailees, of the over 90 IPA assignments as of July 1999, 17 were compensated at the GS-15 level and 22 were compensated at the Senior Executive Service level or above. These individuals manage NASA programs, make significant decisions involving NASA resources, and supervise civil servants. If these individuals had been appointed to positions within NASA or were permanent Federal employees, they would be required to file a financial disclosure report.

IPA detailees come to NASA from academic and other institutions, where conflict of interest and other ethics guidelines may significantly differ from those of the Federal Government. Lack of awareness of Federal guidelines, coupled with the lack of requirements by the Agency for IPA detailees to make a financial disclosure may expose the detailee to a greater risk of violating conflict of interest or ethics laws. Further, NASA is exposed to a greater possibility of loss or embarrassment should a detailee violate the law or ethics regulations. Because these detailees are not required to submit financial disclosure reports (which would be reviewed for potential conflicts) and are not required

² The SF 278, Public Financial Disclosure Reports Standard Form, or OGE 450, Confidential Financial Disclosure Report, is filed by Federal employees subject to financial disclosure. The Office of Government Ethics (OGE) has determined that IPA detailees are not covered by Title 2 of the Ethics in Government Act pertaining to financial disclosure. The OGE has also indicated that use of the financial disclosure forms by individuals who are not Government employees would be beyond that authorized by the Privacy Act and the Paperwork Reduction Act.

to attend ethics briefings, they may be unaware of potential conflicts of interest and may make decisions that violate the law.

III. PRACTICE BY OTHER AGENCIES

We contacted several agencies that use IPA assignments for obtaining skills in scientific research and design areas. The National Institutes of Health (NIH) uses an interview process to learn about potential ethical/financial conflicts. The Ethics Counselor interviews new IPA detailees to NIH to ascertain the individual's stock ownership, other financial interests, and the status and working relationship with his/her parent and other organizations. The National Science Foundation has obtained specific authorization regarding financial disclosure. The National Science Foundation Authorization Act of 1998 (Section 204) states that:

Persons temporarily employed by or at the Foundation shall be subject to the same financial disclosure requirements and related sanctions under the Ethics in Government Act of 1978 (5 U.S.C. App.) as are permanent employees of the Foundation in equivalent positions.

Recommendation 1: NASA should discuss with OPM and OGE legislative options for authority to apply the same financial disclosure requirements and related sanctions under the Ethics in Government Act to persons temporarily employed under the Intergovernmental Personnel Act as apply to permanent employees of the Agency in equivalent positions. If OPM and OGE do not favor a Government-wide solution, NASA should seek the authority through its Authorization Act.

Recommendation 2: Until such authorization is approved, individuals detailed to NASA as IPAs should be required to discuss financial interests and outside activities with their Ethics Counselor on an annual basis to avoid any real or apparent conflicts of interest.

IV. IPA FUNDING

The costs of IPA details can be charged to several fund sources depending on the circumstances of the assignment. For Headquarters and most Centers, these costs are either charged to Resource and Operations Support (ROS) or to Research and Development (R&D), depending on whether the assignment is administrative or programmatic in nature.

Individuals appointed to positions within NASA are treated as Federal employees for budgetary purposes, they count against the Full Time Equivalent (FTE) ceiling of the Agency (unlike IPA detailees), and their costs are charged to the Resource and Program Management (R&PM) funds source. With the exception of the Ames Research Center (Ames), NASA funds its IPA details through either the R&D budget or the ROS budget.

Ames funds its IPA details through the R&PM budget, a fund source designated for civil servants and those appointed to positions within NASA.

Ames funds seven to eight IPA detailees that cost the Center between \$900,000 and \$1,000,000 annually. The use by Ames of the R&PM budget to fund its detailees has taken funds that otherwise would have been used to cover other civil servant expenses. Over the last several years, the Office of Aero-Space Technology has assisted Ames to cover the shortfall in R&PM funding by transferring funds from other Centers.

Recommendation 3: Ames should charge its IPA costs to a more appropriate funds source. For those individuals on detail to administrative positions, Ames should charge the costs to the ROS funds source. For those individuals benefiting programmatic research, the costs should be charged to R&D.

V. SUMMARY OF MANAGEMENT RESPONSE

In its response, NASA management partially concurred with Recommendation 1, which discusses legislative options for authority to apply the same financial disclosure requirements and related sanctions to IPA detailees as apply to permanent Agency employees. NASA management supports the elevation of awareness on the part of detailees regarding Federal conflict of interest and ethics laws. However, NASA management does not believe a NASA-specific legislative solution is warranted. NASA management indicates that statutory change, if indicated, should be sought by those agencies with Government-wide responsibility for the IPA program, such as OPM or the Office of Government Ethics (OGE).

