

PERSONNEL ASPECTS
OF THE
INDIAN SELF-DETERMINATION AND
EDUCATION ASSISTANCE ACT
PUBLIC LAW 93-638
HANDBOOK

DEVELOPED BY
DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

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GUIDING SELF-DETERMINATION POLICY

In passing the Indian Self-Determination and Education Assistance Act (ISDA), Public Law (P.L.) 93-638 on January 4, 1975, the 93rd Congress recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of education as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

The 93rd Congress also declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which would permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

On April 29, 1994, at a historic meeting with the heads of tribal governments, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments" and issued a directive to all executive departments and agencies of the Federal Government that:

"As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty."

President Clinton's directive requires that in all activities relating to or affecting the government or treaty rights of Indian tribes, the executive branch shall:

- (1) Operate within a government-to-government relationship with federally recognized Indian tribes;
- (2) Consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions that affect federally recognized Indian tribes;
- (3) Assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken;

- (4) Remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes; and
- (5) Work cooperatively with other agencies to accomplish these goals established by the President.

President Clinton's executive memorandum builds on the firmly established federal policy of self-determination for Indian tribes. Working together with Congress, previous Presidents affirmed the fundamental policy of federal respect for tribal self-government. President Johnson recognized "the right of the first Americans. . .to freedom of choice and self-determination." President Reagan pledged "to pursue the policy of self-government" for Indian tribes and reaffirmed "the government-to-government basis" for dealing with Indian tribes. President Bush recognized that the Federal Government's "efforts to increase tribal self-governance have brought a renewed sense of pride and empowerment to this country's native peoples."

INTRODUCTION

This Handbook has been developed to provide guidance to officials of the Indian Health Service (IHS) and tribe/tribal organizations (T/TO) regarding personnel procedures for contracts awarded under authority of Title I of P.L. 93-638, as amended.

The purpose of this Handbook is to 1) describe the options for staffing tribal programs and the personnel procedures for contracts under the authority of P.L. 93-638, 2) familiarize the IHS personnel specialists, managers, supervisors, and employees, and officials of T/TOs with the personnel aspects of P.L. 93-638, as amended, and generally familiarize them with the various methods of assigning individuals to and from programs under tribal management, 3) consolidate the IHS administrative guidelines concerning the personnel aspects of P.L. 93-638 into a single issuance, and 4) provide IHS personnel with assistance in carrying out their responsibilities.

The personnel provisions in P.L. 93-638 were intended to enable the T/TO to use the services of skilled IHS employees to help ensure the success of programs contracted by T/TOs.

These guidelines are not regulations establishing program requirements. In addition, these guidelines are not intended to bind agency personnel. They are intended to provide guidance to IHS personnel while allowing IHS personnel to apply judgment and prudence in individual circumstances.

The guidelines contained in this Handbook regarding use and benefits of Federal personnel under the ISDA may apply to utilization of Federal personnel on Intergovernmental Personnel Act (IPA) assignments and Memoranda of Agreements (MOA) under a self-governance compact and funding agreements negotiated under the authority of Title III of P.L. 93-638, Tribal Self-Governance Demonstration Projects. Chapters 9 and 10 may apply to functions compacted under Title III self-governance provisions, at the option of the T/TO.

This Handbook should be used in conjunction with all other regulations, policies, and procedures (i.e., Indian Preference Circular, Commissioned Corps Personnel Manual, P.L. 93-638 regulations, etc.). This Handbook will be revised periodically to reflect changes in policies, procedures, and regulations.

BACKGROUND

In 1986, the IHS issued the Personnel Aspects of the Indian Self-Determination and Education Assistance Act Public Law 93-638, an internal operating procedure to describe the staffing options available to provide for consistent application of the personnel aspects of P.L. 93-638, clarify the procedures and options available to managers, employees, and tribal officials in staffing tribal programs, and describe the minimum personnel management system a tribal organization should have to be eligible to apply for contracts under P.L. 93-638.

Some of the procedures described in the Personnel Aspects were based on the original Act and regulations. The Act has been amended several times since 1975. However, the most significant amendments were those enacted by P.L. 103-413, the Indian Self-Determination Act Amendments of 1994 (the Act), which rendered some of the Personnel Aspects and other miscellaneous IHS guidance documents on P.L. 93-638 obsolete. This Handbook is issued to assist the IHS staff in assuring that all personnel aspects related to P.L. 93-638 are consistently applied and provide guidance to IHS staff and T/TOs to familiarize them with the personnel aspects of P.L. 93-638.

Public Law 93-638 gave T/TOs the authority to contract for the direct operation of programs serving their tribal members. The enactment of P.L. 93-638, amended other Federal laws and regulations as outlined in general terms below. The specific effects of various amendments will be discussed in subsequent chapters of this Handbook.

Public Law 93-638 amended the Intergovernmental Personnel Act of 1970 to enable Indian T/TOs to participate in IPA mobility assignments. These are assignments by which an IHS civil service employee can be temporarily assigned to a T/TO or by which a tribal employee may be assigned to an IHS activity, normally for a period of two years with provision for one two-year extension.

Public Law 100-472, the Indian Self-Determination and Education Assistance Act Amendments of 1988, was passed October 5, 1988, to simplify the self-determination contracting process and facilitate the assumption of IHS programs by tribal governments.

Public Law 100-413 was passed October 25, 1994. Title I of the Act significantly amends the Indian Self-Determination Act of 1975 (P.L. 93-638) and the Amendments of 1988. The overall purpose of Title I is to limit the promulgation of regulations under the ISDA, and to specify the terms of self-determination contracts entered into between the United States and Indian tribal organizations.

Section 104(e) of P.L. 93-638, as amended, allows Federal employees to resign from the Federal Government and accept tribal employment. These former employees may retain certain Federal employee benefits, e.g., life and health insurance, Civil Service retirement, Federal Employees Retirement, and protection under the Federal Employee's Compensation Act covering on-the-job injuries.

Public Law 93-638 amended the Public Health Service Act to enable the Department to assign Commissioned Corps personnel to tribal governments of tribal organizations. However, Commissioned Officers (Officers) are not subject to provisions for retention of civil service benefits under section 104(e).

The Military Selective Service Act was amended to allow service credit for periods of employment with the T/TO while on assignment as directed by the Department of Health and Human Services (HHS).¹

On November 4, 1983, the President signed an Appropriations Act, P.L. 98-146, for the Department of the Interior (DOI) and related agencies for the fiscal year ending September 30, 1984, and for other purposes. The Act amended section 3371(a) of title 5, United States Code, by adding a new sentence at the end to read:

"In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(c) of this subchapter, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization."

Thus, special purpose IPA agreements, as defined in Chapter 2 of this Handbook, which assist T/TOs in implementing the provisions of P.L. 93-638, may be extended indefinitely, in increments of two years or less.

Section 104(k) of P.L. 93-638, as amended, allows that if an assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, a replacement employee may be assigned to complete the period of assignment. The agreement may be for a different period of assignment as determined by the IHS and the tribal organization.

Section 104(k)(1)(d) of P.L. 93-638, as amended, allows employees assigned to T/TOs to be eligible for promotions, periodic

¹ Paragraph (2), subsection (a), section 6, Military Selective Service Act of 1967 (81 Stat. 100), as amended.

step-increases, additional step-increases, merit pay, and cash awards on the same basis as other Federal employees.

Public Law 104-109, enacted February 12, 1996, amended section 403 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458cc) to allow, at the option of a T/TO, any or all provisions of Title I of the ISDA to be made part of an agreement entered into under Title III of the Act. Thus, a T/TO has the option to incorporate self-determination provisions into self-governance.

The final joint Department of Health and Human Services (HHS) and Department of the Interior (DOI) rule implementing section 107 of the Indian Self-Determination Act (ISDA), as amended, was published in the Federal Register on June 24, 1996 and became effective August 23, 1996. The rule implements P.L. 103-413, the Indian Self-Determination Contract Reform Act of 1994. These regulations set out the rights and responsibilities of T/TOs and the Departments of DOI and HHS with respect to the planning, conduct, and administration by T/TOs of programs, or portions, of programs, authorized under specified laws or otherwise administered by these Departments for the benefit of Indians because of their status as Indians. These regulations superseded the original regulations published November 14, 1975 (42 C.F.R. § 36.201 et seq).

Subpart C, section 900.8(g)(7) of the DOI/HHS regulations implementing P.L. 93-638, as amended, requires that an initial contract proposal contain minimum staff qualifications proposed by the T/TO, if any. The superseded regulations required that the T/TO proposing to contract submit, as part of their contract proposal, certain information concerning the T/TO's personnel system and the qualifications of the personnel (42 C.F.R. 36.205). In addition, the superseded regulations provided certain evaluation criteria, including criteria for evaluating the adequacy of trained personnel (42 C.F.R. §36.208(5)). The new regulations at 25 C.F.R. Part 900 do not require the same information in the proposal and have no evaluation criterium.

Section 900.8 of the new regulations governs the proposal contents. The only personnel requirement is that the T/TO provide "minimum staff qualifications proposed by the Indian tribe and tribal organization, if any." Thus, the T/TO is no longer required to provide a description of their personnel system, key personnel, the experience and training of the personnel performing under the contract, the identification of their Federal employee transfers contemplated or the method of staffing. Moreover, the regulations at 25 C.F.R. Part 900 do not provide evaluation criteria. The only evaluation criteria are the declination criteria.

Subpart C, section 900.8(k) of the regulations require that the proposal include the extent of any planned use of Federal personnel and Federal resources.

The most significant changes in this Handbook since the issuance of the Personnel Aspects of P.L. 93-638 in 1986 are summarized below:

- 1.Reduction-in-force (RIF) regulations were changed to require a 60-day specific notice prior to any RIF. In addition, the IHS is no longer prohibited from issuing a RIF notice more than 90 days prior to a RIF.
- 2.The prohibition on promoting a person on a special purpose IPA was removed.
- 3.A Replacement IPA allows another Federal employee to be hired when an individual on a special purpose IPA vacates the position and the T/TO is unable to fill the position as a tribal hire.
- 4.Employees on special purpose IPA assignments are eligible for quality step increases.
- 5.The "on or before December 31, 1985" date was eliminated for retention of benefits for employees serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization.
- 6.The Federal Personnel Manual was abolished effective December 31, 1993. It was succeeded by a Provisional System which terminated use on December 31, 1994. The FPM Supplement 296-33 continues in effect (refer to the Guide to Processing Personnel Actions 296-33).
- 7.Chapter 2, Use of Intergovernmental Personnel Act Assignments Under P.L. 93-638, was divided into two chapters; one is titled Special Purpose IPA Assignments and the other is Regular Purpose IPA Assignments (Chapter 3).
- 8.The Fiscal Year 1988 Appropriation Act, P.L. 100-202 extended the protection of coverage under the Federal Tort Claims Act to P.L. 93-638 contractors and their employees, acting within the scope of their employment, against claims for personal injury, including death, resulting from the performance on or after December 22, 1987, of "medical, surgical, dental or related functions, including the conduct of clinical studies or investigations" in carrying out a P.L. 93-638 contract.
- 9.Public Law 101-630, Title IV, Indian Child Protection and Family Violence Prevention Act of 1990, was enacted November, 18, 1990.

The Act requires that each Indian T/TO that receives funds under P.L. 93-638 conduct a character investigation of each individual who is employed, or is being considered for employment, in a position that involves regular contact with, or control over, Indian children. Federal agencies must ensure that persons hired for these positions must not have been found guilty of or pleaded nolo contendere to violent crimes.

10. Indian Health Circular No. 95-15, Funding of Personnel Costs Under P.L. 93-638 Contracts/Compacts, was issued September 29, 1995. The Circular clarifies the availability of funds to meet certain personnel costs (i.e., special pays) for contracts and compacts awarded pursuant to P.L. 93-638, as amended, and the criteria for obtaining such funding. The Circular superseded Indian Self-Determination Memorandum No. 85-4, "Funding of Nonrecurring Personnel Costs Under P.L. 93-638 Contracts," dated September 20, 1985.
11. Revisions were made throughout the Handbook to conform to the P.L. 93-638 implementing regulations which were published in the Federal Register June 24, 1996 and became effective August 23, 1996.

CHAPTER 1

CHAPTER 1

PLANNING AND IMPLEMENTING A P.L. 93-638 PROGRAM ASSUMPTION

1. GENERAL

Public Law 93-638 recognizes the right of Indian people to direct the planning, conduct, and administration of Federal programs for, and services to Indians while preserving their special rights and trust status with the Federal Government. The law and the implementing regulations recognize that, when so requested by a tribe, a tribal organization has the right to contract for the operation of any IHS health services program. Under section 102(a)(1) of the Act, the IHS, upon the request of any Indian tribe by tribal resolution, must enter into a self-determination contract or contracts with a T/TO to plan, conduct, and administer programs or portions thereof, including construction programs.

2. INTRODUCTION

A T/TO, in accordance with section 104 of the Act, may utilize Federal employees for the operation of programs authorized to be contracted under section 102 of the Act. A T/TO may elect to directly hire Federal employees, as provided in 3.B. below; or enter into either an IPA agreement as provided in 3.C. below, or an agreement pursuant to section 214(d) of the Public Health Service (PHS) Act as provided in 3.D. below. Such employees can help plan and operate contracted programs; strengthen the capacity of tribal governments to staff and manage their own health delivery system; design plans for programs to be operated by the IHS; or perform other functions which are part of the tribal approach to self-determination.

In a P.L. 93-638 contract, a critical issue for tribal organizations to properly operate various IHS programs is the identification of personnel to fill available positions. The T/TOs may use any of several staffing options, separately or in combination, in order to perform the work requested by a program contract with the IHS. These options are listed below and discussed in detail in Chapters 2, 3, 4, and 7 of this Handbook.

The Servicing Personnel Office (SPO) staff should work with the contracting officer, project officer, Contract Proposal Liaison Officer (CPLO), T/TO, and the Area Indian Self-Determination Leadership Team (ISDLT) on the personnel aspects of planning and implementing tribal personnel activities so the various professional disciplines, technical expertise, and managerial skills available in the Area Office can coordinate efforts to help the P.L. 93-638 contractor succeed in its efforts.

3.AVAILABLE OPTIONS FOR STAFFING PROGRAMS UNDER P.L. 93-638 CONTRACTS

The T/TOs have several sources of qualified individuals to operate the IHS contract programs. They include the Federal Government, state and local governments, private organizations, and the general public.

A.Tribal Hire of Qualified Individuals from Outside Sources

The T/TO may hire its own people to staff the program as long as they give preference to the greatest extent feasible in employment and opportunities for training to Indians. The preference policy will be determined by each T/TO. These employees may be either from within or outside the tribal membership, depending upon the preference policy.

B.Direct Hire of an IHS Employee with the Retention of Selected Benefits

The T/TO may employ Federal personnel who were previously employed by a Federal agency in the operation of programs authorized to be contracted under section 102 of the Act. Such employees shall, upon the effective date of transfer, be subject to a T/TO's personnel policies and procedures, except that a T/TO may agree to extend to the affected employee the coverage, rights, and benefits provided in section 104(e)(1), (2), (3) and (g) of the Act. The direct hire of an IHS employee is discussed in Chapter 4 of this Handbook.

Employees direct hired by a T/TO are not covered by a bargaining unit.

C.Intergovernmental Personnel Act (IPA) Assignments

The T/TO may request temporary assignment of Federal employee under an IPA agreement to assist in performing the contract awarded under section 102 of the Act. The IPA assignment agreements are three-party agreements between the IHS, the employee and

the T/TO. The IPA assignments are discussed in Chapters 2 and 3 of this Handbook.

Employees on IPA assignments are covered by a bargaining unit.

D. Commissioned Officer Personnel Assignments

The T/TO may request that any or all Federal Officers currently serving the program to be contracted be assigned to continue serving the program through a MOA. The use of Officer personnel assignments is discussed in Chapter 7 of this Handbook.

4. PROCEDURES

A. Contract Proposal

Whenever a T/TO wants to enter into a contract under P.L. 93-638, the T/TO makes a request to the IHS Area Office that is currently operating the program. The request is in the form of a contract proposal outlining the scope of work to be performed, the proposed budget and administrative documents which describe the organization's capability to manage the program. The proposal must include, as a minimum, description of the following:

Minimum staff qualifications proposed by the T/TO, if any;

Extent of any planned use of Federal personnel and Federal resources contemplated;

(1) Method of Staffing

Subpart C, section 900.8(k) of the implementing regulations requires a T/TO to include in the contract proposal the extent of any planned use of Federal personnel and Federal resources. The method of staffing should identify Federal employees the organization plans to transfer to tribal employment or supervision, either through an IPA, MOA assignment or direct hire.

(2) Advance Notice for Contracting

When it is anticipated that a contract will result in the displacement of IHS personnel, the T/TO should be encouraged to submit the application at least 120 days before the proposed starting date of the contract in order to comply with the United States Office of Personnel Management (OPM) requirements applicable to RIF or reassignment of

Federal employees. Employees must be given a specific written notice at least 60 full days before the effective date of a RIF action.

(3) Evaluation Criteria

The proposal will be evaluated pursuant to the declination criteria and will only be declined if one of the declination criteria are met. However, if the IHS wants to provide technical assistance to the T/TO in developing a personnel system, the checklist provided at Exhibit 1-2 may be useful.

B. Role of the Servicing Personnel Office (SPO)

The SPO will:

- (1) Review contract proposals;
- (3) Provide technical assistance to the IHS program officials and T/TOs in preparing and implementing P.L. 93-638 contract proposals and implementing the contract;
- (4) Conduct employee counseling sessions;
- (5) Identify requirements for RIF requests;
- (6) Provide information and counseling to affected employees concerning out placement assistance;
- (7) Conduct periodic site visits, if requested by the T/TO, to provide technical assistance and guidance regarding tribal personnel systems;
- (8) Provide technical assistance, as requested by and with the concurrence of the T/TO, to resolve problems and identify deficiencies and discrepancies during contract performance;
- (9) Assist T/TOs and employees in the development of IPA assignment agreements, MOAs and other related forms.
- (10) Communicate regularly with project officer to keep informed and provide assistance.
- (11) Ensure all labor relations obligations are met.

5. INDIAN HEALTH SERVICE EMPLOYEES AFFECTED BY TRIBAL CONTRACTING

Employees occupying positions in program(s) for which a T/TO requests a contract will be reassigned or faced with a RIF unless they are employed by the T/TO through an IPA, MOA, or direct hire assignment.

Employees and union representatives should be kept advised as far in advance as possible regarding any possible changes that may be made concerning their employment situation.

A. Employee Counseling

The SPO will counsel employee groups and individuals affected by a proposed P.L. 93-638 contract concerning their rights, benefits, and the options available.

- (1) An employee may request a retirement computation from the SPO. A sample memorandum for use by employees requesting a retirement computation is provided at Exhibit 1-3.
- (2) The SPO will complete the Checklist of Options Available to Employees Under P.L. 93-638 Program Assumptions and discuss the options available during individual counseling sessions. A copy of the checklist is provided at Exhibit 1-4 for this purpose.
- (3) Employees agreeing to accept an IPA, MOA, or direct hire assignment with a T/TO may authorize the release of information to the T/TO from their Official Personnel Folder (OPF). A sample memorandum for release of information from an employee's OPF is provided at Exhibit 1-5.

B. Assignment of Employees

- (1) When negotiations result in a contract for an IHS program or portion thereof, employees may request reassignment by contacting the SPO. Every effort will be made to reassign employees within the same Area Office jurisdiction. Reassignments must be made within the IHS in accordance with Indian preference guidelines and the Indian Health Service Career Transition Assistance Plan (IHS CTAP) (see Appendix C, page 6-20):
- (2) The IHS may offer a reassignment to employees not offered employment or an IPA or MOA by the T/TO;
- (3) The IHS may direct a reassignment of an employee to a vacant position in the IHS at the same grade and pay. If the

employee refuses reassignment, the alternative is separation for failure to accept reassignment or if eligible, elect to retire under the provisions of Discontinued Service retirement.

C.Reduction-In-Force

When tribal contracting results in the displacement of IHS employees, RIF procedures outlined in Chapter 6 of this Handbook will be followed. Employees who are faced with RIF will be provided an opportunity for placement to vacancies within the IHS. (See Chapter 6, Appendix C).

6. TECHNICAL ASSISTANCE

The IHS SPO will provide technical assistance to the T/TO during the process of proposal submission, the development of plans for actually accomplishing the work of the program, and the implementation of the tribal personnel system.

A.Servicing Personnel Office (SPO)

The SPO will assist the IHS and the T/TOs, if requested, in:

- (1)Developing and evaluating a proposed personnel system or particular elements of a personnel system;
- (2)Recruiting staff, including position advertising;
- (3)Obtaining information regarding retention of benefits by Federal employees that have been hired by tribal organizations to staff contracted programs; and
- (4)Developing and processing IPA assignment agreements and MOAs for IHS civil service and Commissioned Corps employees.
- (5)Overcoming any deficiencies in the contract proposal.

B. Contracting Process Stages

- (1)Proposal Planning

The T/TO may request the IHS to assist in the development of the proposal.

- a.The SPO, in coordination with the CPL0, advises T/TO of P.L. 93-638 personnel requirements; information regarding Federal personnel policies for civil service and commissioned corps personnel; e.g.

assignments, transfers, and RIF or reduction in strength, including IPA and MOA information.

b.The SPO participates in the Area ISDLT and planning meetings.

c.The SPO provides a description of staffing and grade levels for Federal personnel currently performing the program activity to be contracted, including funded vacancies. In addition, all position descriptions for direct services should be included.

(2)Review and Prenegotiations

a.The SPO reviews contract proposal;

b.The SPO reviews the staffing package for any requests to assign IHS personnel to the T/TO. Provides review comments and a proposed action plan to the CPLO to be discussed with the T/TO at negotiations to accomplish the necessary agreements (IPA or MOA). Once an employee has been assigned to the T/TO, if the T/TO later elects not to keep the employee on the IPA, the issue of who then pays the severance pay costs should be covered in negotiating the final IPA/MOA agreement with the T/TO.

c.The SPO notifies the CPLO of any personnel problems identified during review of the contract proposal;

d.The SPO provides technical assistance, if requested, by the T/TO to resolve issues which may lead to declination issues (e.g. staff qualifications are not sufficient to provide satisfactory services).

(3)Post Award

a.Develop personnel contingency plans - retrocession, assumption, reassumption;

b.Provide ongoing communication and support system to assist the T/TO, when requested, in their management of their personnel system; and

c.Provide technical assistance to resolve personnel problems and to identify and resolve deficiencies in personnel contract performance.

(4)Contract Recision

Provide technical assistance to overcome program or administrative deficiencies which could lead to reassumption of the contract.

7.PUBLIC LAW 101-630

Public Law 101-360, Title IV, Indian Child Protection and Family Violence Prevention Act of 1990 (Act) requires that each T/TO that receives funds under P.L. 93-638 conduct a character investigation of each individual who is employed, or is being considered for employment, in a position that involves regular contact with, or control over, Indian children.

A.Character Investigation

Section 408 of P.L. 101-630 requires that the Secretary of the Interior and the Secretary of HHS:

- (1)Compile a list of all authorized positions the duties and responsibilities of which involve regular contact with, or control over, Indian children,
- (2)Conduct an investigation of the character of each individual who is employed, or is being considered for employment in positions which involve regular contact with, or control over, Indian children, and
- (3)Prescribe minimum standards of character and suitability for employment for individuals whose duties and responsibilities allow them regular contact with, or control over, Indian children.

All positions that allow an applicant, employee, or volunteer regular contact with, or control over, Indian children are subject to a background investigation and determination of eligibility for employment.

B.Criminal Records

Section 231 of P.L. 101-647, the Crime Control Act of 1990, requires that existing and newly hired employees involved with the provision of child care services undergo a criminal history background check. To determine eligibility for employment, the law mandates that questions on arrests be asked on employment applications.

The minimum standards of character prescribed shall ensure that none of the individuals appointed to positions which involve regular contact with, or control over, Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons.

C. Investigations by T/TOs

Each T/TO that receives funds under the P.L. 93-638 or the Tribally Controlled Schools Act of 1988 shall:

- (1) Conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such T/TO in a position that involves regular contact with or control over, Indian children, and
- (2) Employ individuals in those positions only if the individuals meets standards of character, no less stringent than those prescribed under A. above, as the T/TO shall establish.

8. FUNDING OF PERSONNEL COSTS UNDER P.L. 93-638 CONTRACTS/COMPACTS

Section 106 (a)(1) of P.L. 93-638, as amended, states:

"The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated."

The amount of funds that the Secretary of HHS would have provided for the direct operation of the IHS program to be contracted/compact will be determined based on the processes actually utilized by the Secretary to allocate resources among program activities. This would include all recurring and nonrecurring funds that are or would be made available.

Funds are made available to the IHS Areas for certain personnel costs for IHS physicians and dentists who meet specific criteria and agree to specific service obligations. This is intended to enhance the recruitment and retention of qualified health professionals by the IHS. Historically, only contractual funds have been maintained in a centralized pool at IHS Headquarters (HQ) and are reimbursed to IHS Areas as nonrecurring funds. This policy addresses the level of salary support for physicians and dentists including contractual special pays and physicians' comparability allowances. These are the only special pays reimbursed by IHS HQs. All other special pays are paid directly from IHS Area office and service unit operating funds (e.g., nurse accession bonuses, nurse anesthetist pay, continuation pay for scientists and engineers, and special pay for optometrists).

A. Policy

The IHS will distribute funds for salary support for physicians and dentists at programs contracted/compact under P.L. 93-638 on the same basis as for the IHS direct programs.

B. Procedure

- (1) To determine the levels of salary support, the IHS will include all special and bonus pay that would be used to determine the salaries of health care professionals at comparable IHS sites, training, and experience levels at the IHS-operated programs.
- (2) Salary support will only be provided for the IHS-funded portions of those positions included in the original contract/compact, or that are added to the program through appropriations from the Congress to the IHS. If funds are not appropriated, the costs will be absorbed as negotiated. Tribal programs are responsible for the entire salary of physicians and dentists that occupy positions added to the program using funds obtained from non-IHS sources.
- (3) Once funds for contractual special pays for physicians and dentists have been added to the service unit budget on a recurring basis, no additional funds will be made available from IHS HQs. This is a one-time distribution of funds to service unit budgets for use in contracts/compacts. To the extent that nonrecurring funds have been made available to a program or portion of a program, or to the extent that these funds would have otherwise been provided for IHS operating the program or portion thereof, they will be included in the

amount of funds calculated in accordance with section 106(a)(1) for a T/TO proposing to contract under P.L. 93-638. The contractor maintains the discretion and flexibility to establish specific salary amounts, benefits, and recruitment and retention programs. Once distributed, no additional funds will be made available to the contractor for these purposes.

C.Distribution

The IHS special pay pool will be distributed to the Areas based on each Area's average disbursements during fiscal years 1992 through 1994. This 3-year average of funding will be placed in the base budget to be used as salary support. The formula is based on the assumption that there will be no increases in available funds for special pays over the fiscal year 1995 amount and is subject to availability of future appropriations. Consultation with the tribes regarding the formula used in each Area is the responsibility of each Area Director and must be conducted prior to distribution of funds.

EXHIBITS

PROPOSAL EVALUATION CRITERIA CHECKLIST

Yes No Comment

Personnel Requirements

Does the proposal contain minimum staff qualifications _____

If not:

Will the T/TO require assistance in establishing a personnel system/qualifications? _____

If the proposal does contain minimum staff standards:

Will the standards ensure that satisfactory services will be provided? _____

Will the contract be properly completed or maintained under the proposed personnel standards? _____

**SAMPLE MEMORANDUM
FOR EMPLOYEES
REQUESTING A RETIREMENT COMPUTATION**

DATE:

TO: (Servicing Personnel Office)

FROM: (Name of Employee)

SUBJECT: Request for Retirement Computation

Please compute an estimated annuity for me if I were to retire on
(date)_____.

Do additional computations for the following dates (if any):

_____ (Date) _____ (Date)

My sick leave as of the end of the current pay period is _____
hours.

I have a spouse. Yes _____ No _____.

I have reviewed and selected my retirement election for continuation
of basic life insurance coverage (i.e., 75%, 50%, no reduction). Yes
No _____.

I have withdrawn my retirement deductions. Yes _____ No _____.

I withdrew my retirement deductions on _____ (Date or Dates)_____.

I am not eligible for Indian preference and was employed with an Indian
agency (BIA/IHS) on or before December 21, 1972. (Check).

Signature of Employee

**CHECKLIST OF OPTIONS
AVAILABLE TO EMPLOYEES UNDER
P.L. 93-638 PROGRAM ASSUMPTIONS**

I. PERSONAL DATA

Name _____

Position Title, Pay Plan, Series, Grade _____

Organization Location _____

Date of Birth _____ Social Security Number _____

Service Computation Date _____ Date of Next WGI _____

II. OPTIONS

Employees working in a function that is proposed for program assumption under P.L. 93-638 have several options. The following checklist may be used to provide a summary of the options available to individual employees.

RETIREMENT

Civil service employees under either the CSRS or the FERS may qualify for several types of retirement. Except for disability retirement, individuals must have been employed under the CSRS or FERS for at least one year within the two year period immediately preceding separation, and must meet the requirements specified below.

- Discontinued Service Retirement for CSRS and FERS.

If the T/TO elects not to continue some or all of the employees in their positions, the employees must be given a specific written notice of removal from their positions. Such employees may qualify for discontinued

**CHECKLIST OF OPTIONS
AVAILABLE TO EMPLOYEES UNDER
P.L. 93-638 PROGRAM ASSUMPTIONS
(CONTINUED)**

service retirement on an immediate annuity if they are:

____ 50 years of age with 20 years creditable service, including five years civilian service, or any age with 25 years creditable service, including five years civilian service

____ Under age 55, the CSRS basic annuity is reduced by 1/6 of 1 percent for each full month (2 percent a year) under age 55

____ There is no reduction in FERS benefits based on age except that the CSRS component of a FERS annuity is reduced by 1/6 of 1 percent for each year under age 55

- Retirement under the Indian Civil Service Retirement Act, P.L. 96-135

The eligibility criteria for retirement under P.L. 96-135 is:

____ 50 years of age/20 years creditable service

____ Any age/25 years creditable service

____ Non-Indian involuntarily separated without cause may retire two years prior to meeting the 50/20 or 25 years requirement

____ Must have been an employee of the IHS or the BIA continually since December 21, 1972, not eligible for Indian preference, and have never received a waiver of Indian preference laws by a Federally recognized Indian T/TO under the provisions of P.L. 96-135

**CHECKLIST OF OPTIONS
AVAILABLE TO EMPLOYEES UNDER
P.L. 93-638 PROGRAM ASSUMPTIONS
(CONTINUED)**

____ Under age 55, basic life annuity is reduced by 1/6 of 1 percent for each full month (2 percent a year) under age 55

•Optional/Voluntary Retirement for CSRS Employees

____ 62 years of age/5 years creditable service

____ 60 years of age/20 years creditable service

____ 55 years of age/30 years creditable service

•Deferred CSRS Retirement (Resign and receive annuity at age 62)

____ Must have completed at least five years civilian service, must leave retirement deductions in the retirement fund, and must wait until 62 years of age

The CSRS annuities are based upon length of creditable service and the highest average basic pay during any three consecutive years. The basic annuity cannot exceed 80 percent of the high-three average pay. However, a higher annuity may result from crediting unused sick leave. Annuities are increased by cost-of-living adjustments that occur after retirement.

The CSRS basic annuities will be reduced for retirement before age 55, for failure to make a deposit to cover service for which no retirement deductions were taken, and/or to provide for a survivor annuity. The survivor annuity will be 55 percent of all or whatever portion of the annuity the employee designates.

**CHECKLIST OF OPTIONS
AVAILABLE TO EMPLOYEES UNDER
P.L. 93-638 PROGRAM ASSUMPTIONS
(CONTINUED)**

• Optional/Voluntary Retirement Under FERS

____ Minimum Retirement Age (MRA) plus 30 years service (*Note MRA varies from 55 to 57 depending on the year of birth*)

____ Age 60 plus 20 years of service

____ Age 62 plus 5 years of service

____ For discontinued service and optional voluntary retirement under FERS the individuals annuity is supplemented until age 62 when Social Security coverage begins.

____ Voluntary early out MRA plus 10 years with a reduction of 5 percent for each year under the age of 62. Persons electing voluntary early out do not receive an annuity supplement.

Social Security

____ Employees who elected the FERS are also covered by Social Security retirement/survivors insurance. Social Security benefits normally start at age 62. Some employees who elected FERS may also have "frozen" CSRS benefits.

Any employee contemplating retirement should consult with the SPO to obtain a full explanation of their retirement eligibility and benefits.

INTERGOVERNMENTAL PERSONNEL ACT (IPA) ASSIGNMENT

____ Continue as Federal employee on either a special purpose IPA or replacement assignment.

**CHECKLIST OF OPTIONS
AVAILABLE TO EMPLOYEES UNDER
P.L. 93-638 PROGRAM ASSUMPTIONS
(CONTINUED)**

COMMISSIONED OFFICER ASSIGNMENT

____ Continue as Federal employee on a Memorandum of Agreement with the T/TO.

DIRECT HIRE WITH T/TO

____ Resign from Federal service to become employed by the T/TO with no break in service.

____ Hired under the personnel system of T/TO

____ Salary and benefits determined and paid by the T/TO

____ Federal benefits that may be retained if the tribal organization agrees²

____ Health insurance

____ Life insurance

____ Retirement, including thrift savings

____ Reemployment rights (an individual gets reemployment rights irrespective of the continuation of benefits, and the T/TO does not have to agree to reemployment rights)

____ OWCP coverage

² Election of coverage for retention of benefits must be made prior to employment by tribe/tribal organization. Failure to file form SF-2816 will result in the loss of retirement, life insurance and health benefits coverage.

**CHECKLIST OF OPTIONS
AVAILABLE TO EMPLOYEES UNDER
P.L. 93-638 PROGRAM ASSUMPTIONS
(CONTINUED)**

____ The T/TO or the employee may decide to retain no Federal benefits.

RESIGNATION FROM FEDERAL SERVICE

____ Yes

____ No

III. FORMS TO BE COMPLETED

____ SF-52, Request for Personnel Action

____ OF-69, Assignment Agreement (IPA)

____ MOA (for Officer Assignment)

____ RI 38-130 (formerly SF-2816) , Retirement, Life Insurance, and Health Benefits Under the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.

____ SF-2801, Application for Immediate Retirement (CSRS)

____ SF-3107, Application for Immediate Retirement (FERS)

**SAMPLE MEMORANDUM
FOR RELEASE OF INFORMATION FROM
EMPLOYEE'S OFFICIAL PERSONNEL FOLDER**

DATE:

TO: (Servicing Personnel Office)

FROM: (Name of Employee)

SUBJECT: Release of Personnel Information

I hereby give my permission to the Servicing Personnel Office (SPO) to provide _____ (name of T/TO) _____ personnel office with information from my Official Personnel Folder (OPF).

I hereby give my permission to the SPO to provide _____ (name of T/TO) _____ personnel office with information from my OPF, with the exception of the following:

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____

(Signature of Employee)

NOTE: Please submit signed memorandum to the Servicing Personnel Office.

QUESTIONS AND ANSWERS

QUESTIONS AND ANSWERS

PLANNING AND IMPLEMENTING A P.L. 93-638 PROGRAM ASSUMPTION

1.Q.What options are available for staffing programs under P.L. 93-638 contracts?

A.Several options are available:

- (1) Tribal hire of qualified individuals from outside sources in accordance with the preference policy of each tribe.
- (2) Direct hire of an IHS employee with the retention of selected benefits.
- (3) IPA assignments for civil service employees.
- (4) MOA assignments for Commissioned Corps personnel.

2.Q.What personnel elements must the contract proposal include?

A.The proposal must include, as a minimum, description of the following:

- (1) Minimum staff qualifications proposed by the T/TO, if any; and
- (2) Extent of any planned use of Federal personnel and Federal resources.

3.Q.What technical assistance is available to help a tribal contractor select, develop, and use qualified individuals?

A.The SPO will assist the IHS, the T/TOs in:

- (1) Developing and evaluating a proposed personnel system or particular elements of a personnel system, if requested by the T/TO;
- (2) Recruiting staff, including position advertising;
- (3) Obtaining information regarding retention of benefits by Federal employees that have been hired by T/TOs to staff contracted programs; and
- (4) Developing and processing IPA assignment agreements for civil service personnel and MOAs for Commissioned Officers.

CHAPTER 2

CHAPTER 2

SPECIAL PURPOSE INTERGOVERNMENTAL PERSONNEL ACT ASSIGNMENTS UNDER P.L. 93-638

1. GENERAL

This chapter is based on the Intergovernmental Personnel Act (IPA) of 1970 (as amended by P.L. 93-638) assignment procedures, associated guides, Departmental procedures, and IHS instructions (i.e., Indian Self-Determination Memorandums, IHS Circulars, Indian Health Manual Chapters, etc.). These guidelines apply only to the assignment of competitive and excepted civil service employees from the IHS to T/TOs.

A special purpose IPA assignment is an assignment which continues an incumbent in an IHS function at the time of an initial P.L. 93-638 takeover contract to perform the same duties at the same location with a T/TO.

Generally, the special purpose IPA is the more frequently used form of an IPA assignment with T/TOs.

2. INTRODUCTION

The Act was amended by P.L. 93-638, in January 1975, to provide for the temporary assignment of Federal civilian employees to T/TOs. Each assignment is carried out under the provisions of a specific agreement that states the purposes and duration of the assignment; the places, hours, and conditions of work; and the methods of financing employees' pay and allowances.

As the result of a rider to an Appropriations Act, P.L. 98-146 approved November 4, 1983, distinction was made between regular purpose IPA assignments and special purpose IPA assignments which may be used to assign IHS civil service employees to T/TOs under P.L. 93-638 program assumption contracts.

Public Law 93-638, as amended, allows that if an assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, a replacement employee

may be assigned to complete the period of assignment. The agreement may be for a different period of assignment as determined by the IHS and the T/TO.

The Act, as amended, also allows employees assigned to T/TOs on special purpose IPA assignments to be eligible for promotions, periodic step-increases, additional step-increases, merit pay, and cash awards on the same basis as other Federal employees.

3. PURPOSE

Public Law 93-638 is legislation that allows T/TOs to assume operation of Federal programs that provide services to Indians. The amendment to the IPA allowing for the inclusion of tribal governments and tribal organizations facilitates the sharing of personnel resources and aids in the development of the tribal government's capacity to manage and operate such programs. This law makes it possible to temporarily assign skilled personnel to T/TOs.

4. DEFINITIONS

For the purpose of this chapter, terms are defined as follows:

A. Special Purpose IPA Assignment means an assignment which continues an incumbent in an IHS function at the time of an initial P.L. 93-638 take over contract to perform the same duties at the same location with a T/TO.

B. Replacement IPA Assignment means an assignment made when an employee on a special purpose IPA vacates a position, the T/TO is unable to fill the position and there is another employee who is willing to accept the position and is qualified for the position. If the position to be filled is at a higher grade or has promotion potential to a higher grade than the position currently occupied by the individual who is proposed to fill the position, merit staffing procedures including Indian Preference must be used.

C. Eligible Non-Federal Organization means an Indian tribe or tribal organization.

D. Eligible Employees means:

(1)A Federal employee holding a career or career-conditional appointment without limitation in the competitive or excepted service.

(2)Special purpose IPA assignments may be made for full-time, part-time, and intermittent employees serving under career or conditional (competitive or equivalent excepted) appointments. The individual does not have to have been a full-time employee of the Department for 90 days to be eligible for a special purpose IPA.

E. Ineligible Employees means:

(1)A Federal employee holding a time-limited, temporary or term appointment.

(2)Employees with current summary performance ratings of less than fully satisfactory and/or unacceptable are not eligible for IPA assignments.

5. PROCEDURES

A. Assignments

The IPA assignments are initiated by the T/TO. There must be a joint agreement between the IHS and the T/TO, and concurrence of the employee. All assignments will be put into effect by a written agreement among the three parties.

Assignment under these provisions applies only to civilian employees of the IHS.

B. General Provisions

(1) Responsibilities

a. The Assistant Secretary for Management and Budget (ASMB) has overall responsibility for the administration of Departmental policy, requirements, and delegations of authority under the IPA; the ASMB also reserves the authority to be the final approving official under specific circumstances described in the delegations of authority in Exhibit 2-1 and 2-1a.

b. Within the IHS, the Director is responsible for:

(1) Providing for effective use of the IPA authority to support the goals and programs of the IHS;

- (2) Assuring compliance with applicable policies and regulations for all IPA assignments arranged involving the IHS organizations;

c. Division of Human Resources, IHS HQs, is responsible for:

- (1) Providing, through the SPOs, technical assistance and support to the IHS program components regarding the use of the IPA authority.

- (2) Reviewing special purpose IPA assignment agreements for technical adequacy; and

d. Servicing Personnel Officers (SPOs) are responsible for:

- (1) Advising program officials negotiating assignment agreements on technical requirements under current C.F.R., HHS, and IHS policy directives, including advice on the completion of assignment agreements (see Exhibit 2-1);

- (2) Affecting personnel actions to properly document the IPA assignment of any IHS employee in accordance with the requirements of the Guide to Processing Personnel Actions 296-33, and supplemental HHS issuances; and

- (3) Providing assistance to surplus or displaced employees as specified under the IHS CTAP;

- (4) Ensuring that the IHS employees on IPA assignments are advised of both their entitlements and their responsibilities. The SPO will provide the following information to IPA assignees:

1 "Open Season" information on elections that may be made from time to time on the Thrift Savings Plan and employee life insurance and health benefit options.

2 Periodic information on options for participating in the purchase of U.S. Government bonds or deductions for the Combined Federal Campaign.

3 Other appropriate notices such as notices furnished to all employees in the Federal supervisor's component regarding a RIF.

- (5) Ensuring that all labor-management obligations are met.

- e. The IHS Federal supervisors are responsible for carrying out the supervisory actions required in HHS Personnel Instruction 334-1.

6. SPECIAL PURPOSE IPA ASSIGNMENTS

A. Procedures

- (1) Special purpose IPA assignments derive from assignment of local IHS employees to work for the T/TO at the time of initial take over of IHS functions under P.L. 93-638. The assignment continues the employees in their respective positions. Employees continue to perform the same duties at the same location for the T/TO that they performed for the IHS. Normally employees on special purpose IPA assignments are detailed to the T/TO that assumed responsibility for the IHS function.
- (2) Employees on special purpose IPA assignments continue to occupy their Federal position of record, and remain on the payroll of and are paid by the IHS. The Federal Tort Claims Act (FTCA) and any other Federal Tort liability statute apply to employees on special purpose IPA assignments.

B. Period of Assignment

Special purpose IPA details are made for an initial period not to exceed two years. They may be extended indefinitely in increments of up to two years.

C. Assignment Agreement

(1) Arranging an Assignment

a. Assignment proposals will be negotiated by the IHS officials with tribal officials in T/TOs, with technical assistance provided by their respective SPOs.

b. The targeted starting date for a special purpose assignment should be no less than 120 days (or 90 days for Replacement IPAs) from proposed starting date of the assignment to allow:

- 1 60 days to convert tentative arrangements into a formal IPA agreement proposal;

2 30 days to secure required formal approvals;
and

3 30 days for the assignee to close out current duties and complete necessary relocation arrangements, if applicable. **NOTE: This provision is applicable to Replacement IPAs only.**

(2)Written Assignment Agreement

a.A written agreement is required and must be executed to document the obligations and responsibilities of the co-sponsoring organizations and the individual employee involved in the assignment, to provide a record of the rights of each of the three parties to the agreement, and to document the employee's consent to the assignment.

b.In the IHS, a separate assignment agreement must be written for each assignee.

c.The modification to OPM's Form OF-69 titled SPECIAL PURPOSE ASSIGNMENT AGREEMENT (Exhibit 2-3) must be used to document all special purpose IPAs. This format contains the required contents of a properly drawn three-party IPA assignment agreement.

(3)Developing an Assignment Agreement

a.Assignment agreements must be negotiated by management officials of the IHS and the T/TO (and not by prospective assignees) at the time of the initial program assumption.

b.A final agreement proposal will be prepared by SPO and reviewed by the Division of Human Resources, IHS HQs, for proper technical content, adequacy, and conformance with OPM, HHS, and IHS guidelines and policies.

(4)Approval of a Proposed IPA Assignment Agreement

a.A proposed assignment agreement will be circulated for review and signature by the:

1 Proposed assignee;

2 Authorizing official of the T/TO;

3 Servicing Personnel Office;

4 IHS Area Director; and

(5) Distribution of the Assignment Agreement

Once an agreement has been approved by the authorizing Federal official, the SPO should retain a copy of the agreement and distribute the remaining copies of the agreement as follows:

a. One copy to the OPM;

b. One copy to the authorizing official of the T/TO;

c. One copy to the assignee;

D. Extending, Modifying, or Terminating a Special Purpose IPA Assignment

(1) Extension or Modification

a. Once a special purpose assignment has been negotiated and approved, it may be extended or modified by an abbreviated document, EXTENSION OF SPECIAL PURPOSE ASSIGNMENT AGREEMENT, (Exhibit 2-4), which:

1 Identifies the assignee, the IHS co-sponsor, T/TO co-sponsor, and the previously approved assignment period; and

2 Describes any modification or change from the original agreement in detail, including any change in the dates of the agreement.

b. Once prepared, an extension or modification proposal must be circulated for review, and approval to the same individuals who are required to sign the original agreement. The same distribution of copies must be made for extensions as for initial special purpose IPA agreements. An IPA Assignment Checklist is provided at Exhibit 2-5.

(2) Termination

The special purpose IPA assignment may be terminated at any time at the option of the IHS, the T/TO, or the employee.

a. Where possible, the party terminating the agreement before the original completion date should give a 30-day notice

to all parties involved. A longer notice of termination can be negotiated. This notification should be in writing and should include the reasons for the termination.

- b. An IPA assignment must be terminated immediately, whenever the participating employee is no longer employed by the IHS.

E. Cost-Sharing of Salary and Allowable Expenses

- (1) The cost-sharing for special purpose IPA assignments recognizes that the IHS funds allocated to T/TOs belong to those organizations and that funds returned to other IHS accounts from such allocations constitute reimbursements from those T/TOs.
- (2) One hundred percent of the salary costs will be reimbursed by the T/TO.

F. Processing Personnel Actions

- (1) Use of SF-52, Request for Personnel Action

- a. An SF-52 will be used to notify the SPO of a detail action for an IHS employee under the IPA authority. Block F of the SF-52 will contain the statement "Arrangement for detail made in IPA agreement approved by (name and title of approving official) on (date)." A sample SF-52 is provided at Exhibit 2-6. A copy of the approved assignment agreement must be attached to the SF-52.
- b. An SF-52 will also be used to extend or terminate an IPA assignment.

- (2) Use of SF-50-B, Notification of Personnel Action

- a. An SF-50-B is required when an IHS employee is detailed to an IPA assignment in order to:
 - 1 Effect any other required personnel action affecting the employee (e.g., within-grade pay increase, statutory or administrative pay change, change in the employee's enrollment for life insurance); and

2 For tracking purposes, all special purpose IPAs

are coded ceiling exempt. The SPOs will remove the ceiling exemption designations at the conclusion of the assignments when termination SF-52s, Requests for Personnel Action, and SF-50-Bs, Notifications of Personnel Action, are processed.