As an alternative to Recommendation 1, NASA management recommends that the Office of Human Resources and Education (Code F) work with the Office of General Counsel (Code G) to develop a plan to use existing authority to prevent conflicts of interest from arising. This plan would address what NASA management perceives to be the core concern of the OIG: that lack of awareness of ethics rules places the detailee at risk. NASA's plan would address two primary elements: training for detailees and pre-screening of proposed IPA agreements for conflicts.

With respect to the first element, NASA is in the process of adding an annual ethics training requirement to all IPA agreements. To this end, Codes F and G have initiated the development of a web-based ethics training module that will focus on ethics requirements applicable to IPA detailees. The website will provide substantive information on the applicable ethics rules, illustrative examples, and interactive vignettes in conjunction with a strong emphasis on the need to seek counseling. The site will also provide the ability to contact an ethics counselor from within the training module as well as a listing of Headquarters and Center ethics officials.

With respect to the second element, NASA management indicates that the most common conflict of interest issue in the IPA context is that arising out of the detailee's employment interest in the sponsoring non-Federal organization. NASA proposes to screen all incoming IPA details prior to execution for potential conflicts based on this relationship. Code F will incorporate this requirement into IPA policy and communicate the importance of this provision to Center personnel offices. Center personnel offices will be required to provide information on conflict avoidance to Agency managers who sponsor IPA details.

NASA management non-concurred with Recommendation 2, which would require IPA detailees to discuss financial interests and outside activities with their Ethics Counselor on an annual basis. NASA believes that requiring ad hoc financial disclosure is not authorized by, and would violate the spirit of the IPA statute. NASA also believes that recommendation 2 would violate the Paperwork Reduction Act, as an unauthorized collection of information from the public. NASA management believes that obtaining Office of Management and Budget approval of a substantial new collection of information would be nearly as time-consuming as obtaining legislation and that such a collection would be difficult to justify.

NASA management indicates that the proposed solution outlined in response to Recommendation 1 makes the OIG's interim solution, contained in Recommendation 2, unnecessary. NASA believes that a voluntary process will be sufficient because it will include training in the conflict of interest rules and strong encouragement to IPA detailees to seek counseling with respect to their financial interests. NASA believes that any decrease in insight into the financial interests of detailees will be outweighed by the enhanced sensitivity to and understanding of the ethics rules and their applicability to IPA detailees on the part of both detailees and their NASA managers.

NASA management concurred in recommendation 3, which addresses the need for Ames Research Center to charge its IPA costs to a more appropriate funds source and to discontinue the use of the R&PM budget for that purpose.

VI. EVALUATION OF MANAGEMENT RESPONSE

The OIG strongly supports the addition of an annual ethics training requirement to all IPA agreements. We also support the screening of all incoming IPA details for potential conflicts arising out of the detailee's employment interest in the sponsoring non-Federal organization. Additionally, we agree that the issue of IPA detailee financial disclosure is not unique to NASA, but applies to all executive branch agencies.

Recommendation 1 of the draft report recognizes that the financial disclosure issue has Government-wide implications. We recommended that NASA discuss with OPM and OGE legislative options for authority to apply Government-wide the same financial disclosure requirements and related sanctions under the Ethics in Government Act to persons temporarily employed under the Intergovernmental Personnel Act as apply to

permanent employees in equivalent positions. The first course of action should be statutory change initiated by those agencies with Government-wide responsibility for the IPA program. However, if OPM and OGE choose not to propose a Government-wide statutory change, we recommended that NASA seek authority through its Authorization Act.

As we mention in the draft report, the National Science Foundation (NSF) has obtained specific authorization regarding financial disclosure. The NSF Authorization Act of 1998 authorizes the Foundation to apply the same financial disclosure requirements to its IPA detailees as to its permanent staff.

Many IPA detailees to NASA hold positions of supervisory or managerial responsibility. These individuals manage NASA programs, make significant decisions involving NASA resources, and supervise civil servants. Because of the need to replace staff possessing essential skills lost through attrition and buyouts, as well as to diversify and modernize its workforce, NASA will be making even greater use of the IPA program in the future. The number of detailees holding positions of supervisory or managerial responsibility will likely increase, making potential conflict of interest issues all the more important. We continue to believe that NASA should seek the authority to apply financial disclosure requirements and related sanctions to its IPA detailees, either through a Government-wide or Agency-specific solution. This authority will provide greater assurance to NASA and to the IPA detailees that conflict of interest situations will not arise.