NOTE: Even though assignees must be coded as ceiling exempt for tracking purposes, current procedures require that all employees including those coded as ceiling exempt must be counted. However, it is still important that the ceiling exempt code be input and removed at the proper times.

b. Processing SF-50-Bs

Specific provisions for processing SF-50-Bs are provided in the Guide to Processing Personnel Actions 296-33 and supplemental HHS Instructions.

G. Obligated Service Requirement

The IHS employees on special purpose IPA assignments are not obligated to return to Federal service (by intent of Congress in P.L. 93-638 as reinforced by P.L. 98-146).

H. Incentive Awards and Promotions

Federal employees on special purpose IPA assignments are eligible for promotions, periodic step increases, additional step increases, and cash awards on the same basis as other Federal employees.

(1) Promotions

Employees are eligible for promotions.

(2) Quality Step Increases (QSI)

A QSI is an exceptional performance pay increase which provides faster than normal step increases for permanent General Schedule employees who achieved all critical results in their Employee Performance Plan. Additional information concerning QSIs is contained in IHS Circulars 97-09, Performance Appraisal System, and 97-10, Recognition and Awards Program. The IHS will allow the granting of QSIs to employees who exceed performance expectations when properly documented and justified. No other awards are directly linked to the

performance appraisal process; however, awards may be based on achieving critical results outlined in an employee's performance plan.

(3) Cash and Honorary Awards

a. As would otherwise be appropriate under Chapters 45 and 54 of Title 5, Code of Federal Regulations, Federal employees on special purpose IPA assignments are eligible to receive cash or honorary awards for performance and suggestions related to their work on IPA assignments.

b. If a T/TO wishes to grant a cash award to a Federal employee on an IPA assignment, the IHS must be informed of the award, the reasons for it, and must concur in this action. If the action is concurred with, a copy of the documentation should be retained in the employee's Official Personnel Folder. Such tribal awards may be either cash or honor awards.

I. Physicians Comparability Allowance (PCA)

For the IHS physicians who are assigned under special purpose IPAs to perform work for T/TOs under P.L. 93-638 contracts, there is no legal objection to payment of PCA.

J. Performance Appraisals and Periodic Pay Adjustments

Performance Appraisal System employees will receive regular within-grade increases based on a waiver of acceptable level of competence determinations and may receive QSIs.

K. Grievances

The IHS employees who are on IPA assignments to a T/TOs may file a grievance under the IHS grievance procedure or negotiated grievance procedure, if IHS has some authority over the matter grieved or the remedy sought. Where appropriate, IHS officials issuing a grievance decision should obtain a recommendation from the tribal officials involved.

L. Equal Employment Opportunity (EEO)

Federal employees on special purpose IPA assignments to T/TOs are entitled to protections afforded under Title VII; however, tribal employers are specifically excluded from Title VII

coverage. Thus, a ToTO is not required to perform employees on an IPA assignment official time to meet with an EEO counselor or an EEO investigator, nor to testify at administrative hearings. However, the same employees are entitled to participate in the administrative process established by regulation at 29 C.F.R., Part 1614 and obligated to seek EEO counseling within the prescribed time frame, if they have a claim against federal officials or employees.

M. Travel Expenses

(1) Special Purpose IPA

No expenses. Special purpose IPA Assignments derive from assignment of local IHS employees to work for the T/TO at the time of initial program assumption under P.L. 93-638. Consequently, no relocation expenses will be involved with any special purpose IPA assignment and no service obligation is incurred.

(2) Special Purpose Replacement IPA

Replacement IPAs may incur travel expenses if the assignment is filled by an employee from another Area.

N. Licensure

The Office of the General Counsel (OGC), HHS, issued an opinion that the IHS health professionals who are assigned or detailed to T/TOs under the IPA are not required to be licensed in the state in which they are detailed.³ The opinion also states: "The United States Supreme Court has held that a state may not regulate the qualifications of Federal employees who are carrying out their authorized Federal activities within the scope of their employment." Penn Dairies, Inc. v. Milk Control Commonwealth of Pennsylvania, 318 U.S. 261 (1943): Johnson v. Maryland, 254 U.S. 51 (1920). At the foundation of the Supreme Court's decision on this issue is the doctrine of Federal supremacy, i.e., a state may not burden or tax the performance of an authorized Federal activity."

³ Memorandum dated May 14, 1985, from Patricia Reusing, Public Health Division, Office of the General Counsel to James Murray, Deputy Personnel Officer, HRSA, entitled "Licensing of IHS Health Professionals."

The opinion further states: "Under the Intergovernmental Personnel Act, an employee assigned or on a detail under the Act `remains an employee of his agency' [5 U.S.C. 3373(a)]. Under the Act, such individuals are covered under the Federal Tort Claims Act and retain other specific Federal employee benefits. Therefore, insofar as state licensure is concerned, such `IPA' employees are to be treated no differently than if they were still working directly under IHS supervision. They are required to meet any applicable IHS or other Federal standards and licensure requirements, but they are not required to be licensed in the state in which they are working." (Emphasis added)

A second OGC opinion indicates that health professionals employed directly by a T/TO would not be exempt from state licensure requirements because they would not be Federal employees engaged in carrying out the business of the Federal Government. The opinion also indicates that Officers assigned to T/TOs under section 214 of the Public Health Service Act, as amended, are exempt from state licensure requirements.⁴

O. Standards of Conduct (5 C.F.R. Part 2635)

(1) Conflict of Interest

a. Employees on special purpose IPAs are still Federal employees and must adhere to the Standards of Ethical Conduct for Employees of the Executive Branch and any other guidance published by the HHS or the IHS on ethical behavior.

b. Public Law 93-638 provides that Federal employees on IPA assignments may represent a T/TO in a matter pending before the Federal Government, if the provisions of 5 C.F.R. Part 2635 are met.

Each such officer or employee or former officer or employee must advise, in writing, the head of the department, agency, court, or commission with which he/she dealing or appearing on behalf of the T/TO of any personal and substantial involvement he/she may have had as an officer or employee of the U.S. in connection with the matter involved.

⁴ Memorandum, dated September 10, 1982, from Frank Smith, Regional Attorney, Region VI, Office of the General Counsel, to John Davis, Area Director, Oklahoma City Area IHS.

(2) Conduct Regulations

- a. The regulations and policies of both the HHS, the IHS, and the T/TO will apply to the IHS and T/TO employees on IPA assignments.
- b. The IHS will be responsible for any disciplinary or adverse actions that may be required because of an IHS employee's actions during an IPA assignment with a nonfederal organization.
- c. Requests, by IHS employees on IPA assignment, for approval of outside work, writing or editing activities, etc., must be submitted through the appropriate tribal official to the Federal supervisor for approval/disapproval in accordance with HHS and IHS regulations and policies. (**See Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635.**)
- d. The IHS employees on IPA assignments may not engage in any political activities prohibited to Federal employees under 5 U.S.C. 7324 (Hatch Act). However, a Presidential bill signed October 3, 1993, now allows flexibility in an employee's political activity. Specific instances must be reviewed under both the Hatch Act and the 1993 law.

P. Workweek, Hours of Duty, Holidays, and Leave

- (1) For employees on IPA assignments, the T/TO, in accordance with its regulations and policies, will determine the employee's workweek, hours of duty, and the holidays to which the employee is entitled.
- (2) Employees on assignment will either be excused from duty on all Federal holidays without charge to leave or will receive holiday pay for work performed on a Federal holiday. Employees may be excused from duty by the T/TO on a local tribal holiday without charge to leave, but will not be entitled to premium pay if required to work on such a day.
- (3) Employees on assignment continue to earn annual and sick leave under the Federal agency's leave system and to have appropriate absence from duty with the T/TO charged against that leave. The responsibility for documenting leave-earned and leave-used for detailed employees should be specified in the assignment agreement. The

240-hour limit for annual leave accrual remains in effect for IPA assignees. All leave used, as well as hours worked, must be certified by the T/TO supervisor to the Federal supervisor.

NOTE: *With flexible workdays and workweeks becoming more prevalent, the IHS should determine whether an employee's tour of duty on an IPA assignment will conflict with law or regulations governing the employee's Federal workweek, hours of duty, or holidays.*

Q.Reporting Time and Attendance

- (1) Assignment agreements will provide for the Federal (IHS) supervisor (or designee) to be responsible for reporting time and attendance to the HHS Personnel and Pay Systems Division (PPSD) (using a time and attendance report or TAIMS) and serving as the certifying officer for that purpose. Time and attendance will be reported in the same manner as if the employee were not on assignment.
- (2) The T/TO supervisor will approve leave for the Federal employee. The agreement will provide that the T/TO supervisor (or timekeeper) will contact the IHS supervisor (or timekeeper or other designee) by telephone, biweekly, on the day that the Federal supervisor normally forwards time and attendance, to orally report the time in pay status and leave taken. The T/TO supervisor (or designee) will certify and forward, in writing, information for each full pay period during the week following the end of the pay period.
- (3) An 8 will be entered for regular hours worked for each pay day in the pay period the employee was in pay status with the nonfederal organization. The total number of hours in the pay period will be shown as 80. Occasionally, a full-time employee may be detailed to a T/TO where the workweek is less than 40 hours. Irrespective of this fact, the time and attendance report will show 80 regular hours worked for the pay period.
- (4) Appropriate entries under type of absence will show leave used by the employee. If the full-time employee's workday with the T/TO is less than 8 hours because the workweek is less than 40 hours, 8 hours of leave will be recorded whenever an employee is absent for an entire day. When absences are less than a full day, the actual number of hours of leave taken will be shown.

(5) For employees that work an alternative work schedule, e.g., a schedule other than 8 hours a day five days a week or who are on a part-time appointment, the actual hours worked each day should be reflected on the time and attendance report. For example, an employee on a part-time appointment who works five, six-hour days each week would have 6 entered for the regular hours worked for each pay day in the pay period that the employee was in pay status with the nonfederal organization. Similarly an employee that was on a 4-10 work schedule would have 10 entered for regular hours worked for each day in pay status.

(6) Appropriate entries under type of absence will show leave used by employees that are on a part-time appointment or work an alternative work schedule.

a. If the employee is on a part-time appointment the employee should be charged leave based on the part time schedule. For example, if the employee works a six-hour day and is absent the entire day, the employee should be charged with six hours of leave. If the employee works part of the day, the employee should be charged leave for the difference between the hours worked and the hours scheduled for that day.

b. An employee who is on an alternative work schedule should be charged leave based on the number of hours scheduled for the day the employee is not at work. For example, an employee scheduled to work a ten-hour shift would have 10 entered under type of absence on the time and attendance report. Similarly, if the employee is absent only part of the day, the regular hours worked plus the type of absence should equate to the total hours scheduled for the day.

7. REPLACEMENT IPA ASSIGNMENTS

A. Assignments

Replacement IPAs are special purpose IPAs that occur when one employee on a special purpose IPA vacates a position, the T/TO is unable to fill the position and there is another employee who is qualified for and willing to accept the position. All the rules, regulations and policies that apply to special purpose IPAs apply to employees placed in a position using a replacement IPA.

(1)When a T/TO requests a replacement IPA, the individual selected must be a current Federal employee. The employee selected is reassigned to a position already contracted under P.L. 93-638. If the position to be filled is at a higher grade or has promotion potential to a higher grade than the position currently occupied by the individual who is proposed to fill the position, merit staffing procedures must be used to fill the position, including Indian Preference.

(2)Since replacement IPAs are special purpose IPAs, the Area Office does not have to develop alternate plans to cover the possible return of the employee to a dedicated position.

B. Procedures

(1)Employees on replacement IPAs are reassigned to positions that were previously contracted and then detailed to the T/TO. The employees have the same rights and benefits as any employee detailed to a T/TO under a P.L. 93-638 contract.

(2)Employees accepting replacement IPAs are reassigned to a function that has been contracted, therefore, the Area must notify them of the following in writing:

a.That the detail may be terminated by the T/TO with a 120 day notice to the Area.

b.That in the event the IPA is terminated or not renewed the competitive area for RIF purposes is the IHS commuting area where the individual is stationed.

c.If the IPA is terminated or not renewed, the IHS will take steps to place the individual in another position.

(3)Individuals hired to fill replacement IPAs may have their relocation expenses paid. However, since replacement IPAs are by definition special purpose IPAs, no service obligation is incurred when the IPA is terminated.

C. Assignments Requiring Prior Reassignment Between IHS Area Offices

(1)When a T/TO requests a replacement IPA assignment of an employee under the jurisdiction of a different Area Office, the employee should first be reassigned to a position in the Area from which the IPA will take place. For example, a T/TO in Area A requests an IPA assignment of an employee

in Area B, the employee should be reassigned to a position in Area A where the IPA will take place.

(2)The reassignment must be to the position occupied by the initial assignee at the time of the original P.L. 93-638 program assumption.

(3)The Area must have alternate plans to cover the possible return of the employee, i.e., position and salary for the employee. This could occur if the T/TO no longer requires the services of the employee, or requests that the employee no longer be assigned to them. The Area must be able to reassign the employee within that Area, or arrange the reassignment of the employee within the IHS in a reasonable period of time, i.e., 60 days. A sample memorandum for detailing an IHS employee to a T/TO is provided at Exhibit 2-7.

EXHIBITS

HHS Transmittal 96.4
Personnel Manual
Issue Date: 3/7/96

Material Transmitted:

HHS Instruction 334-1, Temporary Assignments of Personnel Under the Intergovernmental Personnel Act of 1970, as Amended

Material Superseded:

HHS Instruction 334-1 (all)

Background:

This Instruction has been substantially streamlined and delegations of authority have increased in accordance with National Performance Review recommendations, and in support of HHS administrative initiatives calling for more streamlined rules and greater delegations of authority.

Any reference to "OPDIV" in this Instruction now includes the PHS agencies, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

/s/
John J. Callahan
Assistant Secretary for
Management and Budget

DISTRIBUTION: MS (PERS): HRFC-001

INSTRUCTION 334-1

HHS INSTRUCTION 334-1
TEMPORARY ASSIGNMENTS OF PERSONNEL UNDER
THE INTERGOVERNMENTAL PERSONNEL ACT

334-1-00 Information and Guidance
 10 Departmental Policy
 20 Reporting and Record Keeping Requirements

Exhibit 334-1-A Delegations of Authority

334-1-00 INFORMATION AND GUIDANCE

The authorities delegated in paragraphs A.1.a., b., and c.; A.2.a. and b.; and A.3 must be exercised in accordance with Departmental policy cited in this Instruction and the requirements and/or provisions in the following references:

A.5 U.S.C. Chapter 33, Subchapter VI, Assignments to and From States.

B.5 C.F.R. Part 334, Temporary Assignment of Employees Between Federal Agencies and State, local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations.

C.Reorganization Plan Number 1 of 1953, Section 6 (which created this Department) restricts the authority to delegate authorities to Department employees. An IPA detailee is not an employee and may not exercise any delegated functions (see 334-1-10A.).

334-1-10 DEPARTMENTAL POLICY

A.Non-Federal employees on IPA details to HHS may not serve in line management positions. They may serve in an advisory or consultative capacity or in a staff assignment. They may provide day-to-day supervision of employees, provided that the exercise of delegated personnel authorities over the employees is reserved to Department employees. For example, the individual on detail could provide input to an employee's performance rating, but a Department employee would have to issue the rating.

B.Non-Federal employees who are on IPA appointments to positions in HHS may serve in line management positions.

334-1-20 REPORTING AND RECORD KEEPING REQUIREMENTS

A. One copy of the original assignment agreement or extension of assignment agreement, as well as any modifications, must be sent within 15 days of the date of the agreement or modification to:

U.S. Office of Personnel management
Office of Merit Systems Oversight and Effectiveness
IPA Mobility Program
1900 E Street, N.W., Room 7662
Washington, D.C. 20415

B. A copy of the IPA assignee's agreement or extension of assignment agreement and other related documents must be maintained in the respective HHS organization.

HHS Instruction 334-1 - Exhibit A

DELEGATIONS OF AUTHORITY

A. AUTHORITY DELEGATED

1. Heads of OPDIVs (including PHS agencies, the Program support Center, and AOA), the Assistant Secretary for Management and Budget for the Office of the Secretary (OS), and the Inspector General (for OIG) are delegated the authority to:
 - a. approve or disapprove the temporary assignments of personnel under the Intergovernmental Personnel Act (IPA) of 1970, as amended, between HHS components and eligible non-federal organizations for up to two years;
 - b. approve or disapprove the extension of assignments for up to an additional two years; and
 - c. waive repayment of expenses for failure to complete the obligated service agreement upon completion of an IPA assignment.
2. The authority to approve, disapprove, and/or extend special purpose IPA assignments of Indian Health Service (IHS) employees to Indian tribes or tribal organizations is delegated to the Director, IHS, under the following conditions:
 - a. a takeover contract or contract between IHS and an Indian tribe or tribal organization as authorized by Public Law 93-638 provides for such IPA assignments; and
 - b. the assignee is an incumbent of a position in a contracted function at the time of its takeover or is a substitute for such an incumbent as authorized by Public Law 100-472.
3. These authorities may be redelegated with further redelegation authorized.

B. AUTHORITY RETAINED

ASMB retains the authority to approve and disapprove IPA assignments to or from the immediate staffs of elected chief executives of State or local governments.

C. PRIOR DELEGATIONS

This delegation supersedes the February 13, 1991, Delegations of Authority concerning IPA assignments, as amended September 29, 1993, from the Assistant Secretary for Personnel Administration to the Heads of Operating Divisions and Regional Directors. To the extent that previous redelegations of authority to approve or disapprove IPA assignments made to other officials within HHS are consistent with the provisions of this delegation, they may remain in effect until new redelegations are made under the authority of this delegation.

D. EFFECTIVE DATE

This delegation is effective on the date of this transmittal.

Exhibit 2-1a

Personnel #15

MAY 20, 1999

TO: See Below

FROM: Director

SUBJECT: Delegation of Authority for the Intergovernmental Personnel Act of 1970

Authority Delegated

Pursuant to the authority delegated to the Director, Indian Health Service (IHS), by the Assistant Secretary for Management and Budget (ASMB), on March 7, 1996, I hereby delegate to the positions listed within this delegation, the authority to:

- a. Approve or disapprove the temporary assignments of personnel, for up to 2 years, under the Intergovernmental Personnel Act (IPA) of 1970, as amended, between Department of Health and Human Services (HHS) components and eligible non-Federal organizations.
- b. Approve or disapprove the extension of assignments for up to an additional 2 years.
- c. Waive repayment of expenses for failure to complete the obligated service agreement upon completion of an IPA assignment.
- d. Approve, disapprove, and/or extend **special purpose IPA assignments** of IHS employees to Indian tribes or tribal organizations where both of the following conditions are met:
 - (1) An award is made under the authority of the Indian Self-Determination and Education Assistance Act (ISDA), Public Law (P.L. 93-638), as amended; and
 - (2) The IPA assignee is an incumbent of a position in a function that is included in an ISDA award at the time of its transfer to a tribe or tribal organization or is a replacement for such an incumbent as authorized by P.L. 100-472, the Indian Self-Determination and Education Assistance Act Amendments of 1988.

Page 2 - See Below

To Whom Delegated

Director of Headquarters Operations
Director, Office of Management Support
Director, Office of Public Health
Director, Division of Human Resources (DHR)
Area Directors

Authority to Redelegate

These authorities may not be redelegated.

Information and Guidance

Information on requirements for exercising these authorities may be found in the HHS Instruction 334-1, "Temporary Assignments of Personnel Under the Intergovernmental Personnel Act of 1970," as amended, and 5 CFR Part 334.

Reporting Requirements

The Director, DHR, will maintain a record of all IHS IPA agreements. Prior to the effective date of the agreement, a copy of the IPA assignee's agreement or extension of assignment agreement and other related documents must be sent by the IHS Area Personnel office entering into the IPA agreement to the Director, DHR.

Prior Delegations

This delegation of authority supersedes Paragraph 1.d regarding IPA assignments contained in the Blanket Delegation of Authority Memorandum, Subject: Delegation of Personnel Administration Authorities, from the Director, IHS, to the DHO, dated april 7, 1995.

Effective Date

This delegation is effective upon date of signature.

/s/ Michael H. Trujillo, M.D.
Michael H. Trujillo, M.D., M.P.H., M.S.
Assistant Surgeon General

Addressees:
DHO
Area Directors

Director, OMS
Director, DHR
Director, OPH

HHS Exhibit 334-1-M
Personnel Manual
HHS Transmittal 91.6 (2/13/91)

PROVISIONS OF P.L. 100-472
APPLICABLE TO
IHS SPECIAL PURPOSE
INTERGOVERNMENTAL PERSONNEL ACT ASSIGNMENTS

Public Law 100-472, which amended P.L. 93-638, the Indian Self-Determination and Education Assistance Act, contains two provisions that apply to IHS employees on special purpose IPA assignments. One of the provisions involves financial compensation, and the other addresses the issue of replacing IHS staff who have been serving special purpose IPA assignments to tribes or tribal organizations.

Financial Compensation

The IHS employees serving special purpose IPA assignments to T/TOs are eligible for promotions, periodic step increases, quality step increases (QSIs), merit pay, and cash awards. Special purpose IPA assignees are eligible for these awards and increases under the same conditions as other Federal employees. For example, employees on IHS special purpose IPA assignments are eligible for quality step increases.

Also as with other Federal employees, employees on special purpose IPA assignments to tribes or tribal organizations may receive career ladder promotions only when it is documented that their current performance ratings are "Acceptable". The employee's IPA agreement must be amended to reflect the changes of a promotion, whether a career ladder promotion or a promotion made under the merit promotion plan.

Replacement

The 5 U.S.C. 3372(a) specifies the conditions under which one employee can replace another who has been serving in a special purpose IPA assignment to a tribe or tribal organization:

If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may execute an agreement with the tribal organization with respect to the replacement employee.

HHS Exhibit 334-1-M
Personnel Manual
HHS Transmittal 91.6 (2/13/91)

That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.

Under this replacement provision, the IHS may assign an employee to replace another who has been serving a special purpose IPA assignment if the assignment is to the same position. The IPA assignment agreement of the new employee may specify the same and/or an extended assignment period.

This provision cannot be used to fill a position newly created by the tribal organization after the P.L. 93-638 take-over or to fill a position that was abolished by the IHS after the take-over.

OF-69

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

Extension

IPA ASSIGNMENT CHECKLIST

Assignment of IHS Employees to a T/TO.

<u>Description of Item</u>	<u>Completed</u>		<u>NA*</u>	<u>Date</u>
	Yes	No		
1. Proposal for assignment initiating OF-69 received.	___	___	___	___
The IPA Question and Answer sheet given to employee.	___	___	___	___
2. Employee has agreed to the assignment.	___	___	___	___
a. Employee given position title and description.	___	___	___	___
b. Employee told proposed length of assignment.	___	___	___	___
3. Assignment is (Check one):				
a. Detail basis.		___		
b. LWOP basis.	___			
4. Assignment is (Check one):				
a. Special Purpose IPA.		___		
b. Replacement IPA.	___			
5. SF-52, Request for Personnel Action initiated by losing IHS organization (see Exhibit 2-8).	___	___	___	___
6. Employee given full information on benefits.				
a. Health insurance.	___	___	___	___
b. Life Insurance (Survivor benefits).	___	___	___	___
c. Retirement (Survivor benefits, etc.)	___	___	___	___
d. Leave (Annual and sick).	___	___	___	___
e. Benefits Question and Answer Sheet.	___	___	___	___
f. Thrift Savings Plan.	___	___	___	___
g. Other _____.	___	___	___	___

IPA ASSIGNMENT CHECKLIST (CONTINUED)

<u>Description of Item</u>	<u>Completed</u>		<u>NA*</u>	<u>Date</u>
	Yes	No		
7. Employee notified as to where his/her check will be sent. _____	_____	_____	_____	_____
8. Pay increases and promotions explained to employee. _____	_____	_____	_____	_____
9. Employee notified as to arrangements concerning withholdings including union dues, if applicable documented accordingly. _____	_____	_____	_____	_____
10. Travel and transportation expenses explained to employee. _____	_____	_____	_____	_____
11. Employee notified as to name and location of supervisor during the IPA assignment. _____	_____	_____	_____	_____
12. Performance appraisal process reviewed with employee and gaining organization to assure understanding of responsibilities and time frames. _____	_____	_____	_____	_____
13. Employee notified as to point of contact within the losing organization in the event of a problem. _____	_____	_____	_____	_____

Personnel Representative's Signature

Date

*Not Applicable

SAMPLE SF-52

SAMPLE SF-52

**SAMPLE MEMORANDUM FOR DETAILING INDIAN
HEALTH SERVICE EMPLOYEES TO TRIBES/TRIBAL
ORGANIZATIONS ON IPA ASSIGNMENTS UNDER
P.L. 93-638**

DATE:

TO: (Servicing Personnel Office)

FROM: (Area Director)

SUBJECT:Detail of IHS Employee on Special Purpose IPA Assignment to
Tribe/Tribal Organization Under
P.L. 93-638

In accordance with the procedures in the Personnel Aspects of the
Indian Self-Determination and Education Act Public Law 93-638
Handbook, and the Assignment Agreement for Special Purpose IPA
Assignment, OF-69, for

_____ (Name of Employee) _____,

_____ (Position Title, Series, Grade) _____,

this is to certify that an assignment to _____ (Name of Health
Facility) _____

with _____ (Name of T/TO) _____

- 1) a position and funds will be made available in _____ (Area) _____
for the reassignment of the above named employee; and/or
- 2) arrangements will be made within the IHS for the reassignment of
the employee in the event the T/TO requests the removal of the
employee, or it has been determined that the services of the employee
are no longer necessary.

(Signature of Area Director)

Attachment
SF-52

QUESTIONS AND ANSWERS

**QUESTIONS AND ANSWERS
SPECIAL PURPOSE IPA ASSIGNMENTS
UNDER P.L. 93-638**

1.Q.What is the Intergovernmental Personnel Act?

A.Title IV of the Intergovernmental Personnel Act (IPA) of 1970 permits the temporary assignment of personnel between the Federal Government and local governments and institutions of higher learning.

2.Q.How does P.L. 93-638 affect the Intergovernmental Personnel Act?

A.Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975 amended the Intergovernmental Personnel Act to include Indian tribal governments and Indian tribal organizations as local government entities eligible for participation in IPA assignments.

3.Q.What effect did P.L. 93-638 have?

A.Federal employees may be temporarily assigned to Indian tribal governments or tribal organizations for the purpose of bringing specialized knowledge and experience of skilled people to address problems of mutual concern.

4.Q.Can an IPA assignment be made if a T/TO contracts to operate a part or all of a health care program?

A.Yes. The IPA assignments can be used to assist the T/TOs to operate a health care program under P.L. 93-638 contract.

5.Q.Are all IHS employees covered under the IPA assignment procedures?

A.No. In general, most civil service employees are covered, but Commissioned Officers would be assigned under provisions of the Public Health Service Act.

6.Q.How do you arrange an IPA assignment?

A.The tribal organization initiates the request for an assignment.

7.Q.Why must there be a formal assignment agreement?

A.(1)The assignment must be documented. The agreement will indicate the terms and conditions of the assignment that have been agreed upon by the IHS and the T/TO.

(2)The agreement will document the employee's consent to the assignment by his/her signature and the signatures of all other parties to the agreement.

(3)The agreement provides a record of the rights and responsibilities of each of the three parties to the agreement.

8.Q.Can employees who are in a documented career ladder position before they go on a special purpose IPA assignment be promoted while on the assignment?

A.Yes. Section 104(k)(1)(d) of P.L. 93-638, as amended, allows employees assigned to T/TOs to be eligible for promotions, periodic step-increases, additional step-increases, merit pay, and cash awards on the same basis as other Federal employees.

9.Q.What is the difference between a regular purpose, special purpose, and replacement IPA?

A.A regular purpose IPA assignment is an assignment to or from the IHS which (1) serves as a developmental opportunity for the assignee, (2) supports the agency mission, (3) shares scarce expertise, (4) supports a U.S. Government initiative, (5) strengthens Intergovernmental relations, (6) assists in the transfer of new ideas or technology, or (7) serves other appropriate purposes not covered.

A special purpose IPA assignment is an assignment which continues an incumbent in an IHS function at the time of initial P.L. 93-638 take over contract to perform the same duties at the same location with a T/TO.

A replacement IPA is made when an employee on a special purpose IPA fails to complete the period of assignment,

the tribal organization is unable to fill the position, and there is another employee who is willing to accept the position and is qualified for the position. A replacement employee may be assigned to complete the period of assignment. The agreement may be for a different period of assignment as determined by the IHS and the T/TO.

10.Q.How long may a special purpose assignment last?

A.Special purpose assignments may be extended indefinitely--in increments of two years or less (in accordance with the expiration date of the contract) where it will continue to benefit both the IHS and the T/TO.

11.Q.How are special purpose or replacement assignments terminated?

A.Assignments may be terminated at any time at the option of the IHS, the T/TO, or the employee. However, each written agreement must be checked to be certain that the agreed upon procedure for documenting termination of assignment has been followed. In establishing procedures for terminating such assignments, consideration should be given to minimum advance notice requirements in the event that termination of the assignment would result in a need to implement RIF procedures.

12.Q.How does an employee find out about employee rights, benefits, and obligations, while on assignment?

A.These are outlined in the individual assignment agreement. Rights, benefits, and obligations vary with each type of assignment, so they should be checked carefully.

13.Q.What travel and transportation expenses are allowed?

A.Travel and per diem (i.e. lodging and miscellaneous and incidental expense) allowances for official business during the assignment, as a general rule, will be paid by the T/TO to which assigned. However, if there is official travel authorized by the IHS, then the Federal agency will pay the expenses. Again, these special conditions must be documented in the written assignment agreement.

For employees on replacement IPA assignments who are reassigned from another Area Office where there is a change in duty station, travel and transportation of household goods may be paid in accordance with established government regulations.

14.Q.May assignments be made between Area Offices? For example, may an IHS employee in one Area Office be assigned to a T/TO in another Area Office?

A. Assignments between Area Offices may occur for a replacement IPA. When a T/TO requests a replacement IPA assignment of an employee under the jurisdiction of a different Area Office, the employee should first be reassigned to a position in the Area Office from which the IPA will take place. For example, a T/TO in Area A requests an IPA assignment of an employee in Area B, the employee should be reassigned to a position in Area A where the IPA will take place.

15.Q. What type of form is used for documenting a special purpose or replacement IPA assignment agreement.

A. The Special Purpose IPA Assignment Form, Exhibit 2-5 is used for documenting the assignment agreements. Copies are available in this Handbook or from the SPOs through requisition channels.

16. Q. At what point should the SPO be involved in the negotiation of assignments?

A. As soon as possible. From the date that a request for assignment is received or initiated by the IHS, the assistance and advice of the SPO should be sought to ensure that the effects of the assignment(s) on organizational structures (such as RIF) are anticipated and all labor-management obligations are met.

17.Q. Are employees assigned under special purpose or replacement IPA agreements counted against employment ceilings?

A. Yes. However, for tracking purposes, all special purpose and replacement IPA assignments are coded ceiling exempt. For the purposes of the government-wide streamlining exercise begun in fiscal year 1993, all employees including those who are coded as ceiling exempt must be counted.

18.Q. What job protection rights does an employee have if he/she accepts an IPA assignment?

A. An employee on a special purpose or replacement IPA assignment will probably be subject to RIF procedures if the IPA is terminated for any reason since the function no longer exists in the IHS.

19.Q. Does an employee have to resign to accept assignment under IPA?

A.No. The person assigned to a tribal organization under an IPA assignment remains a Federal employee. (Do not confuse IPA with the provisions of section 104(e) of P.L. 93-638, as amended, which authorizes IHS employees to resign to go to work for the T/TO and is entitled, if the employee and the tribal organization so elect, to retain certain benefits.)

20.Q.When employees go on IPA assignments to a T/TO, are they still covered by the negotiated labor agreement?

A.Yes. They are covered, but the employee should check with the local Area Labor Relations Specialist.

21.Q.May an employee on an IPA assignment to a T/TO be fired or have other disciplinary action taken against him/her by the T/TO?

A.An IPA assignee could not be fired by the T/TO. The T/TO could recommend disciplinary action or removal, but each of these actions would be covered by established civil service procedures, rights of appeal, etc. Only a Federal official with this delegated authority can approve the action.

22.Q.Can an employee decline an IPA assignment?

A.Yes. Employees occupying positions in program(s) for which a T/TO requests a contract may be reassigned or faced with a RIF unless they are employed by the T/TO through an IPA, MOA, or direct hire assignment.

CHAPTER 3

CHAPTER 3

REGULAR PURPOSE INTERGOVERNMENTAL PERSONNEL ACT ASSIGNMENTS

1. GENERAL

This chapter is based on the Intergovernmental Personnel Act (IPA) of 1970 (as amended by P.L. 93-638) assignment procedures, associated guides, Departmental procedures, and IHS instructions (i.e. Indian Self-Determination Memorandums, IHS Circulars, etc.). These guidelines apply only to:

- 1) the assignment of competitive and excepted civil service employees from the IHS to T/TOs; and 2) the assignment of tribal employees to the IHS from T/TOs.

A regular Purpose IPA assignment is an assignment to or from the IHS which (1) serves as a developmental opportunity for the assignee, (2) supports the agency mission, (3) shares scarce expertise, (4) supports a U.S. Government initiative, (5) strengthens Intergovernmental relations, (6) assists in the transfer of new ideas or technology, or (7) serves other appropriate purposes.

2. INTRODUCTION

The IPA was amended by P.L. 93-638, in January 1975, to provide for the temporary assignment of Federal civilian employees to T/TOs. Each assignment is carried out under the provisions of a specific agreement that states the purposes and duration of the assignment; the places, hours, and conditions of work; and the methods of financing employees' pay and allowances.

Some IPA agreements call for financing between the participating organizations, with employees receiving their pay and allowances directly from their regular employers. Others provide for direct payments to employees by the organizations to which they are assigned under the terms of the agreement.

As the result of a rider to an Appropriations Act, P.L. 98-146 approved November 4, 1983, distinction was made between regular and special purpose IPA assignments which may be used to

assign IHS civil service employees to T/TOs under P.L. 93-638 program assumption contracts.

3. PURPOSE

Public Law 93-638 is legislation that allows T/TOs to assume operation of Federal programs that provide services to Indians. The amendment to the IPA allowing for the inclusion of tribal governments and tribal organizations facilitates the sharing of personnel resources and aids in the development of the tribal government's capacity to manage and operate such programs. This law makes it possible to temporarily assign skilled personnel to T/TOs.

4. DEFINITIONS

For the purpose of this chapter, terms are defined as follows:

A.Regular Purpose IPA Assignment means an assignment to or from the IHS which (1) serves as a developmental opportunity for the assignee, (2) supports the agency mission, (3) shares scarce expertise, (4) supports a U.S. Government initiative, (5) strengthens Intergovernmental relations, (6) assists in the transfer of new ideas or technology, or (7) serves other appropriate purposes not covered in C. below.

B.Eligible Non-Federal Organization means an Indian tribe or tribal organization.

C.Eligible Employees means:

- (1) A Federal employee holding a career or career conditional appointment without time limitation in the competitive or excepted service.
- (2) To be eligible for a regular purpose IPA assignment, an employee must have been an employee of either the Department or of the nonfederal organization for at least 90 days before the IPA assignment is effected.
- (3) The IPA assignments may be made for full-time, part-time, and intermittent employees serving under career or conditional (competitive or equivalent excepted) appointments.
- (4) To be eligible to participate in an IPA assignment, an employee of a T/TO must be a permanent, career employee of that organization for at least 90 days prior to

entering into an IPA assignment agreement with a Federal agency.

- (5) Elected official positions in State or local governments are not included in the IPA program. However, this exclusion does not automatically apply to assignments with Indian tribal governments. If such an assignment with a tribal government is contemplated, notify the Division of Human Resources in IHS HQs before completing the agreement form.

D. Ineligible Employees

- (1) New Federal employees who are serving probationary periods are not eligible for regular purpose IPA assignments. The term "probationary period," as used in this chapter, covers only the probationary period required of new Federal employees and not the probationary period of employees recently assigned to supervisory or managerial positions.
- (2) Employees with current summary performance ratings of less than fully satisfactory and/or unacceptable are not eligible for IPA assignments.
- (3) Employees serving on temporary, time-limited or term appointments are not eligible for regular purpose IPA assignments.

5. PROCEDURES

A. Assignments

The IPA assignments may be initiated by either the IHS or the T/TO. There must be a joint agreement between the IHS and the T/TO, and concurrence of the employee. All assignments will be put into effect by a written agreement among the three parties. All assignments are intended to be temporary in nature.

Assignment under these provisions applies only to civilian employees of the IHS.

B. General Provisions

- (1) Responsibilities

a. The Assistant Secretary for Management and Budget (ASMB) has overall responsibility for the administration of Departmental policy, requirements, and delegations of authority under the IPA; ASMB also reserves the authority to be the final approving official under specific circumstances described in the delegations of authority in Exhibit 3-1 and 3-1a.

b. Within the IHS, the Director is responsible for:

(1) Providing for effective use of the IPA authority to support the goals and programs of the IHS;

(2) Assuring compliance with applicable policies and regulations for all IPA assignments arranged involving the IHS organizations;

(3) Placement of IHS employees who are returning from regular purpose IPA assignments to their organizations, are placed in positions of like grade and pay as those occupied by them at the start of their IPA assignments; and

(4) Serving as an IHS endorsing official, under the conditions prescribed in Exhibit 3-1.

e. Servicing Personnel Officers (SPOs) are responsible for:

(1) Advising program officials negotiating assignment agreements on technical requirements under current HHS, and IHS policy directives, including advice on the completion of assignment agreements (see Exhibit 3-1);

(2) Reviewing regular purpose IPA assignment agreements for technical adequacy;

(3) When a Reemployment Priority List (RPL) exists in the commuting area of the proposed assignment of a tribal employee to IHS duties, providing the names of qualified employees from the RPL to the IHS supervisor for consideration;

(4) Provide assistance to surplus or displaced employees as specified under the IHS CTAP;

(5) Effecting personnel actions to properly document the IPA assignment of any IHS employee in accordance with the requirements of the Guide to Processing

Personnel Actions 296-33, and supplemental HHS issuances; and

(6) Ensuring that IHS employees on IPA assignments are advised of both their entitlements and their responsibilities. The SPO will provide the following information to IPA assignees:

1 "Open Season" information on elections that may be made from time to time on the Thrift Savings Plan and employee life insurance and health benefit options. (For assignees on regular purpose IPA assignments, supervisors will maintain records of such notifications for the final evaluations prescribed in Exhibit 3-3.)

2 Periodic information on options for participating in the purchase of U.S. Government bonds or deductions for the Combined Federal Campaign.

3 Other appropriate notices such as notices furnished to all employees in the Federal supervisor's component regarding a RIF.

(7) Ensuring that all labor-management obligations are met.

f. The IHS Federal supervisors are responsible for:

(1) Determining how the knowledges, skills, and abilities being gained by an IHS employee on a regular purpose IPA assignment will be effectively utilized upon return from the IPA assignment;

(2) Carrying out the supervisory actions required in HHS Personnel Instruction 334-1;

(3) Securing, from each regular purpose IPA assignee, the overall post-assignment report and evaluation required in HHS Instruction 334-1;

(4) Before a tribal employee is assigned to an IHS component, considering qualified employees from the RPL for that commuting area.

6. REGULAR PURPOSE IPA ASSIGNMENTS

A.Policies

Assignment of professional or support personnel by regular purpose IPA assignments may be made to T/TOs by either detailing the employee or putting the employee on Leave Without Pay (LWOP).

(1)Details

Federal employees may be detailed to a T/TO. Employees on detail continue to occupy their Federal positions and they remain on the payroll of, and are paid by, the IHS. The Federal Tort Claims Act and any other Federal Tort liability statute apply to employees on regular purpose IPA assignments. They remain employees of their permanent agencies for all purposes except work and supervision.

(2)Leave Without Pay (LWOP)

- a.Federal employees may be placed on LWOP from their Federal positions in order to be assigned to a T/TO. Employees on such LWOP assignments continue to occupy their IHS positions of record during the assignment but receive formal appointments from, and are paid by, the T/TO.
- b.Employees on LWOP assignments continue to be entitled to receive the full salary of the employee's Federal grade and to continue life insurance, health insurance and retirement benefits, etc. (Refer to OPM's Handbook for CSRS and FERS.)

B.Length of Assignment

Initial regular purpose IPA assignments can be made for up to two years and may be intermittent, part-time, or full-time. The assignment may be extended for an additional two years when the extension will be to the benefit of both organizations. Regular purpose IPAs cannot be extended beyond four years on a single assignment without at least a 12-month return to duty with his/her regular employer. Successive assignments without a break of at least 60 calendar days are regarded as continuous service under the IPA authority. The IHS employees approved for regular purpose IPA assignment to T/TOs incur an obligation to return to Federal service for a length of time equal to that of the IPA assignment.

C. Assignment Agreement

(1) Arranging an Assignment

- a. Assignment proposals will be negotiated by IHS officials with tribal officials in T/TOs, with technical assistance provided by their respective SPOs.
- b. The targeted starting date for a regular purpose assignment should be no less than 120 days from proposed starting date of the assignment to allow:
 - 1 60 days to convert tentative arrangements into a formal IPA agreement proposal;
 - 2 30 days to secure required formal approvals;
and
 - 3 30 days for the assignee to close out current duties and complete necessary relocation arrangements, if applicable.
- c. The assignment is voluntary and must be agreed to by the employee.

(2) Written Assignment Agreement

- a. A written agreement must be executed to document the obligations and responsibilities of the co-sponsoring organizations and the individual employee involved in the assignment, to provide a record of the rights of each of the three parties to the agreement, and to document the employee's consent to the assignment.
 - b. The modification to OPM's Form OF-69 titled REGULAR PURPOSE ASSIGNMENT AGREEMENT (Exhibit 3-2) must be used to document all regular purpose IPAs. This format contains the required contents of a properly drawn three-party IPA assignment agreement.
- c. A separate agreement must be written for each assignee. Where agreements for several assignees jointly reflect a combined appropriate cost-sharing, the multiple agreement cost-sharing must be reported in (or attached to) each agreement.

(3) Developing an Assignment Agreement

a. Assignment agreements must be negotiated by management officials of the IHS and the T/TO and not by prospective assignees.

b. A final agreement proposal will be prepared by the program unit and must be reviewed by the SPO for proper technical content, adequacy, and conformance with the OPM, HHS, and IHS guidelines and policies.

c. The agreement must make clear that if the employee is paid allowable travel and relocation expenses, he/she must complete the entire period of the assignment or one year, whichever is shorter, unless the assignment is terminated for reasons acceptable to the Federal agency.

1If the assignment is terminated by the employee for unacceptable reasons, the expenses are recoverable from the employee as a debt due the U.S.

2The Director, IHS, may waive the right to recovery from a T/TO employee assigned to the IHS if, in his/her judgement, a waiver is justified.

(4) Approval of a Proposed IPA Assignment Agreement

a. A proposed assignment agreement will be circulated for review and signature by the:

1 Proposed Federal supervisor of the IHS employee to be assigned--or over the Federal work assignment to be temporarily filled by a tribal employee;

2 Proposed assignee;

3 Authorizing official of the T/TO;

4 Servicing Personnel Office

5 IHS Area Director;

6 Authorizing Federal official designated in Exhibit 3-1.

(5) When ASMB has reserved final approval authority for specific categories of assignment, ASMB's approval is in addition to all usual Federal and tribal approvals.

(6) Distribution of the Assignment Agreement

Once an agreement has been approved, copies must be distributed as follows:

- a. One copy to the assignee;
- b. One copy to the Federal supervisor;
- c. One copy to the authorizing official of the T/TO co-sponsor;
- d. One copy to the authorizing Federal official;
- e. One copy to the appropriate SPO;

(7) Additional copies of the regular purpose assignment agreement will be distributed under the following circumstances:

a. When an agreement provides for cost-sharing:

1 One copy to the administering IHS fiscal officer; and

2 one copy to the administering T/TO fiscal officer;

b. When an IHS employee on LWOP from the IHS must forward periodic checks or money orders to cover the employee's share of costs of Federal benefits being continued during the assignment, one copy will be forwarded to the PPSD.

(8) After approval, the authorizing Federal official should retain a copy of the agreement. The SPO will distribute the remaining copies of the agreement.

D. Extending, Modifying, or Terminating a Regular Purpose IPA Assignment

(1) Extension or Modification

a. Once a regular purpose assignment has been negotiated and approved, it may be extended or modified by an abbreviated document, EXTENSION OF REGULAR PURPOSE ASSIGNMENT AGREEMENT, (Exhibit 3-8), which:

1 Identifies the assignee, the IHS co-sponsor, T/TO co-sponsor, and the previously approved assignment period; and

2 Describes in detail those terms which are proposed to be different from the originally approved agreement, including any change in the dates of the agreement.

- b. Once prepared, an extension or modification proposal must be circulated for review, approval, or post-audit to the same individuals who are required to sign the original agreement. The same distribution of copies must be made for extension as for initial regular purpose IPA agreements.

(2) Termination

The regular purpose IPA assignment may be terminated at any time at the option of the IHS, the T/TO, or the employee.

- a. A termination by mutual consent of both co-sponsors may be approved by the Federal supervisor. An HHS-initiated termination for cause must be approved by the official who approved the most recent agreement, extension, or modification. A copy of the letter or other notification of termination of the assignment must be forwarded to the offices currently required to approve or post-audit original agreements and to OPM.
- b. Where possible, the party terminating the agreement before the original completion date should give a 30-day notice to all parties involved. However, the parties may negotiate a longer notice of termination. This notification should be in writing and should include the reasons for the termination.
- c. An IPA assignment must be terminated immediately whenever the participating employee is no longer employed by the IHS.
- d. An assignment may be terminated or other corrective action taken if an assignment is found to violate the requirements of the IPA or program regulations (5 C.F.R. 334).

E. Cost-Sharing of Salary and Allowable Expenses

Cost-sharing arrangements for a regular IPA assignment are negotiable between the Federal Government and a T/TO. The Federal agency may agree to pay all, some, or none of the costs associated with an assignment. Costs may include employee pay, supplemental pay, fringe benefits, and travel and relocation expenses. Reimbursements are credited to the Federal agency appropriation fund or account which would otherwise be used for payment. Funds do not revert to the U.S. Treasury.