Our draft report also recommended that, until such authorization is approved, individuals detailed to NASA as IPA's should be required to discuss financial interests and outside activities with their Ethics Counselor on an annual basis to avoid any real or apparent conflicts of interest. Our report did not suggest or require that detailees prepare a financial disclosure form or any other written documentation of their financial holdings and outside interests. Our recommendation differs from the alternative proposed in the Agency response only in that our recommendation requires that Ethics Counselors proactively contact IPA detailees and arrange for annual discussions. The NASA alternative would provide a mechanism for IPA detailees to contact an Ethics Counselor only if they chose to do so.

As mentioned in our draft report, NIH currently uses an interview process to learn about potential ethical/financial conflicts of its IPA detailees. The NIH Ethics Counselor interviews new IPA detailees to ascertain the individual's stock ownership, other financial interests, and the status and working relationship with his/her parent and other organizations.

We continue to believe that NASA Ethics Counselors should have annual meetings with IPA detailees to discuss financial interests and outside activities. We do not believe that these discussions violate either the letter or intent of the IPA statute or the Paperwork Reduction Act.

The Agency concurs with our third recommendation. The response indicates that IPA individuals detailed to administrative and research positions at Ames Research Center will be funded from the ROS and R&D budgets respectively. The response provides milestones for implementation of the recommendation. We will follow-up on the status of corrective actions at a later date.

VII. CONCLUSION

NASA needs to take steps to ensure that all individuals occupying positions covered by NPG 1900.3, Financial Disclosure Reports, prepare financial disclosure reports or, at a minimum, discuss their financial holdings and outside activities with an Agency Ethics Counselor. These actions will help protect the Agency and the individual from potential violations of conflict of interest and ethics laws. In addition, NASA should not charge the costs of individuals on detail to the Agency to a fund source designated for civil servant costs. Instead, NASA should ensure consistent treatment of these costs by appropriately charging them to either the ROS or R&D fund source depending on whether the detail is primarily administrative or programmatic in nature.

We are requesting that NASA reconsider its response to recommendations 1 and 2. As mentioned in our evaluation of management's response, we continue to believe that NASA should seek authority to apply financial disclosure requirements and related sanctions to its IPA detailees. We also believe that, as an interim step, NASA should require annual discussions with its IPA detailees regarding financial interests and outside activities.

[original signed by]

David M. Cushing

2 Enclosures:

Appendix A: NASA Management Response

Appendix B: Report Distribution

MAJOR CONTRIBUTORS TO THIS REPORT

Wesley E. Pippenger, Management Analyst
Robert J. Wesolowski, Auditor (team leader)
Kenneth C. Wood, Auditor

Appendix A

NASA Management Response

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



JUN - 8 2000

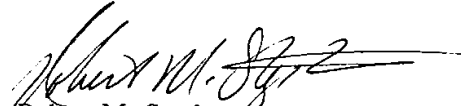
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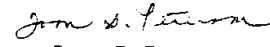
TO: W/Assistant Inspector General for Inspections,
Administrative Investigations, and Assessments

FROM: G/Deputy General Counsel
FP/Director of Personnel

SUBJECT: Intergovernmental Personnel Act (IPA) Assignments to NASA, G-99-018

In our March 30, 2000, response to the subject draft report, dated February 1, 2000, our offices agreed with the need to address the subjects of Recommendations 1 and 2 but differed with the draft report on the methodology for addressing them. Since then members of our staffs and you and your staff have attempted, but have been unable, to resolve these differences. The enclosed describes our proposed approach, along with accompanying rationale, for each of the draft recommendations.


Robert M. Stephens


Joan S. Peterson

Enclosure

Response to the draft audit report on Intergovernmental Personnel Act (IPA) Assignments to NASA, G-99-018.

Recommendation 1: (Partial Concurrence)

We agree with the OIG's concern that a 'lack of awareness of Federal guidelines...may expose the detailee to a greater risk of violating conflict of interest or ethics laws.' Although we support the recommendation to elevate the level of awareness, we do not believe that a NASA-specific legislative solution is warranted. This is not an issue that is unique to NASA, as both the Intergovernmental Personnel Act (IPA) and the Ethics in Government Act apply to all executive branch agencies. Statutory change, if indicated, should be sought by those agencies with government-wide responsibility for the program, such as the Office of Personnel Management (OPM) or the Office of Government Ethics (OGE). In particular, OGE has responsibility for the Government-wide financial disclosure requirement, and has acknowledged for many years that a statutory solution would be required. OGE has not pursued this option, and has generally opposed past attempts by NASA to obtain agency-specific ethics legislation.