- (1) Cost-sharing arrangements should be based on the extent to which the participating organizations benefit from the assignment. The largest share of costs should be absorbed by the organization which benefits most from the assignment. The borrowing organization is usually the *principal* beneficiary of the assignment.
- (2) Most regular purpose IPA assignments should result in a "cost-saving" to the IHS. An estimated saving should be targeted in regular purpose IPA assignment negotiations between the IHS and T/TOs.
 - a. For a person assigned to the IHS from a T/TO, cost-sharing should reflect a mutual benefit ratio that will result in the IHS securing the services of a temporary employee at less than the normal cost of hiring the same person as a temporary employee, expert, or consultant.
 - b. For a person assigned from the IHS to a T/TO, cost-sharing should reflect a mutual benefit ratio that will result in the IHS securing developmental assignment experience for employee at less than the normal cost of long-term training for the same period at a college or university.
- (3) The employer's share of annual benefit costs for retirement programs, health insurance, life insurance, and other usual benefits to an employee must be calculated. Ordinarily, the cost support for employer-paid employee benefits will be allocated to each co-sponsor on the basis of the estimated benefit ratio. These cannot include unusual benefits such as car allowances, tuition grants for assignee or family, computer time allowance or secretarial support, any advance trips for house-hunting, home sale expenses at time of relocation, nor the administrative costs of establishing and maintaining the assignment.
- (4) Federally authorized round trip travel and transportation (i.e., relocation) expenses to and from the assignment location will be calculated and, ordinarily, allocated to each co-sponsor on the basis of the estimated benefit ratio. Reimbursement for other travel costs may be committed in the agreement but excluded from cost-sharing, such as travel costs during an assignment on behalf of either co-sponsor. (For a T/TO employee only, the agreement may provide for reimbursement of unusual expenses by the T/TO as long as these expenses are not included in cost-sharing calculations.)

- (5) Cost figures used for computations of cost-sharing will be based on salary and benefit costs as of the first day of the assignment (or extension thereof) and estimated relocation expenses at the start of the assignment. Each agreement will provide, however, for the assignee to receive normal pay and benefit adjustments given co-workers (e.g., within-grade increases, comparability increases, etc.) with these changes to be shared by the co-sponsors at the previously determined cost-sharing ratio assigned to that category.
- (6) The negotiated costs for each co-sponsor must be computed as described in Exhibit 3-2, Block 27A.
- (7) Ordinarily, cost-sharing for each category will reflect the estimated benefit ratio. In some instances, however, a co-sponsor may negotiate a lesser cost-sharing in one category in exchange for an offsetting higher cost-sharing in another category.
- (8) If extraordinary circumstances warrant proposing a Federal share of costs at a higher level than the estimated Federal benefit, a justification for variance must be prepared and added to the agreement in Block 27B of Exhibit 3-2.
- (9) It is assumed that an assigned employee will use annual leave at the rate accumulated during the assignment period, unless a post-assignment adjustment for annual leave used versus annual leave accrued is stipulated in the initial agreement. Exhibit 3-7 is provided for use in making such an adjustment.
- (10) The IPA does not prohibit use of Federal grant funds to support an IPA assignment in whole or in part. In such cases, the concurrence of the funding agency may be needed.

F. Determining Cost Benefit Ratios

- (1) Regular purpose IPA assignments may be approved only when a benefit to both the IHS component and the T/TO can be shown. The principal purpose(s) of a regular purpose IPA assignment must be determined, as well as the relative benefit to the IHS and to the T/TO. Cost-sharing negotiations between the co-sponsors must be targeted to match this benefit ratio. The estimated benefit ratio must be calculated in accordance with Block 26 of Exhibit 3-2.

(2) All Regular Purpose IPAs must be approved by the official designated in the delegations of authority, see Exhibit 3-1. When the IHS share of the negotiated costs is the same or less than the Federal benefit share a regular purpose IPA may be approved at a lower level than if it is proposed that the Federal share of costs exceeds the calculated Federal share of benefits. If the Federal share of costs exceeds the Federal share of benefits a special justification must be included in the agreement for review by a variance approving official.

G. Processing Personnel Actions

(1) Use of SF-52, Request for Personnel Action

a. An SF-52 will be used to notify the SPO of a detail or LWOP action for an IHS employee under the IPA authority. Block F of the SF-52 will contain the statement "Arrangement for detail (or LWOP) made in IPA agreement approved by (name and title of approving official) on (date)." A copy of the approved assignment agreement must be attached to the SF-52.

b. An SF-52 will also be used to extend or terminate an IPA assignment.

(2) Use of SF-50-B, Notification of Personnel Action

a. An SF-50-B is required when an IHS employee is detailed to an IPA assignment in order to:

1 Effect any other required personnel action affecting the employee (e.g.; within-grade pay increase, statutory or administrative pay change, change in the employee's enrollment for life insurance); and

2 Code the employee as ceiling exempt (and uncode at assignment termination) if 50% or more of salary costs are to be reimbursed by the tribal co-sponsor.

NOTE: Even though assignees must be coded as ceiling exempt for tracking purposes, current procedures require that all employees including those coded as ceiling exempt must be counted. However, it is still important that the ceiling exempt code be input and removed at the proper time.

b. An SF-50-B is required when an IHS employee is placed on LWOP to accept an appointment with a T/TO to:

1Effect, extend, or terminate the LWOP IPA assignment; and

2Effect any other required personnel action affecting the employee.

(3) Specific provisions for processing SF-50-Bs are provided in the Guide to Processing Personnel Actions 296-33 and supplemental HHS Instructions.

(4) The SPOs are responsible for providing the employees on LWOP with a copy of the SF-50-B, along with information about the timing, amount, and receiving office for payments, if any, to be sent to the HHS PPSD to cover the employee's share of benefits. The SPO will also notify the employee of changes in the required periodic contributions (see Exhibits 3-9, 3-10, 3-11.)

H. Obligated Service Requirements

A Federal employee must agree, as a condition of accepting a regular purpose IPA assignment, to return to the Federal Government and to serve for a period of time equal to the length of the assignment. If the employee fails to carry out this agreement, he/she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary). The Director, IHS, may waive this reimbursement for good and sufficient reason.

(1) At least 30 days before the end of an IPA assignment, the SPO must notify the employees of the positions to which they will be returned at the conclusion of their assignments.

(2) The Federal supervisor and SPO must research and concur on:

a. The date through which an employee is obligated to serve with the Federal Government to equal the time spent on the IPA assignment (including any carry-over obligation from previous IPA service in HHS or elsewhere); and

b. The approximate amount expended for relocation expenses spent for the round trip IPA assignment. These expenses could become a debt due the U.S., if the assignee does not meet the service obligation.

(3) The Federal supervisor must report the service obligation date and the approximate potential debt due the U.S. in the post-assignment evaluation as prescribed in Exhibit 3-3.

- (4) The SPO having jurisdiction at the termination of a regular purpose IPA assignment, must include the following remark on all SF-50-Bs produced until the service obligation date has passed: "IPA service obligation extends to (date) or employee must reimburse cost of round trip relocation expenses paid." This entry is not required if no relocation expense were paid. The remark must also be included on an SF-50-B separating the employee for transfer to another Federal agency. Similarly, a former IPA assignee transferring into the IHS with an outstanding IPA service obligation must have an appropriate "Remarks" entry carried on all SF-50-Bs until the service obligation date has passed.
- (5) If an employee separates from Federal service before the service obligation expiration date, the SPO having jurisdiction at the time of separation is responsible for advising the appropriate Debt Collection Officer of any debt due the U.S.
- (6) Either the affected employee or the employee's Federal supervisor may, if unusual circumstances warrant, initiate a written request for a waiver of the obligated service requirement. (No waiver is required if there was no relocation expense.)
- a. The Federal supervisor will take initial action on an employee's request. A disapproved request may be appealed by an employee, or by an ex-employee involuntarily separated.
- b. A favorably endorsed waiver request will be forwarded through the Area Director to the Director, IHS. A request disapproved at any level will be returned to the initiating supervisor or employee.
- c. The final decision to approve a waiver request is reserved by the Director, IHS. (Any reviewing level may disapprove.)

I. Incentive Awards and Promotions

As would otherwise be appropriate under Chapters 45 and 54 of Title 5, Code of Federal Regulations, Federal employees on regular purpose IPA assignments are eligible to receive cash or honorary awards for performance and suggestions related to their work on IPA assignments.

- (1) Promotions

If IHS employees on a regular purpose IPA assignment wish to be considered for promotions equally with other employees in the same agency, they must leave three copies of their current resume, OF-612 or SF-171 with the designated Federal (IHS) supervisor. Employees may also provide the supervisor with a list of types of positions of interest or non interest, or request telephone consultations before referral for a specific vacancy. Federal supervisors must make a special effort to be alert to appropriate vacancies, submit copies of the employee's application and notify the employee of such actions, and maintain a record of these actions for the final report and evaluation prescribed in Exhibit 3-4.

(2)Cash and Honorary Awards

If a T/TO wishes to grant a cash award to a Federal employee on an IPA assignment, the IHS must be informed of the award, the reasons for it, and must concur in this action. If the action is concurred with, a copy of the documentation should be retained in the employee's Official Personnel Folder. Such tribal awards may be either cash or honor awards.

J.Physicians Comparability Allowance

(1)There is no legal authority to pay allowances to physicians who are assigned out of IHS under an IPA, with the exception of physicians who are assigned under special purpose IPA to perform work for T/TO under P.L. 93-638 contracts. Performing long-term assignments outside the agency negates the physician's agreement which provides for a specified period of service in return for an allowance. For a physician on a contract who goes on an IPA assignment, he/she may retain the allowance already received. A waiver is not required.

(2)Individuals on IPA assignments who are appointed to positions outside the IHS and paid by the Federal Government under appropriate pay authorities may receive an allowance if they are assigned to positions approved for PCA. The service period under the PCA agreement must be consistent with the length of the IPA assignment and the requirements in the HHS Instruction 595-1 (e.g., service agreement must be for one or two years). Employees detailed into IHS under an IPA are not eligible to receive PCA.

K.Performance Appraisals and Periodic Pay Adjustments

The Performance Appraisal System, IHS circular 97-09, dated October 15, 1997, discusses recognition of employee's performance and within-grade increases related to performance ratings.

L. Supervision

- (1) The IHS employees on regular purpose IPA assignments will receive day-to-day supervision from an individual designated by the T/TO co-sponsor.
- (2) The assignee's IHS supervisor at the time of the assignment, or a substitute Federal supervisor designated by IHS management when necessary and appropriate, will handle the IHS administrative duties regarding the assignee, e.g. submission of time and attendance reports.

M. Grievances

The IHS employees who are on IPA assignments to a T/TO may file a grievance under the IHS grievance procedure or negotiated grievance procedure, if IHS has some authority over the matter grieved or the remedy sought. Where appropriate, IHS officials issuing a grievance decision should obtain a recommendation from the tribal officials involved.

N. Equal Employment Opportunity

Federal employees on regular purpose IPA assignments to T/TOs are entitled to protections afforded under Title VII; however, tribal employers are specifically excluded from Title VII coverage. Thus, a T/TO is not required to permit employees on an IPA assignment official time to meet with an EEO counselor or an EEO investigator, nor to testify at administrative hearings. However, the same employees are entitled to participate in the administrative process established by regulation at 29 C.F.R., Part 1614 and obligated to seek EEO counseling within the prescribed time frame, if they have a claim against federal officials or employees.

O. Travel, Relocation Expenses, and Per Diem

A Federal agency may pay or reimburse a Federal employee on an IPA assignment for expenses authorized under subchapter 1 of chapter 57 of title 5, United States Code.

- (1) An employee on assignment may be reimbursed for the expenses of transportation of his/her immediate family, household goods and personal effects to and from the assignment location in accordance with section 5724; for relocation

expenses in accordance with section 5724a(a)(1); for subsistence expenses in accordance with section 5724a(a)(3); for miscellaneous expenses in accordance with section 5724a(b); and for non-temporary storage of household goods and personal effects in connection with assignment at an isolated location in accordance with section 5726(c).

(2)The Federal Government is authorized to pay for either relocation expenses to and from the assignment location or a per diem allowance at the assignment location during the period of assignment. A per diem allowance at the assignment location is intended for short-term assignments and not for longer assignments. Per diem allowances should not be paid for more than one year.

(3)The assignee can be reimbursed for the expenses of (1) transportation of the assignee and his/her immediate family and household goods and personal effects to and from the assignment location, including 60-days temporary storage; (2) per diem allowances for the assignee and immediate family while traveling to and from the assignment location; (3) subsistence for the assignee and immediate family while occupying temporary quarters (up to 30 days) at the assignment location and on return to the former post of duty; and (4) non temporary storage of household goods and personal effects in connection with assignment at an isolated location. Allowable relocation expenses do not include the costs of selling or purchasing a residence.

(4)Per diem authorizations at the assignment location cover only the individual on the IPA assignment. Expenses which may be paid include a per diem allowance at the assignment location during the assignment, and travel expenses, including a per diem allowance while on official business away from the designated post of duty during the assignment when the agency considers the travel to be in the interest of the U.S. Government. As long as this limit is observed, both the per diem allowance authorized at the assignment location and the per diem allowance while traveling on official business may be paid concurrently.

(5)A Federal employee on an IPA assignment may receive only those travel and relocation expenses authorized by the Intergovernmental Personnel Act and Federal travel regulations, whether those expenses are paid by a Federal agency or T/T0.

- (6) Reimbursement of travel, relocation and per diem expenses may be allowed only if the Federal Government employee agrees in writing to serve the entire period of his/her assignment or one year, whichever is shorter, unless the assignment is terminated for reasons acceptable to the Federal agency.
- (7) If the assignment is terminated by the employee for unacceptable reasons, the expenses are recoverable from the employee as a debt due the U.S.
- (8) The Director, IHS, may waive the right to recovery from a T/TO employee assigned to the IHS if, in his/her judgment, a waiver is justified.

P. House-Hunting

The Federal Government is prohibited from reimbursing IPA assignees for the costs of an advance trip for house-hunting. However, the Federal supervisor may allow an excused absence, not to exceed three days, for this purpose.

Q. Licensure

The Office of the General Counsel, HHS issued an opinion that IHS health professionals who are assigned or detailed to T/TOS under the IPA are not required to be

licensed in the state in which they are detailed.⁵ The opinion also states: "The United States Supreme Court has held that a state may not regulate the qualifications of Federal employees who are carrying out their authorized Federal activities within the scope of their employment." Penn Dairies, Inc. v. Milk Control Commonwealth of Pennsylvania, 318 U.S. 261 (1943); Johnson v. Maryland, 254 U.S. 51 (1920). At the foundation of the Supreme Court's decision on this issue is the doctrine of Federal supremacy, i.e., a state may not burden or tax the performance of an authorized Federal activity."

The opinion further states: "Under the Intergovernmental Personnel Act, an employee assigned or on a detail under the Act 'remains an employee of his agency' [5 U.S.C. 3373(a)]. Under the Act, such individuals are covered under the Federal

⁵ Memorandum dated May 14, 1985, from Patricia Reusing, Public Health Division, Office of the General Counsel to James Murray, Deputy Personnel Officer, HRSA, entitled "Licensing of IHS Health Professionals."

Tort Claims Act and retain other specific Federal employee benefits. Therefore, insofar as state licensure is concerned, such 'IPA' employees are to be treated no differently than if they were still working directly under IHS supervision. They are required to meet any applicable IHS or other Federal standards and licensure requirements, but they are not required to be licensed in the state in which they are working." (Emphasis added)

A second OGC opinion indicates that health professionals employed directly by a T/TO would not be exempt from state licensure requirements because they would not be Federal employees engaged in carrying out the business of the Federal Government. The opinion also indicates that Officers assigned to T/TOs under section 214 of the Public Health Service Act, as amended, are exempt from state licensure requirements.⁶

R. Standards of Conduct

(1) Conflict of Interest

- a. Employees on regular purpose IPAs are still Federal employees and must adhere to the Standards of Ethical Conduct for Employees of the Executive Branch and any other guidance published by HHS or the IHS on ethical behavior.
- b. The P.L. 93-638 provides that Federal employees on IPA assignments may represent a T/TO in a matter pending before the Federal Government, if the provisions of 5 C.F.R. Part 2635 are met.

S. Workweek, Hours of Duty, Holidays, and Leave

- (1) For employees on LWOP IPA assignments, the T/TO, in accordance with its regulations and policies, will determine the employee's workweek, hours of duty, and the holidays to which the employee is entitled.

⁶ Memorandum, dated September 10, 1992, from Frank Smith, Regional Attorney, Region VI, Office of the General Counsel, to John Davis, Area Director, Oklahoma City Area IHS.

- (2) The workweek and hours of duty for employees on detail will be determined by the T/TO.
- (3) Employees on detail will either be excused from duty on all Federal holidays without charge to leave or will receive holiday pay for work performed on a Federal holiday. Employees may be excused from duty by the T/TO on a local tribal holiday without charge to leave, but will not be entitled to premium pay if required to work on such a day.
- (4) Employees on detail continue to earn annual and sick leave under the Federal agency's leave system and to have appropriate absence from duty with the T/TO charged against that leave. The responsibility for documenting leave-earned and leave-used for detailed employees should be specified in the assignment agreement. The 240-hour limit for annual leave accrual remains in effect for IPA assignees. All leave used, as well as hours worked, must be certified by the T/TO supervisor to the Federal supervisor.

NOTE: *With flexible workdays and workweeks becoming more prevalent, the IHS should determine whether an employee's tour of duty on an IPA assignment will conflict with law or regulations governing the employee's Federal workweek, hours of duty, or holidays.*

T.Reduction-in-Force (RIF)

Employees on IPA assignment will be affected by RIF activities in the IHS as if they are present, except when retention out of order is specifically provided for in HHS 351-1-70. The SPO will communicate, in a timely manner, any options available to employees on an IPA assignment.

U.Reporting Time and Attendance for Federal Employees Detailed to a Regular Purpose IPA Assignment

- (1) Assignment agreements will provide for the Federal (IHS) supervisor (or designee) to be responsible for reporting time and attendance to the HHS PPSD (using the time and attendance report) and serving as the certifying officer for that purpose. Time and attendance will be reported in the same manner as if the employee were not on detail.
- (2) The T/TO supervisor will approve leave for the Federal employee. The agreement will provide that the T/TO supervisor (or timekeeper) will contact the IHS supervisor (or timekeeper or other designee) by telephone, biweekly, on

the day that the Federal supervisor normally forwards time and attendance reports, to orally report the time in pay status and leave taken. The T/TO supervisor (or designee) will certify and forward, in writing, information for each full pay period during the week following the end of the pay period.

(3) An 8 will be entered for regular hours worked for each pay day in the pay period the employee was in pay status with the nonfederal organization. The total number of hours in the pay period will be shown as 80. Occasionally, a full-time employee may be detailed to a T/TO where the workweek is less than 40 hours. Irrespective of this fact, the time and attendance report will show 80 regular hours worked for the pay period.

(4) Appropriate entries under type of absence will show leave used by the employee. If the full-time employee's workday with the T/TO is less than 8 hours because the workweek is less than 40 hours, 8 hours of leave will be recorded whenever an employee is absent for an entire day. When absences are less than a full day, the actual number of hours of leave taken will be shown.

(5) For employees that work an alternative work schedule, e.g., a schedule other than 8 hours a day five days a week or who are on a part-time appointment, the actual hours worked each day should be reflected on the time and attendance report. For example, an employee on a part-time appointment who works five, six-hour days each week would have 6 entered for the regular hours worked for each pay day in the pay period that the employee was in pay status with the nonfederal organization. Similarly, an employee that was on a 4-10 work schedule would have 10 entered for regular hours worked for each day in pay status.

(6) Appropriate entries under type of absence will show leave used by employees that are on a part-time appointment or work an alternative work schedule.

a. If the employee is on a part-time appointment, the employee should be charged leave based on the part-time schedule. For example, if the employee works a six-hour day and is absent the entire day, the employee should be charged with six hours of leave. If the employee works part of the day, the employee should be charged leave for the difference between the hours worked and the hours scheduled for that day.

b. An employee who is on an alternative work schedule should be charged leave based on the number of hours scheduled for the day the employee is not at work. For example, an employee scheduled to work a ten-hour shift would have 10 entered under type of absence on the time and attendance report. Similarly, if the employee is absent only part of the day, the regular hours worked plus the type of absence should equate to the total hours scheduled for the day.

V. Reporting Time and Attendance for Federal Employees on LWOP IPA Assignments

(1) The T/TO supervisor will approve leave for the Federal employee and report it as described above for employees detailed to a regular purpose IPA.

(2) The Federal supervisor will send to the HHS PPSD each pay period, a certified time and attendance report completed as follows:

a. An 8 will be entered for regular hours worked for each pay day in the pay period the employee was in pay status with the nonfederal organization. The total number of hours in the pay period will be shown as 80. Occasionally, an employee may be assigned under a LWOP arrangement to a nonfederal appointment where the workweek is less than 40 hours. Irrespective of this fact, the time and attendance report will show 80 hours for the pay period.

b. Appropriate entries under type of absence will show leave used by the employee. If the employee's workday with the nonfederal organization is less than 8 hours because the workweek is less than 40 hours, 8 hours of leave will be recorded whenever an employee is absent for an entire day. When absences are less than a full day, the actual number of hours of leave taken will be shown.

c. When an employee was in a non-pay status with the nonfederal organization for an entire day, 8 LWOP must be entered under type of absence and 0 for the regular hours worked. If the employee is receiving a Federal salary supplement, it will be adjusted automatically by the HHS PPSD.

d. In the remarks space, an entry should be made "For action under 5 U.S.C. 3371-3376."

(3) In sending the time and attendance report to the HHS PPSD, the Federal supervisor must use the transmittal memorandum shown in Exhibit 3-9.

W. Reports Required

(1) Reports

- a. Two copies of each new regular purpose assignment agreement must be submitted to: U.S. Office of Personnel Management, Office of Merit systems Oversight, IPA Mobility Programs, 1900 E Street, N.W., Room 7662, Washington, DC 20415.
- b. Assignments which are modified, extended or terminated before the original completion date must also be submitted to the OPM. All submissions are due within 30 days after the agreement, extension, termination, or modification is signed.
- c. Any significant changes in an employee's duties, responsibilities, salary, work assignment location or supervisory relationships should be reported to the OPM as a modification to the original agreement.
- d. Minor changes such as changes in salary due to cost-of-living adjustments, changes in benefits or benefit costs due to revised coverage, and very short-term changes in duties are not reported to the OPM.

(2) Federal Supervisor

The Federal supervisor must keep the HHS PPSD advised of the status of IHS employees on LWOP to an IPA assignment, using Exhibit 3-12 and appropriate attachments.

(3) Post-Assignment Evaluations of Regular Purpose IPA Assignments

- a. The following two post-audit reports and evaluations must be made by the Federal supervisor within 90 days following the conclusion of the assignment and must be forwarded through channels to all levels currently approving, or post-auditing, IPA agreements:

1 An Overall Post-Assignment Evaluation by the supervisor as prescribed in Exhibit 3-5.

2 Either a Post-Assignment Report and Evaluation of the IPA assignment of a Federal employee as prescribed in Exhibit 3-3,

or a Post-Assignment Report and Evaluation of a Nonfederal employee as prescribed in Exhibit 3-4.

b. Employees on regular purpose IPA assignments, must submit to the IHS supervisor a completed Overall Post-Assignment Evaluation by the Assignee within 75 days as prescribed in Exhibit 3-6.

7. ASSIGNMENT OF EMPLOYEES OF TRIBES/TRIBAL ORGANIZATIONS TO THE IHS

A. Detail of T/TO Employees to IHS Components

(1) Assignment Agreement

The assignment agreement will serve as the basic record for both personnel and fiscal purposes for all details of personnel to the IHS. No SF-52 or SF-50-B will be prepared.

(2) Time and Attendance Reports

Time or attendance reports will not be made within the IHS for employees of T/TOs who are detailed to the IHS. Federal supervisors may be required to report the employees time and attendance, including leave used, to the nonfederal organization as designated in the agreement. If such reporting is required, the assignment agreement will specify how this will be done.

(3) Performance Appraisals

Employees on detail to the IHS from T/TOs for 120 days or more may be given advisory IHS performance appraisals to assist T/TO supervisors who must provide formal appraisals for their employees on IPA assignments.

(4) Termination

If the IPA of a tribal employee to the IHS is terminated, the employee must return to the T/TO because there is no longer a personnel relationship between the employee and the IHS and the employee is no longer covered by Federal Employee's Compensation Act and the Federal Tort Claims Act. Therefore, the employee is not protected in case of legal suits resulting from official actions taken by the employee. If the employee continues to perform any work which involves a Federal function, the IHS would be in violation of statutory prohibitions against

acceptance of volunteer services by the Federal Government. Any Federal official responsible for accepting service for which the Federal Government is not paying, is in violation of criminal statutes.

(5) Supplemental Pay

a. A T/TO employee assigned *by detail* to a classified position in a Federal agency is entitled to earn the basic rate of pay which the duties of the assignment position would warrant under the applicable classification and pay provisions of the Federal agency. If the assignee's tribal salary is less than the minimum rate of pay for the Federal position, the agency must supplement the salary to make up the difference. Supplemental pay cannot be paid in advance or in a lump sum. It is not conditional on the completion of the full period of assignment. It may be paid directly to the employee or reimbursed to the T/TO. The supplemental pay may vary during the assignment as the assignee's regular salary varies and as revisions to the Federal pay plan occur.

b. To determine the appropriate minimum rate of pay, the assignment position must be properly described and classified in accordance with applicable classification provisions of the agency.

c. When T/TO employees proposed for detail to the IHS would be entitled to supplemental pay under circumstances which qualify under a. and b. above, the IHS will conduct negotiations with the HHS PPSD and the T/TO co-sponsor to determine one of two possible provisions:

1 The T/TO co-sponsor will provide an appropriate increase in pay, subject to the usual tax and other withholding requirements of the higher pay level, which will be cost-shared by the co-sponsors as provided in the cost-sharing arrangement; or

2 The HHS PPSD will provide periodic appropriate supplemental pay checks to the assignee.

B. Appointment of T/TO Employees in IHS Components

(1) The appointment of an individual under 5 U.S.C. 3374 will be effected in the same way as other excepted appointments. The supervisor will forward an SF-52 to the SPO and the SPO will effect an SF-50-B in the usual manner.

- (2) Before effecting an appointment, the SPO must be sure that the assignment has received all of the approvals prescribed in Exhibit 3-1.
- (3) The employee will execute an SF-61, Appointment Affidavit, upon entry on duty.
- (4) The SF-50-B terminology relating to appointment of personnel under 5 U.S.C. 3374 is prescribed in the Guide to Processing Personnel Actions 296-33 and supplemental HHS issuances.
- (5) Before preparing the SF-50-B, the SPO must check proposed employee benefits against the restrictions imposed by OPM CSRS/FERS Handbook.
- (6) For those employees of T/TOs who are on LWOP and who accept temporary Federal appointments, time and attendance reports will be prepared biweekly in the same manner as for other temporary IHS employees.
- (7) T/TO employees on LWOP and temporarily appointed to IHS positions for 120 days or more will receive performance appraisals in the same manner as other temporary appointees.
- (8) For a T/TO employee on LWOP and temporarily appointed to a position in the IHS, the HHS PPSD will act on behalf of the T/TO and carry out the requirements of HHS 334-1-50 by withholding the employee's Social Security tax, providing the employer's matching amount from IHS funds, and forwarding both to the Social Security Administration.
- (9) T/TO employees on IPA assignments with the IHS must comply with the requirements of P.L. 101-630, Title IV, Indian Child Protection and Family Violence Prevention Act of 1990 (see 9. on page 8 of the Background section).

C. Standards of Conduct (5 C.F.R. Part 2635)

(1) Conflict of Interest

- a. T/TO employees assigned to the IHS by appointment or detail are subject to a number of provisions of law governing the ethical and other conduct of Federal employees. Therefore, assignees must be advised of the restrictions outlined in 5 C.F.R. 334 and be informed of the restrictions in the Standards of Ethical Conduct for Employees of the Executive Branch.

b. When a T/TO employee is to be assigned to an IHS component which has responsibility for approving the allocation of funds or other Federal resources to the nonfederal co-sponsor, the agreement will specifically provide that the assignee will not be involved in any way with decision-making concerning that T/TO.

(2) T/TO employees on IPA assignment with the IHS, likewise, may not engage in any political activities prohibited under 5 U.S.C. 7321-7324 (Hatch Act) and October 3, 1993 Presidential bill.

EXHIBITS

HHS Transmittal 96.4
Personnel Manual
Issue Date: 3/7/96

Material Transmitted:

HHS Instruction 334-1, Temporary Assignments of Personnel Under the Intergovernmental Personnel Act of 1970, as Amended

Material Superseded:

HHS Instruction 334-1 (all)

Background:

This Instruction has been substantially streamlined and delegations of authority have increased in accordance with National Performance Review recommendations, and in support of HHS administrative initiatives calling for more streamlined rules and greater delegations of authority.

Any reference to "OPDIV" in this Instruction now includes the PHS agencies, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws, regulations, bargaining agreements, and Departmental policy.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

/s/
John J. Callahan
Assistant Secretary for
Management and Budget

DISTRIBUTION: MS (PERS): HRFC-001

INSTRUCTION 334-1

HHS INSTRUCTION 334-1
TEMPORARY ASSIGNMENTS OF PERSONNEL UNDER
THE INTERGOVERNMENTAL PERSONNEL ACT

334-1-00 Information and Guidance
10 Departmental Policy
20 Reporting and Record Keeping Requirements

Exhibit 334-1-A Delegations of Authority

334-1-00 INFORMATION AND GUIDANCE

The authorities delegated in paragraphs A.1.a., b., and c.; A.2.a. and b.; and A.3 must be exercised in accordance with Departmental policy cited in this Instruction and the requirements and/or provisions in the following references:

A.5 U.S.C. Chapter 33, Subchapter VI, Assignments to and From States.

B.5 C.F.R. Part 334, Temporary Assignment of Employees Between Federal Agencies and State, local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations.

C.Reorganization Plan Number 1 of 1953, Section 6 (which created this Department) restricts the authority to delegate authorities to Department employees. An IPA detailee is not an employee and may not exercise any delegated functions (see 334-1-10A.).

334-1-10 DEPARTMENTAL POLICY

A.Non-Federal employees on IPA details to HHS may not serve in line management positions. They may serve in an advisory or consultative capacity or in a staff assignment. They may provide day-to-day supervision of employees, provided that the exercise of delegated personnel authorities over the employees is reserved to Department employees. For example, the individual on detail could provide input to an employee's performance rating, but a Department employee would have to issue the rating.

B.Non-Federal employees who are on IPA appointments to positions in HHS may serve in line management positions.

334-1-20 REPORTING AND RECORD KEEPING REQUIREMENTS

- A. One copy of the original assignment agreement or extension of assignment agreement, as well as any modifications, must be sent within 15 days of the date of the agreement or modification to:

U.S. Office of Personnel management
Office of Merit Systems Oversight and Effectiveness
IPA Mobility Program
1900 E Street, N.W., Room 7662
Washington, D.C. 20415

- B. A copy of the IPA assignee's agreement or extension of assignment agreement and other related documents must be maintained in the respective HHS organization.

HHS Instruction 334-1 - Exhibit A

DELEGATIONS OF AUTHORITY

A. AUTHORITY DELEGATED

1. Heads of OPDIVs (including PHS agencies, the Program support Center, and AOA), the Assistant Secretary for Management and Budget for the Office of the Secretary (OS), and the Inspector General (for OIG) are delegated the authority to:
 - a. approve or disapprove the temporary assignments of personnel under the Intergovernmental Personnel Act (IPA) of 1970, as amended, between HHS components and eligible non-federal organizations for up to two years;
 - b. approve or disapprove the extension of assignments for up to an additional two years; and
 - c. waive repayment of expenses for failure to complete the obligated service agreement upon completion of an IPA assignment.
2. The authority to approve, disapprove, and/or extend special purpose IPA assignments of Indian Health Service (IHS) employees to Indian tribes or tribal organizations is delegated to the Director, IHS, under the following conditions:
 - a. a takeover contract or contract between IHS and an Indian tribe or tribal organization as authorized by Public Law 93-638 provides for such IPA assignments; and
 - b. the assignee is an incumbent of a position in a contracted function at the time of its takeover or is a substitute for such an incumbent as authorized by Public Law 100-472.
3. These authorities may be redelegated with further redelegation authorized.

B. AUTHORITY RETAINED

ASMB retains the authority to approve and disapprove IPA assignments to or from the immediate staffs of elected chief executives of State or local governments.

C. PRIOR DELEGATIONS

This delegation supersedes the February 13, 1991, Delegations of Authority concerning IPA assignments, as amended September 29, 1993, from the Assistant Secretary for Personnel Administration to the Heads of Operating Divisions and Regional Directors. To the extent that previous redelegations of authority to approve or disapprove IPA assignments made to other officials within HHS are consistent with the provisions of this delegation, they may remain in effect until new redelegations are made under the authority of this delegation.

D. EFFECTIVE DATE

This delegation is effective on the date of this transmittal.

MAY 20, 1999

TO: See Below

FROM: Director

SUBJECT: Delegation of Authority for the Intergovernmental Personnel Act of 1970

Authority Delegated

Pursuant to the authority delegated to the Director, Indian Health Service (IHS), by the Assistant Secretary for Management and Budget (ASMB), on March 7, 1996, I hereby delegate to the positions listed within this delegation, the authority to:

- a. Approve or disapprove the temporary assignments of personnel, for up to 2 years, under the Intergovernmental Personnel Act (IPA) of 1970, as amended, between Department of Health and Human Services (HHS) components and eligible non-Federal organizations.
- b. Approve or disapprove the extension of assignments for up to an additional 2 years.
- c. Waive repayment of expenses for failure to complete the obligated service agreement upon completion of an IPA assignment.
- d. Approve, disapprove, and/or extend **special purpose IPA assignments** of IHS employees to Indian tribes or tribal organizations where both of the following conditions are met:
 - (1) An award is made under the authority of the Indian Self-Determination and Education Assistance Act (ISDA), Public Law (P.L. 93-638), as amended; and
 - (2) The IPA assignee is an incumbent of a position in a function that is included in an ISDA award at the time of its transfer to a tribe or tribal organization or is a replacement for such an incumbent as authorized by P.L. 100-472, the Indian Self-Determination and Education Assistance Act Amendments of 1988.

Page 2 - See Below

To Whom Delegated

Director of Headquarters Operations
Director, Office of Management Support
Director, Office of Public Health
Director, Division of Human Resources (DHR)
Area Directors

Authority to Redelegate

These authorities may not be redelegated.

Information and Guidance

Information on requirements for exercising these authorities may be found in the HHS Instruction 334-1, "Temporary Assignments of Personnel Under the Intergovernmental Personnel Act of 1970," as amended, and 5 CFR Part 334.

Reporting Requirements

The Director, DHR, will maintain a record of all IHS IPA agreements. Prior to the effective date of the agreement, a copy of the IPA assignee's agreement or extension of assignment agreement and other related documents must be sent by the IHS Area Personnel office entering into the IPA agreement to the Director, DHR.

Prior Delegations

This delegation of authority supersedes Paragraph 1.d regarding IPA assignments contained in the Blanket Delegation of Authority Memorandum, Subject: Delegation of Personnel Administration Authorities, from the Director, IHS, to the DHO, dated april 7, 1995.

Effective Date

This delegation is effective upon date of signature.

/s/ Michael H. Trujillo, M.D.
Michael H. Trujillo, M.D., M.P.H., M.S.
Assistant Surgeon General

Addressees:
DHO
Area Directors

Director, OMS
Director, DHR
Director, OPH

OF-69

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

OF-69 (continued)

Federal Supervisors Post-Assignment Report - Federal

Federal Supervisors Post Assignment Report - Non Federal

Overall Post-Assignment Evaluation - Supervisor

Overall Post-Assignment Evaluation - Assignee

Overall Post-Assignment Adjustment

Extension

Extension (continued)

**MEMORANDUM FOR SENDING DOCUMENTS
TO PERSONNEL AND PAY SYSTEMS DIVISION**

DATE:

TO: Director, Personnel and Pay Systems Division, HHS

FROM:

SUBJECT: Payroll Account of an Employee Assigned to Leave Without Pay
Under the Intergovernmental Personnel Act (5 U.S.C.
3371-3376)

Name:

Social Security Number:

Timekeeper Number:

The above designated employee is assigned to a nonfederal organization under a leave without pay arrangement under the Intergovernmental Personnel Act.

The following documents are forwarded herewith for appropriate action:

_____ Time and Attendance Report

_____ Notification of Personnel Action - SF 50-B

The documents stapled to this memorandum should remain attached hereto since the payroll record of this employee is handled apart from the automated system.

(Signature)

Attachments

**SAMPLE MEMORANDUM FOR PROVIDING
INFORMATION TO FEDERAL
EMPLOYEES ON LEAVE WITHOUT PAY WITH A
SALARY SUPPLEMENT**

DATE:

TO: (Name of Employee)

FROM: (Servicing Personnel Officer)

SUBJECT: Information About Your Responsibilities While on
Leave Without Pay (LWOP)

During your period of LWOP, you will receive pay from the nonfederal organization by which you will be employed, in accordance with its rules and procedures. In addition, because your pay in your Federal position is more than your nonfederal salary, your nonfederal salary will be supplemented by the amount of the difference. You will receive the salary supplement from the HHS PPSD.

While on LWOP, under 5 U.S.C. 3373, you are entitled to continue certain of your Federal benefits, provided you pay the employee's share of the cost of them.

The HHS PPSD will deduct from your Federal salary supplement on a biweekly basis your share of the costs of these benefits. If at any time the salary supplement is not enough to cover the costs of all the benefits, the HHS PPSD will deduct for whichever benefits can be covered completely and you will be responsible for paying the others.

Each pay period, you will receive from the HHS PPSD an Earnings and Leave Statement (Form OS 340). This form will always show the deductions which have been made from your pay. If no deduction is made for a particular benefit (e.g., health insurance), the current deductions block on the form will have no entry. In such a case, you must pay directly to the Personnel and HHS PPSD the amount that would otherwise have been covered by a deduction.

(SAMPLE MEMORANDUM CONTINUED)

Checks or money orders should be made payable to

"HHS, Office of the Secretary"

and must be forwarded every 2 or 4 weeks. In sending your payment, be sure to enclose a covering statement explaining that this is a payment to cover your share of the costs of Federal employee benefits while you are on LWOP under 5 U.S.C. 3373. Always include your Social Security Number on both your check or money order and your covering statement. A copy of Exhibit 3-13 is attached as a model covering statement, and it contains the mailing address of the HHS PPSD.

(Please keep your Exhibit 3-12 as an "original" for reproduction of additional copies as you need them.)

Other matters of importance to you are covered by the assignment agreement negotiated between the Department and the nonfederal organization with you as a concurring third party. A copy of the agreement and matching Notification of Personnel Action (SF 50-B) have been (or will be) furnished to you.

(Servicing
Personnel Officer)

(NOTE TO SERVICING PERSONNEL OFFICER: *If it is clear, at the time the SF 50-B placing the employee on LWOP is prepared, that the Federal salary supplement is not enough to cover all of the employee's withholdings, you should determine what will be withheld and enter on the SF 50-B what the employee must pay, in the same way you would do for LWOP without a salary supplement. You must then modify this sample memorandum to include appropriate information from Exhibits 3-11 and 3-12. You may also wish to furnish the employee with an Exhibit 3-12 with the blanks already properly completed so that the employee need only reproduce copies for forwarding with checks or money orders.)*

**SAMPLE MEMORANDUM FOR PROVIDING
INFORMATION TO FEDERAL
EMPLOYEES ON LEAVE WITHOUT PAY WITHOUT
A SALARY SUPPLEMENT**

DATE:

TO: (Name of Employee)

FROM: (Servicing Personnel Officer)

SUBJECT: Information About Your Responsibilities While on
Leave Without Pay (LWOP)

During the period of your LWOP, you will receive your pay from the nonfederal organization by which you will be employed, in accordance with its rules and procedures. However, you are entitled to continue certain of your Federal benefits, provided you pay the employee's share of the cost of them.

The attached Notification of Personnel Action (SF 50-B) indicates the amount you must pay each pay period to continue retirement, health benefits, and life insurance coverage. You may pay this amount every 2 weeks, or you may double the amount and pay it every 4 weeks. It is your responsibility to remember to make these payments no less frequently than every 4 weeks. Your failure to do so will result in loss of coverage.

Checks or money orders should be made payable to

"HHS, Office of the Secretary"

and forwarded to the HHS PPSD. In sending your payment, be sure to enclose a covering statement explaining that this is a payment to cover your share of the costs of Federal employee benefits while you are on LWOP under 5 U.S.C. 3373. A copy of HHS Exhibit 3-12 is attached as a model covering statement, and it contains the mailing address of the HHS PPSD.

(Please keep Exhibit 3-11 as an "original" for reproduction of additional copies as you need them.)

(SAMPLE MEMORANDUM CONTINUED)

The first payment must be mailed in time to be received by the end of the second pay period after your LWOP action is effective. Always include your Social Security Number on both your check or money order and your covering statement.

Your retirement and life insurance coverage is based on the Federal salary for the position from which you are on LWOP. A change in this Federal salary could result in a change in your contribution. A change in costs, either by periodic cost adjustments announced by the U.S. Office of Personnel Management or your change in an election of benefits, could also change the required contribution. You will be notified of new payment amounts if any of these changes occur and affect the required amounts of your payments.

Other matters of importance to you are covered in the assignment agreement negotiated between the Department and the nonfederal organization with you as a concurring third party. A copy of the agreement has been (or will be) furnished to you.

(Servicing Personnel Officer)

(NOTE TO SERVICING PERSONNEL OFFICER: You may wish to furnish the employee with an Exhibit 3-12 with the blanks already properly completed so that the employee need only reproduce copies for forwarding with checks and money orders.)

**SAMPLE MEMORANDUM FOR EMPLOYEES
TO IDENTIFY CHECKS OR MONEY ORDERS
FORWARDED TO THE
PERSONNEL AND PAY SYSTEMS DIVISION**

DATE:

FROM: (Name of Employee)

TO: Personnel and Pay Systems Division, HHS
Silver Spring Centre
8455 Colesville Road, Room 112, MS 700
Silver Spring, MD 20910

SUBJECT: Transmittal Identifying Purpose of Check or Money Order

The attached ___ check (bearing Social Security Number)
___ money order (bearing Social Security Number)

is in full payment of the employee's share of Federal employee benefits continued while on LWOP for the

___ 2 week period ___ 4 week period
beginning, Sunday, _____ ' _____
(month) (day) (year)

and ending Saturday, _____ ' _____
(month) (day) (year)

benefiting:

Employee's Name: _____
Social Security Number: _____ - _____ - _____
Timekeeper Number: _____

Amount of Check: \$ _____

Covering:

Retirement: \$ _____
Health Insurance: \$ _____
Life Insurance: Basic: \$ _____
Option A: \$ _____
Option B: \$ _____

**SAMPLE MEMORANDUM FOR EMPLOYEES
TO IDENTIFY CHECKS OR MONEY ORDERS
FORWARDED TO THE
PERSONNEL AND PAY SYSTEMS DIVISION
(CONTINUED)**

(for ___x ___x ___x ___x ___)

Option C: \$ _____
Combined Federal Campaign: \$ _____
U.S. Savings Bonds: \$ _____

Reference 5 U.S.C. 3373

(Signature of IPA Assignee on LWOP) _____

**SAMPLE LETTER FROM THE TRIBE/TRIBAL
ORGANIZATION TO IHS PROPOSING
A REGULAR PURPOSE IPA ASSIGNMENT**

Dear -----⁷

This is a proposal to enter into an IPA assignment agreement with Mr. Joe Doe, Health Systems Specialist, GS-671-11, currently employed at the Indian Health Service Hospital, (indicate duty location).

The reason for proposing this assignment is to provide assistance to our Tribal Health Board in assuming responsibility for the community outreach program on accident prevention in the home. We want Mr. Doe to assist in development of the narrative materials to be used in the outreach presentations, slides, tapes, etc., and to conduct the meetings at several community centers located on the reservation. (Describe the desired duties in detail so that the potential assignee's responsibilities are clearly defined.)

We anticipate that the assignment will take approximately six months to complete and would like to have him start the assignment about May 2, 1994. (Always state anticipated length of assignment and approximate starting date. Remember, this is the tribal proposal, but it is subject to negotiation with IHS Management and the employee).

The subsidy we are to receive includes funds to pay his salary. We are requesting that the assignment be on a detail basis with the IHS picking up the costs for salary and personal benefits, health and life insurance. We propose to have the personnel costs subtracted from the subsidy at the outset and given to your agency for administration of the employee's pay and benefits. (Salary and personal benefits are negotiable items. If funds are not available, it should be so stated. Likewise, if funds are available, that should be indicated in the proposal.) We expect to be able to fund the cost of materials and transportation costs related to Mr. Doe's assignment from existing tribal funds. (Any

⁷ Official letterhead stationery should be used, if available. The letter should be addressed to the Area Director, IHS, as he/she has been delegated authority to negotiate P.L. 93-638 contracts and IPA assignments for employees of the IHS.

**SAMPLE LETTER FROM TRIBE/TRIBAL
ORGANIZATION TO IHS PROPOSING
A REGULAR PURPOSE IPA ASSIGNMENT
(CONTINUED)**

time there will be other costs related to the project assignment this should be mentioned.)

While assigned to the tribal outreach project, Mr. Doe will be under the supervision of the Tribal Health Planner, Mrs. Blank. She will be responsible for directing day to day activities and reporting time and attendance to your office. (Any time there is a detail of an IHS employee someone has to be responsible for reporting time and attendance to an IHS staff person, who will be designated in the agreement for keeping records of time, attendance and other pay matters.)

Mr. Doe is currently occupying government quarters at the hospital. Mr. Doe would like to remain in the quarters he is currently occupying while on assignment. We would appreciate your favorable consideration of his request as there is no other tribal or private housing available. (On occasion, there are other matters, such as housing, which need to be negotiated prior to effecting agreement. On long term assignments, it is often necessary for the IHS to request that an employee vacate quarters, especially if the IHS is seeking a temporary replacement.)

If Mr. Doe can remain in quarters, there will be no additional costs for moving his family and household goods. We do not have funds available for this purpose. (Occasionally, there are IPA assignments which require the employee to move. There may be a problem with situations related to payment of movement of household goods. This needs to be discussed during the negotiation process.)

Your early consideration of our proposal will be appreciated. To make arrangements for negotiations of the IPA agreement or for further information, please contact me or Mrs. Blank at (address and telephone number, including area code).

Sincerely yours,

(Tribal Representative's Signature)

IPA ASSIGNMENT CHECKLIST

Assignment of IHS Employees to a T/TO.