As an alternative, we recommend that the Office of Human Resources and Education (Code F) work with the Office of the General Counsel (Code G) to develop a plan to use existing authority to prevent conflicts of interest from arising. This plan will address what we perceive to be the core concern of the OIG: that lack of awareness of ethics rules places the detailee at risk. There are two primary elements that we intend to address in this plan: training for detailees and pre-screening of proposed IPA agreements for conflicts.

With respect to the first element, we are in the process of adding an annual ethics training requirement to all IPA agreements. To this end, Codes F and G have initiated the development of a web-based ethics training module that will focus on ethics requirements applicable to IPA detailees. The module will be implemented as part of the NASA Site for On-line Learning and Resources (SOLAR). It will provide substantive information on the applicable ethics rules, illustrative examples, and interactive vignettes in conjunction with a strong emphasis on the need to seek counseling. It will also provide the ability to contact an ethics counselor from within the training module as well as a listing of Headquarters and Center ethics officials.

With respect to the second element, the most common conflict of interest issue in the IPA context is that arising out of the detailee's employment interest in the sponsoring non-Federal organization. Since the non-federal organization is a party to the IPA agreement, no financial disclosure is necessary to identify this conflict. We will screen all incoming IPA details prior to execution for potential conflicts based on this relationship. Code F will incorporate this requirement into IPA policy and communicate the importance of this provision to Center personnel offices. Center personnel offices will be required to provide information on conflict avoidance to Agency managers who sponsor IPA details.

Recommendation 2: (Non-Concur)

Requiring ad hoc financial disclosure is not authorized by, and would violate the spirit of the IPA statute, which specifically makes IPA detailees subject to some, but not all of the ethics rules. It would also violate the Paperwork Reduction Act, 44 U.S.C. § 3501, et. seq., as an unauthorized collection of information from the public. Obtaining OMB approval of a substantial new collection is nearly as time-consuming as obtaining legislation. Further, in light of OMB's mandate to reduce government collections of information by 5 percent per year every year from 1998 through 2001, see, 44 U.S.C. § 3505(a)(1), and the fact that the IPA statute exempts detailees from financial disclosure, such a collection would be difficult to justify.

Our alternative solution makes the recommended interim solution unnecessary. The primary difference between the OIG recommendations and the alternative is that we propose a voluntary disclosure process. A voluntary process will be sufficient because it will include training in the conflict of interest rules and strong encouragement to IPA detailees to seek counseling with respect to their financial interests. We believe that most detailees, once they understand the rules, will choose to seek counseling with respect to any potential conflicts not known to the Agency, thereby accomplishing the intent of the OIG recommendations. In addition, the alternative solution has the distinct advantage of being attainable within existing authority. Finally, when taken as a whole, any decrease in insight into the financial interests of detailees will be outweighed by the enhanced sensitivity to and understanding of the ethics rules and their applicability to IPA detailees on the part of both detailees and their NASA managers.

Recommendation 3. (Concur)

Code F as well as the CFO concurs with the recommendation that Ames should discontinue funding IPA detailees from the R&PM budget. IPA individuals detailed to administrative and research positions will be funded from the Resource and Operations Support (ROS) and Research and Development (R&D) budgets respectively. The office of the Chief Financial Officer will notify Ames via memorandum no later than June 30, 2000. This requirement will be effective no later than October 1, 2000.

Appendix B

Report Distribution

Distribution

National Aeronautics and Space Administration (NASA) Officials:

A/Administrator
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B/Chief Financial Officer
B/Comptroller
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G/General Counsel
H/Associate Administrator for Procurement
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L/Associate Administrator for Legislative Affairs
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NASA Advisory Officials:

Chairman, NASA Advisory Committee

Non-NASA Federal Organizations and Individuals:

Assistant to the President for Science and Technology Policy
Deputy Associate Director, Energy and Science Division, Office of Management and Budget
Budget Examiner, Energy and Science Division, Office of Management and Budget
Associate Director, National Security and International Affairs Division, General Accounting Office
Professional Assistant, Senate Subcommittee on Science, Technology, and Space

Chairman and Ranking Minority Member of Each of the Following Congressional Committees and Subcommittees:

Senate Committee on Appropriations
Senate Committee on VA-HUD-Independent Agencies
Senate Committee on Commerce, Science and Transportation
Senate Subcommittee on Science, Technology and Space
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on VA-HUD-Independent Agencies
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice
House Committee on Science
House Subcommittee on Space and Aeronautics

Congressional Member:

Honorable Pete Sessions, U.S. House of Representatives

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