<u>Description of Item</u>	<u>Completed</u>		<u>NA*</u>	
<u>Date</u>	Yes	No	Yes	No
1. Proposal for assignment initiating OF-69 received. (See Exhibit 3-13)	_____	_____	_____	_____
The IPA Question and Answer sheet sheet given to employee.	_____	_____	_____	_____
2. Employee has agreed to the assignment.	_____	_____	_____	_____
a. Employee given position title and description.	_____	_____	_____	_____
b. Employee told proposed length of assignment.	_____	_____	_____	_____
3. Assignment is (Check one):				
a. Detail basis. _____				
b. LWOP basis. _____				
4. Assignment is (Check one):				
Regular purpose IPA and memorandum authorizing position developed and signed. _____				
5. SF-52, Request for Personnel Action initiated by losing IHS organization (see Exhibit 3-17)	_____	_____	_____	_____
6. Employee given full information on benefits.				
a. Health insurance.	_____	_____	_____	_____
b. Life Insurance (Survivor benefits).	_____	_____	_____	_____
c. Retirement (Survivor benefits, etc.)	_____	_____	_____	_____
d. Leave (Annual and sick).	_____	_____	_____	_____
e. Benefits question and Answer Sheet.	_____	_____	_____	_____
f. Thrift Savings Plan.	_____	_____	_____	_____
g. Other _____.	_____	_____	_____	_____

IPA ASSIGNMENT CHECKLIST (CONTINUED)

<u>Description of Item</u>	<u>Completed NA*</u>		<u>Date</u>
	<u>Yes</u>	<u>No</u>	
7. Employee notified as to where his/her check will be sent.	___	___	___
8. Pay increases and promotions explained to employee.	___	___	___
9. Employee notified as to arrangements concerning withholdings and documented accordingly.	___	___	___
10. Travel and transportation expenses explained to employee.	___	___	___
11. Employee notified as to name and location of supervisor during the IPA assignment.	___	___	___
12. Performance approval process reviewed with employee and gaining organization to assure understanding of responsibilities and time frames.	___	___	___
13. Employee notified as to point of contact within the losing organization in the event of a problem.	___	___	___

Personnel Representative's Signature

Date

*Not Applicable

SAMPLE SF-52

Exhibit 3-15
Page 2
SAMPLE SF-52

**SAMPLE MEMORANDUM FOR DETAILING INDIAN
HEALTH SERVICE EMPLOYEES TO TRIBES\TRIBAL
ORGANIZATIONS ON REGULAR PURPOSE IPA
ASSIGNMENTS**

DATE:

TO: (Servicing Personnel Office)

FROM: (Area Director)

SUBJECT: Detail of IHS Employee on IPA Assignment to
Tribe/Tribal Organization

In accordance with the procedures in the Personnel Aspects of the Indian Self-Determination and Education Act Public Law 93-638 Handbook, and the Assignment Agreement for regular purpose IPA Assignment, OF-69, for

_____ (Name of Employee) _____,

_____ (Position Title, Series, Grade) _____,

this is to certify that an assignment to _____ (Name of Health Facility) _____

with _____ (Name of T/TO) _____

1) a position and funds will be made available in _____ (Area) _____ for the reassignment of the above named employee; and/or 2) arrangements will be made within the IHS or PHS for the reassignment of the employee in the event the T/TO requests the removal of the employee, or it has been determined that the services of the employee are no longer necessary.

(Signature of Area Director)

Attachment
SF-52

QUESTIONS AND ANSWERS

QUESTIONS AND ANSWERS REGULAR PURPOSE IPA ASSIGNMENTS

1. Q.What is the Intergovernmental Personnel Act?

A.Title IV of the Intergovernmental Personnel Act (IPA) of 1970 permits the temporary assignment of personnel between the Federal Government and local governments and institutions of higher learning.

2. Q.How does P.L. 93-638 affect the Intergovernmental Personnel Act?

A.Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975 amended the Intergovernmental Personnel Act to include Indian tribal governments and Indian tribal organizations as local government entities eligible for participation in IPA assignments.

3. Q.What effect did P.L. 93-638 have?

A.Federal employees may be temporarily assigned to Indian tribal governments or tribal organizations for the purpose of bringing specialized knowledge and experience of skilled people to address problems of mutual concern.

4. A.Can employees of T/TOs be assigned to the Federal Government under the IPA as amended by P.L. 93-638?

Q.Yes. The Act permits this. In the IHS, tribal employees may either be detailed to the IHS or given a temporary excepted appointment in accordance with the terms of the agreement.

5. Q.For what purposes would a regular purpose IPA assignment be made?

A.The assignment of IHS employees to T/TOs could be made to assist the T/TO in developing their capacity to manage their own health care delivery system. Assignments of tribal employees to the IHS could be made for such purposes as training or developing employee skills and knowledge in a particular area of health care delivery or program administration.

6. Q.Are all IHS employees covered under the IPA assignment procedures?

A. No. In general, most civil service employees are covered, but Commissioned Officers would be assigned under provisions of the Public Health Service Act.

7. Q.How do you arrange an IPA assignment?

A. Either the IHS or the T/TO may initiate the request for an assignment.

8. Q.Is there any special format for the request?

A. All requests must be in writing. The proposal should outline the:

(1)Purpose of the assignment.

(2)Kind of employee skills (education and experience) required to do the assignment.

(3)Estimated length of the assignment.

(4)Proposals for payment of salary and other expenses.

(5)Location where work is to be performed.

9. Q.Why must there be a formal assignment agreement?

A. (1) The assignment must be documented. The agreement will indicate the terms and conditions of the assignment that have been agreed upon by the IHS and the T/TO.

(2)The agreement will document the employee's consent to the assignment by his/her signature and the signatures of all other parties to the agreement.

(3)The agreement provides a record of the rights and responsibilities of each of the three parties to the agreement.

10. Q.Can employees who are in a documented career ladder position before they go on a regular purpose IPA assignment be promoted while on the assignment?

A.No. However, the T/TO may pay a supplemental salary under the provisions of Chapter 3, 9.A.(5) of this Handbook.

11. Q.What is the difference between a regular purpose, special purpose, and replacement IPA?

A.A regular purpose IPA assignment is an assignment to or from the IHS which (1) serves as a developmental opportunity for the assignee, (2) supports the agency mission, (3) shares scarce expertise, (4) supports a U.S. Government initiative, (5) strengthens Intergovernmental relations, (6) assists in the transfer of new ideas or technology, or (7) serves other appropriate purposes not covered.

A special purpose IPA assignment is an assignment which continues an incumbent in an IHS function at the time of initial P.L. 93-638 take over contract to perform the same duties at the same location with a T/TO.

A replacement IPA is made when an employee on a special purpose IPA fails to complete the period of assignment, the tribal organization is unable to fill the position, and there is another employee who is willing to accept the position and is qualified for the position. A replacement employee may be assigned to complete the period of assignment. The agreement may be for a different period of assignment as determined by the IHS and the T/TO.

12. Q.How long may a regular purpose IPA assignment last?

A.Regular purpose assignments may be made for a period of a few weeks up to two years and may be extended beyond two years, for up to an additional two years, subject to required approvals.

13. Q.How are regular purpose assignments terminated?

A.Assignments may be terminated at any time at the option of the IHS, the T/TO, or the employee. However, each written agreement must be checked to De certain that the agreed upon procedure for documenting termination of assignment has been followed.

In establishing procedures for terminating such assignments, consideration should be given to minimum advance notice requirements in the event that termination of the assignment would result in a need to implement RIF procedures.

14. Q.How does an employee find out about employee rights, benefits, and obligations, while on assignment?

A.These are outlined in the individual assignment agreement. Rights, benefits, and obligations vary with each type of assignment, so they should be checked carefully.

15. Q.What travel and transportation expense are allowed?

A.The following expenses may be paid:

- (1) If there is a change in duty station, travel and transportation of household goods may be paid in accordance with established government regulations.
- (2)Pre-assignment house hunting trips and payment of certain real estate costs (usually allowed in connection with permanent moves) are generally not allowed due to the temporary nature of the assignment. However, this may vary under different situations. An administrative determination must be made in advance of the assignment and documented in the assignment agreement.
- (3)Travel and per diem (i.e. lodging and miscellaneous and incidental expenses) allowances for official business during the assignment, as a general rule, will be paid by the T/TO to which assigned. However, if there is official travel authorized by the IHS, then the Federal agency will pay the expenses. Again, these special conditions must be documented in the written assignment agreement.

16. Q.May regular purpose assignments be made between Area Offices? For example, may an IHS employee in one Area Office be assigned to a T/TO in another Area Office?

A.Yes. However, these situations require extensive negotiations between the Area Offices involved. When a T/TO requests a regular purpose IPA assignment of an employee under the jurisdiction of a different Area Office, the employee must first be reassigned to a position in the Area Office from which the IPA will take place. For example, a T/TO in Area A requests an IPA assignment of an employee in Area B, the employee must be reassigned to a position in Area A where the IPA will take place.

17. Q.What type of form is used for documenting a regular purpose or replacement IPA assignment agreement?

A.The Modifications to OPM's Optional Form (OF) 69 Assignment Agreement for Regular Purpose IPA Assignment Form, Exhibit 3-2 is used for documenting the assignment agreements. Copies are available in this Handbook or from the SPOs forms requisition channels.

18. Q.At what point should the SPO be involved in the negotiation of assignments?

A.As soon as possible. From the date that a request for assignment is received or initiated by IHS, the assistance and advice of the SPO should be sought to ensure that the effects of the assignment(s) on organizational structures (such as RIF) are anticipated.

19. Q.May employees of Federal agencies other than IHS or BIA be assigned to T/TOs under the Intergovernmental Personnel Act?

A.Yes. T/TOs may request regular purpose IPA assignments of employees from other Federal agencies. All such requests should be directed to the Federal agency concerned, not the IHS or the BIA.

20. Q.May T/TO employees be assigned under regular purpose IPA agreements to the IHS for training purposes?

A.Yes. T/TO employees may be assigned by regular purpose IPA on detail or given an excepted appointment to the IHS for training purposes.

21. Q.Are employees assigned under regular purpose IPA agreements counted against employment ceilings?

A.Each situation has to be reviewed individually. In some cases, they will be counted and in others they will not. As a general rule if the IHS is paying 50% or more of the employee's salary and benefits, he/she is counted against the ceiling.

22. Q.What job protection rights does an employee have if he/she accepts an IPA assignment?

A.An employee on a regular purpose IPA assignment normally will return to the IHS upon completion of the assignment. However, he/she will not necessarily be returned to the same position in the same location. The employee could be reassigned anywhere in the IHS.

23. Q.Does an employee have to resign to accept assignment under a regular purpose detail or LWOP IPA?

A.No. An employee assigned to a T/TO under an IPA assignment remains a Federal employee. Employees on detail continue to occupy their Federal positions and they remain on the payroll of, and are paid by, the IHS.

Employees on LWOP assignments continue to occupy their Departmental positions of record during the assignment but receive formal appointments from, and are paid by, the T/TO.

24.Q.When employees go on an IPA assignments to T/TOs, are they still covered by the negotiated labor agreement?

A.Yes. They are covered, but the employees should check with the local Area Labor Relations Specialist.

25. Q.May an employee on an IPA assignment to a T/TO be fired or have other disciplinary action taken against him/her by the T/TO?

A.An IPA assignee could not be fired by the T/TO. The T/TO could recommend disciplinary action or removal, but each of these actions would be covered by established civil service procedures, rights of appeal, etc. Only a Federal official with this delegated authority can approve the action.

26. Q.What salary arrangements are permissible under the regular purpose IPA assignment regulations?

A.An employee will not be paid less than current Federal pay rates for the grade and position occupied. If the tribal organization shares part of the salary cost, and their contribution is less than the employee's current

pay rate, the IHS will supplement salary to maintain the employee's current pay rate.

27. Q.Can an employee who is going on a regular purpose IPA assignment be promoted into the IPA position?

A.There are no provisions for making promotions into positions that are not part of the Federal work force. Promotions can only be made to positions in the Federal work force that have been classified according to OPM classification standards.

A promotion is the change of an employee to a position at a higher grade level within the same job classification system and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.

Since IPA positions are not part of the Federal Classification system and pay schedule, it is not possible to promote employees into those positions.

A federal employee on detail is entitled to his/her Federal rate of pay. However, such assignee may receive a supplemental salary from a State or local government when the position to which he/she is being assigned has a higher established rate of pay. Since federal employees are only entitled to their current federal rate of pay and supplemental payment, if appropriate, by State or local government, promotions into IPA assignments are neither intended or allowed.

CHAPTER 4

CHAPTER 4

TRIBAL EMPLOYMENT OF FORMER IHS EMPLOYEES (CIVIL SERVICE)

1. GENERAL

When a tribal government or tribal organization contracts with the IHS under authority of P.L. 93-638 to assume a function previously performed by civil service IHS employees, the function ceases to exist in the IHS at that location. Therefore, the civil service positions are effectively abolished through implementation of the contract.

The T/TO may elect, under these circumstances, to offer employment (direct hire) to the incumbents of the civil service positions or to negotiate IPA assignments for the incumbents. However, there is no obligation for the T/TO to do so, and failure to offer tribal employment or IPA assignment is not appealable under Federal statute. Affected employees not offered tribal employment or IPA assignment must be outplaced in other IHS vacancies or separated through RIF as discussed in Chapter 5 of this Handbook.

2. INTRODUCTION

Section 104(e)-(h) of P.L. 93-638, as amended by section 3(a) of P.L. 99-221 and section 203(d) of P.L. 100-472⁸, provides that "an employee serving under an appointment not limited to one year or less, who leaves Federal employment to be employed by a tribal organization, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities" is entitled to retain certain Federal benefits if the T/TO so agrees. The employee may retain coverage rights and benefits under:

Compensation for Work Injuries (Chapter 81, Title 5,
U.S. Code)
Federal Employees Retirement System (Chapter 83 of

⁸P.L. 100-472 removed the December 31, 1988, restriction from the conversion of benefits.

Title 5, U.S. Code)
Civil Service Retirement System (Chapter 83 of Title 5,
U.S. Code)
 Thrift Savings Plan (Chapter 84 of Title 5, U.S. Code)
 Life Insurance (Chapter 87 of Title 5, U.S. Code)
Health Insurance (Chapter 89 of Title 5, U.S. Code)

The IHS has a responsibility to fully inform and counsel employees desiring to transfer to tribal employment of their rights and obligations under P.L. 93-638. A mutual agreement must be reached between the T/TO and the employee in order for the employee to retain benefits at the time he/she leaves Federal service to accept employment with a T/TO.

3. PROCEDURES

A. Conditions for Retention of Benefits

- (1) In order to retain coverage in the retirement, health insurance, and life insurance programs, the necessary employee deductions and tribal employer contributions for the period of employment with the tribal organization must be deposited (paid) into the appropriate civil service fund.
- (2) The employee must be employed by the T/TO with no break-in-service from his/her Federal employment.
- (3) The T/TO's agreement must be obtained for the benefits to continue.
- (4) The T/TO's agreement to continue benefits must be documented on RI 38-130 (formerly SF-2816), Retirement, Life Insurance, and Health Benefits Under the Indian Self-Determination and Education Assistance Act-Public Law 93-638, prior to the effective date of termination of the employee's Federal employment.

B. Benefits Which May Be Continued

- (1) Workers' Compensation

If the injured employee, or his/her dependents in the event of his/her death (caused by on-the-job accident), receives any payment (including an allowance, gratuity or payment under an insurance policy for which the tribal organization pays the entire premium) on account of the same injury or death, the injury or death compensation payable by the Office of Workers' Compensation Programs (OWCP) (paid) into the appropriate civil service fund.

(2) Retirement Benefits Coverage

- a. The employees deductions and agency contributions may continue to be paid for either the CSRS or the FERS for periods of tribal employment. The period during which such payments and coverage are continued is considered to be creditable service for retirement purposes. Under CSRS, days of unused sick leave to the employee's credit at the time of separation (to be employed by the T/TO) remain to his/her credit for retirement purposes during covered service with the T/TO. Under FERS, employees do not receive credit for unused sick leave.
- b. A person who leaves Federal employment to be employed, with no break-in-service following separation from the IHS, to work in a program contracted with the IHS by a T/TO under the provisions of P.L. 93-638, is covered by the retirement program when exercising reemployment rights authorized by section 104(i) of P.L. 93-638 after service with a tribal/tribal organization.
- c. Unused sick leave that is credited for civil service retirement purposes under P.L. 93-638 is not reinstated should the employee return to federal service after a three year break in service. Unused sick leave is not credited for FERS.

(3) Life Insurance Coverage and Benefits

The employee deductions and agency contributions may continue to be paid for tribal employment, and the period during which such payments and coverage are continued is considered to be service as an employee under Chapter 87 of Title 5, U.S. Code.

(4) Health Insurance Coverage and Benefits

The employee deductions and agency contributions may continue to be paid for tribal employment, and the period during which such payments and coverage are continued is deemed to be service as an employee under Chapter 89 of Title 5, U.S. Code.

(5) Thrift Savings Plan

The P.L. 100-472 authorized coverage under FERS as one of the benefits that may be maintained if the tribal organization agrees. In accordance with HHS Personnel Circular 1600-1,

Exhibit 1600-1-E, tribal organization and an employee agree to continue FERS retirement coverage the tribal organization must provide basic and appropriate employer matching contributions as an integral part of FERS coverage.⁹

C. Processing the Employee's Resignation from the IHS and Employment With the T/TO

- (1) When an individual first makes it known to his/her immediate supervisor that he/she intends to resign in order to go to work for the T/TO, the supervisor should notify the SPO immediately by sending Request for Personnel Action, SF-52, through appropriate channels to the SPO. The SF-52 must indicate the desired effective date of the resignation and must be signed by the employee.
- (2) The SF-52 should be accompanied by a transmittal memorandum (sample at Exhibit 3-1 of this chapter) from the employee requesting retention of Federal employment benefits and a completed SF-2816 (copy at Exhibit 4-2 of this chapter) in original and three (3) copies. The Kind of Action Requested on the SF-52 will include the statement "Resignation - Under P.L. 93-638." SF-52 remarks will include: "Reason: to accept employment without a break in service under P.L. 93-638 with (name of T/TO)" and "Retirement Retained: Sick Leave Balance (hours)" if applicable.
- (3) The employee's elections concerning retention of benefits, and the T/TO's concurrence in such election must be documented on the SF-2816 prior to the effective date of the employee's resignation, or the eligibility for retention of benefits is forfeited.
- (4) The SPO processes the resignation and produces an SF-50-B, Notification of Personnel Action, effecting the resignation. A letter explaining his/her reemployment eligibility and acknowledging the receipt of his/her

⁹ Although this benefit may be continued there are no administrative procedures presently established. Since the individual is no longer a Federal employee, however, the tribal organization would be responsible for withholding the employees share and contributing the employers share of TSP contributions. In the event that this occurs, contact would have to be made with central payroll to arrange for payment of the contributions and to deposit funds.

election regarding any continuation of benefits should be sent to the employee along with the SF-50-B. A sample transmittal letter is provided as Exhibit 4-3 of this chapter.

(5) Any employee who is considering resignation to accept employment, must be provided a copy of Exhibit 4-4, Questions and Answers About Retention of Federal Benefits Under P.L. 93-638, section 104(e)-(h).

(6) The IHS will cooperate in releasing IHS employees to accept employment with the T/TO. However, employees should be aware that they will no longer retain Federal benefits other than those mentioned above. They will no longer be protected by the Federal procedures for grievances, appeals, union participation, sick leave and annual leave, periodic salary increases, etc.

D. Benefit Contributions (e.g., retirement, health insurance, life insurance) for Former IHS Employees Working for T/TOs

(1) When an IHS employee (1) leaves Federal employment and is employed by a tribal organization under P.L. 93-638, and (2) the employee and the tribal organization elect to retain the employee's coverage under the civil service retirement system, FERS, the Federal Employees Life Insurance Program, Federal Health Benefits Program, etc., the tribal organization must make the required contributions to the appropriate fund(s).

(2) Contributions will be sent to the HHS PPSD which will forward them to the U.S. Office of Personnel

Management. The contributions will be sent to the following address:

Personnel and Pay Systems Division, HRS/PSC/HHS
Silver Spring Centre
8455 Colesville Road
Room 1112, MS 700
Silver Spring, MD 20910

(3) Checks must be made payable to the Department of Health and Human Services and must include the following identifying information:

a. The name and social security number of the employee to whom the payment should be credited;

b.The time period the payment covers;

c.Identification of the contribution being made (e.g., retirement, life insurance, health insurance, etc.); and

d.The words "Indian Self-Determination Act Contribution."

E.Processing Payments for Former IHS Employees Working for Tribal Organizations

When an employee retains benefits, the T/TO must submit the employee deductions for these benefits, plus the tribal share to the HHS PPSD. In addition to the

RI-38-30, the employee and tribal share of benefit deductions/contributions must be documented on form Benefit Contributions for Former Federal Agency Employees Working for Tribe/Tribal Organizations Under P.L. 93-638 (Exhibit 4-4) and forwarded to the HHS PPSD with remittance.

4.NON-RETENTION OF BENEFITS

Whenever a P.L. 93-638 contract is written, the T/TO has the option of offering current Federal employees employment without choosing to offer a continuation of their Federal benefits. Employees accepting the offer of employment must resign from the Federal service in order to be hired by the T/TO. An employee who resigns to accept tribal employment under these conditions has the same rights as any other employee separating from the Federal service.

A.Federal Employee's Group Life Insurance (FEGLI)

(1)Federal insurance may be converted as follows:

a.Regular insurance stops at the end of the day on which the employee is separated for any reason. Optional insurance terminates when regular insurance terminates. However, when regular or optional insurance, or both, terminates (except by waiver or declination), the employee continues to have life insurance protection (not accidental death and dismemberment) for 31 days thereafter. During that time the employee is entitled to convert to an individual policy of life insurance when group insurance terminates with two exceptions - 1) the employee has previously filed an uncancelled waiver or declination, and 2) the employee returns to Federal service within three calendar days to a

position in which he/she is eligible to reacquire insurance as an employee.

b. The employing office is required to give the employee a notice of a conversion privilege when group insurance terminates under conditions entitling him/her to convert to an individual policy. An employee entitled to convert and desiring further information must send the original copy of SF-2819 to OFEGLI within 31 days after insurance stops or within 15 days after notification of conversion privilege, whichever basis gives the most time. The OFEGLI will send the employee a letter showing the maximum amount of insurance he/she may convert, together with a list of insurance companies which have been accepted by the OPM as eligible to handle conversion and which have agreed to do so.

c. The employee may purchase an individual policy from any eligible insurance company. No medical examination is required. The policy, at the employee's option, may be in an amount equal to or less than the insurance held under FEGLI, including optional insurance. The insurance may be in any form customarily issued by the insurance company, except term insurance, but does not include disability, accidental death or dismemberment benefits. Any insurance policy purchased under the conversion privilege is a private business transaction between the individual and the insurance company.

B. Federal Employees' Health Benefits

(1) An employee's enrollment terminates upon separation from the Federal Service, subject to a 31-day temporary extension of coverage for conversion to non-group contract. All eligible employees have the option of electing temporary continuation of coverage (TCC) within 30 days after their coverage would otherwise expire, this includes the 31-day temporary extension of coverage for conversion.

(2) If an employee elects TCC, the employee must submit their election of TCC to their former employing office within 60 days after (1) the date of separation or (2) the date the employee receives the notice from the Agency.

An employee who elects TCC is not limited to the plan, option, or type of enrollment under which he/she had been covered. After the initial enrollment, the employee may change the enrollment during open season or when an event occurs

that would allow an employee to change enrollment. In order to enroll, the employee must use the standard FEHB form (SF-2809). If the employee has separated, the employing office must enter in the remarks section of SF-2809 "Enrollment Authority: 5 U.S.C. 8904a. Eligibility expires (date 18 months after separation date)." The effective date is the date after the expiration of the 31-day temporary extension of coverage or conversion.

Employees electing TCC pay 100% of the plan costs plus a 2% administrative charge. Enrollment charges begin on the day after the free 31-day extension. The payment is due after the pay period during which the employee is covered and in accordance with the schedule established by the employing office. The employing office submits the payments to the OPM. An enrollment under TCC ends either because the period of TCC expires or the enrollee cancels the enrollment (including cancellation due to nonpayment of premiums). If the enrollment ends because of the expiration of the TCC, the employee is entitled to the 31-day temporary extension for conversion to an individual plan.

(3) Coverage of an enrolled employee continues temporarily for 31 days after enrollment terminates for any reason except voluntary cancellation. The person whose enrollment or coverage is ended has a right to convert, without evidence of insurability, to a non-group health benefit contract offered by the carrier of the plan. The employee will be sent an SF-2810, Notice of Change in Health Benefits Enrollment, and the application for conversion (on the back of the enrollee copy of SF-2810) should be mailed to the nearest office of the plan. Normally, the application must be made and the first premium paid to the carrier within 31 days after termination of the enrollment.

(4) Many plans do not provide the same benefits under the converted non-group contract as are provided under the Federal employee group plans, and the premium rates are different. There will, of course, be no government contribution to the cost of the non-group conversion contract. An employee interested in converting should contact the local office of his/her plan for information about benefits and cost of its conversion contract. Employees may also elect to continue their Federal health benefits for up to 18 months if they agree to pay both their shares and the Government's share.

C. Thrift Savings Plan Contributions

- (1) An employee is not vested in the 1% automatic contributions until they have completed 3 years of service.
- (2) The CSRS and FERS employees are always 100% vested in their own contributions plus earnings.
- (3) The FERS employees are 100% vested in the agency matching contributions plus earnings.
- (4) When an employee leaves the government prior to retirement with 3 years but less than 5 years of service the employee is entitled to withdraw:
 - a. All personal contributions;
 - b. All government contributions including the 1% automatic contribution; and
 - c. All interest earned.
- (5) If the employee has less than \$3,500, the Federal Retirement Thrift Investment Board will issue a check to the employee. The employee must transfer funds to an IRA or other qualified pension plan to avoid taxes on the distribution.
- (6) With more than 5 years of service the employee is entitled to withdraw:
 - a. All personal contributions;
 - b. All government contributions including the 1% automatic contribution; and
 - c. All interest earned. The employee may:
 - 1 Receive all monies in a lump sum payment;
 - 2 Take an immediate annuity on a minimum balance of \$3,500;
 - 3 Leave the money in TSP and take a deferred annuity; or
 - 4 Transfer funds to an IRA or other qualified pension plan.
 - d. If redeposit is not made within 60 days, it is subject to current income taxes.

EXHIBITS

**SAMPLE MEMORANDUM
FOR RETENTION OF BENEFITS
UNDER P.L. 93-638**

DATE:

TO: (Supervisor's Full Name and
Organizational Title)

FROM: (Full name of employee who is resigning
to go to work for the T/TO)

SUBJECT: Retention of Benefits Under P.L. 93-638,
Section 104(e)-(h)

This is to inform you that I am resigning effective _____ (Date)
to accept employment with _____ (Name of T/TO),
_____ (Full mailing address).

I wish to retain coverage of my Federal benefits under section
104(e)-(h) of P.L. 93-638. The benefits elected are indicated on the
attached SF-2816 (submitted in original and 3 copies). Tribal
concurrence has been obtained as indicated on the form.

(Employee's Signature)

Attachment

**RETIREMENT, LIFE INSURANCE, AND HEALTH BENEFITS
UNDER THE
INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT-PUBLIC LAW 93-638**

1 Instructions for completing form:

- Read the instructions on the back carefully before filling out form.
- Be sure ALL COPIES of the form are legible. Type or print in ink.
- Keep all four (4) copies of the form together.

2 Fill in the Identifying Information Below (Please print or type):

Name (Last) (First) (Middle)

Date of Birth (Mo.,Day,Yr.) Social Security No.

Employing Department or Agency

Agency Location (City,State,Zip Code, and **FAX No.**)

Have you ever before filed this Form? Yes No

If "Yes," do not file this form again, your last form remains in effect.

3 By law, a person who elects to leave Federal employment to be employed by a tribal organization in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to retain certain benefits.

IMPORTANT: Election of coverage must be made prior to employment by tribal organization and documented on this form prior to the effective date of the employee's resignation. Failure to file this form will result in the loss of retirement, life insurance, health benefits coverage, and continuation of the Thrift Savings Plan.

Employee Elections -- Mark an "X" by the benefits you wish to retain:

A. Retirement CSRS FERS

B. Health Insurance

C. Basic Life Insurance

D. Option A--Standard Life Insurance

E. Option B--Additional Life Insurance

with the following multiples of pay:

1 2 3 4 5

F. Option C--Family Life Insurance

G. Thrift Savings Plan (**must retain retirement coverage**)

H. No Benefits at All

Tribal Organization -- Mark an "X" by the benefits for which you wish to make a contribution.

I. Retirement CSRS FERS

J. Health Insurance

K. Life Insurance

L. Thrift Savings Plan

M. No Benefits at All

4 Employee must sign and date, and then have the tribal organization complete its sections. Return the entire set of four forms to the employing office along with a transmittal memorandum.

Employee's Signature (Do not print)

Signature of Authorized Tribal Official

FOR USE OF FEDERAL AGENCY ONLY

Title and Name of Organization

(Official Receiving Date Stamp)	Address ----- Telephone Number (including area code) Date

formerly SF 2816)

RI 38-130 (

General Information

The major provisions of this program are described in the Indian Self-Determination and Education Assistance Act of Public Law 93-638.

Who must file this form:

- an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to retain or not to retain Office of Personnel Management retirement, life insurance, and health benefits under the Indian Self-Determination and Education Assistance Act.

UNDER THE LAW, THE EMPLOYEE AND TRIBAL ORGANIZATION MUST BOTH ELECT TO HAVE THE BENEFITS CONTINUED IN ORDER FOR THE EMPLOYEE TO RETAIN THE BENEFITS. ONCE AN ELECTION IS MADE NOT TO CONTINUE ONE OR MORE BENEFITS, THE DECISION IS IRREVOCABLE.

Instructions to Employing Agencies

1. Give the employee 4 copies of RI 38-130 when he or she gives notification of employment by a tribal organization. Remind the employee that the 4 completed copies of SF 2816 must be returned before leaving Federal employment.
2. If an employee does not promptly return the RI 38-130, urge that it be returned even if he or she does not elect to retain civil service benefits. If the SF 2816 is still not returned before employment with a tribal organization (or after becoming eligible) file one for the employee as of that date; mark box G, and note in the space provided for the employee's signature "employee contacted on (date)-failed to elect to retain benefits."
3. Review all copies of the RI 38-130 to see that they are legible, complete, and correct. If employee marks box G, find out if it is by intention or by error.
4. Stamp date of receipt by the employing office in the space provided on all copies.
5. Disposition of RI 38-130-1. File the original in the personnel folder; 2. Attach the first copy to the employee's SF 2806 (Individual Retirement Record) and forward both to the Office of Personnel Management, Retirement and Insurance Programs, Washington, D.C. 20415; 3. Send the second copy to the tribal organization; 4. Send the third copy to the employee.
6. For instructions concerning the processing and maintenance of the employee's life and health insurance records, see the Federal Personnel Manual Supplements 870-1 S5-3c(4) and 890-1 S13-8.

Instructions for Tribal Organizations

Consult your liaison officer if you have any questions about what the employee is entitled to under the law and what your responsibilities are.

Mark the appropriate boxes to show the coverage for which the tribal organization elects to make contributions. You should mark:

- **Box I** for the Civil Service Retirement System
- **Box J** for the Federal Employees' Health Benefits Program
- **Box K** for the Federal Employees' Group Life Insurance Program (No contributions are made by the tribal organization for optional coverage.)
- **Box L** for the Thrift Savings Plan
- **Box M** if you DO NOT want to contribute to any of the benefits

IT IS THE TRIBAL ORGANIZATION'S RESPONSIBILITY TO FILL IN THE APPROPRIATE SECTIONS OF THIS FORM PRIOR TO THE EMPLOYMENT OF A FEDERAL EMPLOYEE. After completion, the form should be returned to the Federal employee or sent to his or her agency. That agency will mail a copy of the completed form, after it has been certified (as dated in the agency receipt block), to the tribal organization.

Instructions for Transferring Employees

If you have any questions about your rights under the law, consult your employing office **prior** to your employment by the tribal organization.

You can only retain those benefits you had at the time of your departure from Federal employment. Mark the appropriate boxes to show your choice of coverage. You should mark:

- **Box A** to retain Civil Service or Federal Employee Retirement System coverage
- **Box B** to retain Federal Employees' Health Benefits Coverage
- **Box C** to retain **Basic Life** insurance under the Federal Employees' Group Life Insurance program

(You must elect to retain the Basic Life insurance coverage before you can elect any optional coverage.)

- **Box D** to retain **Option A-Standard** insurance under the Federal Group Life Insurance Program
- **Box E** to retain **Option B-Additional** insurance under the Federal Employees' Group Life Insurance Program. Also mark the box showing the number of multiples of pay to be retained.
- **Box F** to retain **Option C-Family** insurance under the Federal Employees' Group Life Insurance Program
- **Box G** if you want to continue TSP matching basic and contributions (you must elect to retain retirement coverage before you can elect TSP coverage)
- **Box H** if you DO NOT want to retain your benefits.

You cannot continue these benefits unless you mark the appropriate boxes, have the tribal organization complete its portions, and either you or the tribal organization return the form to your current employing office. Your employing agency will mail a copy of the completed form to you and to the tribal organization. If you fail to file this form, you will forfeit your right to retain the benefits.

IT IS YOUR RESPONSIBILITY TO HAVE THE TRIBAL ORGANIZATION FILL IN THE APPROPRIATE INFORMATION PRIOR TO EMPLOYMENT BY THAT TRIBAL ORGANIZATION.

Privacy Act Statement

Title 5, U.S. Code, Chapter 83, Retirement, authorizes solicitation of this information. The data you furnish will be used to determine your eligibility to retain your retirement, life insurance, health benefits, and thrift savings coverage. This information may be shared with national, state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs or with law enforcement agencies when they are investigating violation or potential violation of the civil or criminal law. Provision of this information is voluntary; however, failure to supply all of the requested information may result in inability to determine if you are eligible to retain retirement, life insurance, health benefits, and thrift savings coverage.

**SAMPLE MEMORANDUM FOR EMPLOYEE
RESIGNING TO ACCEPT TRIBAL EMPLOYMENT**

DATE:

TO:(Employee who is resigning to accept tribal employment)

FROM:(Servicing Personnel Officer)

SUBJECT: Retention of Benefits Under P.L. 93-638,
Section 104(e)-(h)

This is to acknowledge receipt of your resignation and your RI 38-130 (formerly SF-2816) requesting retention of your benefits under section 104(e)-(h). The resignation has been processed as requested. A copy of the SF-50B is attached. A copy of the RI 38-130 has been forwarded to the United States Office of Personnel Management (OPM) and to the _____ (T/TO)_____.

The sick leave balance which you will retain to your credit is _____ hours. This cannot be used while employed by the T/TO but will remain to your credit for Federal civil service retirement annuity computation purposes.

Under certain circumstances, if your tribal employment is terminated within six (6) years of the date it commenced, you would be eligible for reemployment in the Indian Health Service (IHS). However, you must apply for reemployment not later than 30 days following your separation from tribal employment. At that time, a review will be made to determine whether you are eligible for employment.

Basically, you are eligible for reemployment within 45 days after receipt of your application if:

- (a)You receive a notice of involuntary separation from tribal employment (meaning any separation processed against your will or not at your request); or
- (b)The function is reverted to Federal operation; or

**SAMPLE MEMORANDUM FOR EMPLOYEE
RESIGNING TO ACCEPT TRIBAL EMPLOYMENT
(CONTINUED)**

(c) You are separated voluntarily with the joint consent of the tribal organization and the IHS for reasons of personal hardship or other special circumstances.

Your right to retention of benefit coverage is retained so long as you are employed by the T/TO in an activity previously performed by the IHS and contracted by the T/TO. If there are any changes in your employment status, you should notify this office, in writing, immediately.

(Signature of Servicing Personnel)

Officer)

Attachments

**BENEFIT CONTRIBUTIONS FOR FORMER FEDERAL AGENCY
EMPLOYEES WORKING FOR TRIBE/TRIBAL ORGANIZATIONS
UNDER P.L. 93-638**

TRIBAL ORGANIZATION: _____ *1* _____ Report No. _____ *2* _____

Contact Person/Phone No: _____ *3* _____

Employee Name: _____ <i>4</i>	SSN: _____ <i>8</i>	Separation Date: _____ <i>13</i>
Address: _____	Date of Birth _____ <i>9</i>	SPO No: _____ <i>14</i>
City, State, Zip Code: _____	Retirement Plan: _____ <i>10</i>	TID: _____ <i>15</i>
Base Salary (Bi-Weekly): \$ _____ <i>5</i> TSP Contributions: % of Base _____ <i>6</i>	Health Benefits Plan Code: _____ <i>11</i>	Timekeeper No: _____ <i>16</i>
Pay Period No: _____ Pay Period Ending Date: _____ <i>7</i>	FEGLI Coverage: _____ <i>12</i>	Sick Leave Bal: _____ <i>17</i>

DEDUCTIONS	EMPLOYEE SHARE	TRIBAL SHARE
CSRS RETIREMENT _____ <i>18</i>	\$ _____	\$ _____
FERS RETIREMENT	\$ _____	\$ _____
HEALTH BENEFITS	\$ _____	\$ _____
FEGLI - BASIC LIFE	\$ _____	\$ _____
OPTION A - STANDARD	\$ _____	+++++++
OPTION B - ADDITIONAL	\$ _____	+++++++
OPTION C - FAMILY	\$ _____	+++++++
SUB-TOTAL	\$ _____	\$ _____ <i>19</i>

<i>20</i> ALLOCATION	G FUND	F FUND	C FUND	TOTAL
EMPLOYEE CONTRIBUTION	\$ _____	\$ _____	\$ _____	\$ _____
AGENCY AUTOMATIC 1% CONTRIBUTION	\$ _____	\$ _____	\$ _____	\$ _____
AGENCY MATCHING	\$ _____	\$ _____	\$ _____	\$ _____

CONTRIBUTION				
TOTAL TSP	\$	\$	\$	\$
CHECK NO.: <i>21</i>	DATE OF CHECK:		TOTAL PAID:	<i>22</i>

MAKE CHECKS PAYABLE TO: DEPARTMENT OF HEALTH AND HUMAN SERVICES, PPSD
ATTN: PATRICIA MOORE, 8455 COLESVILLE ROAD
SILVER SPRING CENTRE, ROOM 1112, MS 700
WASHINGTON, D.C. 20910

INCLUDE THIS FORM AND A COPY OF RI 38-130 (formerly SF 2816) WITH REMITTANCE *23*

INSTRUCTIONS FOR COMPLETING FORM TO SUBMIT
BENEFIT CONTRIBUTIONS FOR FORMER FEDERAL
EMPLOYEES WORKING FOR TRIBE/TRIBAL ORGANIZATIONS
UNDER P.L. 93-638 (continued)

1. Tribal Organization: Enter name of organization submitting funds.
2. Report No.: For use by PPSD staff.
3. Contact Person/Phone No.: Self-explanatory.
4. Employee Name and Address: Provide complete address, city, state and zip code.
5. Base Salary (Bi-Weekly): Gross salary paid to employee.
6. TSP Contribution: Enter percent of base pay to be contributed by employee. **NOTE**: Contributions may not exceed 10 percent of salary for FERS employees or 5 percent of salary for CSRS employees (**SEE ITEM 20**).
7. Pay Period Number and Pay Period Ending Date: **SEE ATTACHMENT A.**
NOTE: Payroll calendars are issued each year -- for new calendars, fax requests to PPSD (Attn: Ola Garland), fax number (301) 504-3589.
8. Social Security Number: Self-explanatory.
9. Date of Birth: Self-explanatory.
10. Retirement Plan:
Civil Service Retirement System (CSRS) - The employee's contribution is .07 percent of basic pay and the employer must match the employee's deduction. (**SEE ATTACHMENT B**)
Federal Employees Retirement System (FERS) - The employee's contribution is .008 percent of basic pay. The employer contribution is 11.4 percent. (**SEE ATTACHMENT B**)

INSTRUCTIONS FOR COMPLETING FORM TO SUBMIT
BENEFIT CONTRIBUTIONS FOR FORMER FEDERAL
EMPLOYEES WORKING FOR TRIBE/TRIBAL ORGANIZATIONS
UNDER P.L. 93-638 (continued)

11. Federal Employees Health Benefits Plan (FEHBP) Code: Enter the 3 digit code for the plan in which the employee is enrolled.

The employer normally pays approximately 60 percent of the average high option premium, but not more than 75 percent of the premium for any individual plan. The remainder of the FEHBP premium is paid by the enrollee.

The cost of each plan differs and may change at the beginning of each year. **NOTE:** Rate changes are normally effective in pay period 3, please contact the Servicing Personnel Office for current rates and dates.

12. Federal Employees Group Life Insurance (FEGLI) Coverage:

Basic Insurance - The cost of basic insurance is shared by the employee and the employer and is based on the Basic Annual Salary. The employee's share is two-thirds of the cost and is withheld from pay (**SEE ATTACHMENT C**). The employer's share is one-third of the total premium payment. If an employees' basic pay changes to a higher or lower \$1,000 level, the amount of the Basic Life and Option B-Additional coverage will change. the new amount of insurance will be effective on the same date the pay change occurs.

Rates for the following options are based on the employees age. The change occurs the year following the age change. (**SEE ATTACHMENT C**)

Option A-Standard - If enrolled for Basic Life, an employee may elect Option A-Standard in the amount of \$10,000. The employee pays the full cost of this insurance.

INSTRUCTIONS FOR COMPLETING FORM TO SUBMIT
BENEFIT CONTRIBUTIONS FOR FORMER FEDERAL
EMPLOYEES WORKING FOR TRIBE/TRIBAL ORGANIZATIONS
UNDER P.L. 93-638 (continued)

12. Federal Employees Group Life Insurance (FEGLI) Coverage
(continued):

Option B-Additional - If enrolled for Basic Life, an employee may elect Option B-Additional in an amount equal to one, two, three, four, or five times their annual basic pay (after first rounding to next \$1,000). the employee pays the full cost of this insurance.

Option C-Family - If enrolled for Basic Life, an employee may also elect Option C-Family. The employee pays the full cost of this insurance.

13. Separation Date: Date employee left Federal service.

14. SPO Number: For use by PPSD Staff.

15. TID: For use by PPSD Staff.

16. Timekeeper Number: For use by PPSD Staff.

17. Sick Leave Balance: Enter sick leave balance, if any, at time of separation. (Contact the former Servicing Personnel Office for information).

18. Deductions - Employee Share and Tribal Share: Enter the amount of money paid by employee and amount paid by Tribal Organization. **Please note percentages for retirement (10), health benefits (11) and FEGLI (12) as shown on previous pages.**

19. Sub-Total: Enter sub-total of deductions.

**INSTRUCTIONS FOR COMPLETING FORM TO SUBMIT
BENEFIT CONTRIBUTIONS FOR FORMER FEDERAL
EMPLOYEES WORKING FOR TRIBE/TRIBAL ORGANIZATIONS
UNDER P.L. 93-638 (continued)**

20. Allocation - Thrift Savings Plan:

Employee Contribution - FERS employees may contribute up to 10 percent of basic pay each pay period to one or more of the three different Thrift Savings Plan funds: (1) the Government Securities Investment (G) Fund; (2) the Common Stock Index Investment (C) Fund; and (3) the Fixed Income Index Investment (F) Fund.

Agency Automatic (1%) Contribution - Employers contribute an amount equal to 1 percent of basic pay per pay period for each FERS employee who is eligible to participate in the Thrift Savings Plan, regardless of whether or not that employee elects to contribute.

The following breakdown shows the percentages of basic pay contributed to the accounts of FERS employees, that is, what the employee puts in; what the agency puts in, both automatically and as a matching contribution at various levels and what the total contribution then amounts to.

Agency Contributions

Employee Contribution	Automatic (1%)	Agency Matching	Total Contribution
0%	1%	0%	1%
1%	1%	1%	3%
2%	1%	2%	5%
3%	1%	3%	7%
4%	1%	3.5%	8.5%
5%	1%	4%	10%
6%-10%	1%	4%	11%-15%

INSTRUCTIONS FOR COMPLETING FORM TO SUBMIT
BENEFIT CONTRIBUTIONS FOR FORMER FEDERAL
EMPLOYEES WORKING FOR TRIBE/TRIBAL ORGANIZATIONS
UNDER P.L. 93-638 (continued)

20. Allocation - Thrift Savings Plan (continued):

Agency Matching Contribution - As the breakdown shows, in addition to the 1 percent automatic agency contribution, employers match FERS employee contributions dollar for dollar up to 3 percent of basic pay contributed each pay period; and 50 cents on the dollar for the next 2 percent of basic pay contributed each pay period.

CSRS Participants in the TSP - Employees covered by the Civil Service Retirement System who elect to participate in the Thrift Savings Plan may contribute up to 5 percent of their basic pay each pay period. CSRS employees may invest their contributions in any of the three funds. **This money is not matched by the agency in the case of CSRS contributors.**

21. Check Number/Date of Check: Self-explanatory.

22. Total Paid: Enter Total amount of money submitted for employee.

23. RI 38-130 (formerly SF 2816): Submit for new employees or changes in elections. Does not need to be sent with each payment (**SEE EXHIBIT 4-4**)

Pay Period		Reporting Period			
Number	Beginning Date	Ending Date	Early Cut-Off	Payday	
01	Dec 19 '99	Jan 1 '00	◆	▲	Jan 11 '00
02	Jan 2 '00	Jan 15	◆		Jan 25
03	Jan 16	Jan 29			Feb 8
04	Jan 30	Feb 12	◆		Feb 22
05	Feb 13	Feb 26			Mar 7
06	Feb 27		Mar 11	1st Qtr. Ending	Mar 21
07	Mar 12	Mar 25			Apr 4
08	Mar 26	Apr 8			Apr 18
09	Apr 9	Apr 22			May 2
10	Apr 23	May 6			May 16
11	May 7	May 20	◆		May 30
12	May 21	Jun 3			Jun 13
13	Jun 4	Jun 17	2nd Qtr. Ending		Jun 27
14	Jun 18	Jul 1	◆		Jul 11
15	Jul 2	Jul 15			Jul 25
16	Jul 16	Jul 29			Aug 8
17	Jul 30	Aug 12			Aug 22
18	Aug 13	Aug 26			Sep 5
19	Aug 27	Sep 9	3rd Qtr. Ending		Sep 19
20	Sep 10	Sep 23			Oct 3
21	Sep 24	Oct 7	◆		Oct 17
22	Oct 8	Oct 21			Oct 31
23	Oct 22	Nov 4			Nov 14
24	Nov 5	Nov 18			Nov 28
25	Nov 19	Dec 2			Dec 12
26	Dec 3	Dec 16	4th Qtr. Ending	◆	Dec 26
01	Dec 17	Dec 30	◆	▲	Jan 9 '01
02	Dec 31	Jan 13 '01			Jan 23 '01

NOTE: Check with the SPO for the current table of annual pay period dates.

ATTACHMENT B

HOW TO COMPUTE DEDUCTIONS FOR RETIREMENT

BACKGROUND Deductions for retirement are computed based on the annual rate of basic pay, including any applicable special salary rate, interim geographic adjustment, locality rate of pay or special pay adjustment for law enforcement officers (LEOs). Basic pay does not include bonuses, allowances, military pay, lump-sum payments for annual leave, premium pay (except when specifically authorized) or any salary, pay or compensation given in addition to the basic pay of the position as fixed by law or regulation.

RULES FOR

ROUNDING Deduction amounts computed from a biweekly basic gross salary are **rounded to the nearest cent**, counting one-half cent and over as the next higher cent (e.g. round \$11.775 to \$11.78).

PROCEDURE Follow the rules below to compute deductions for retirement. (NOTE: The examples below are based on a GS-9, step 5, annual rate of basic pay that has been increased by a locality pay percentage of 5.48%).

RETIREMENT	DEDUCTION	EXAMPLE EMPLOYEE	EXAMPLE EMPLOYER
Civil Service Retirement System (CSRS)	<i>For most employees:</i> Multiply <u>biweekly</u> basic gross salary by 0.07	GS-9/5 = 16.24 1,299.20 x .07 = 90.94	90.94
Federal Employees Retirement System (FERS)	<i>For most employees:</i> Multiply <u>biweekly</u> basic gross salary by 0.008	GS-9/5 = 16.24 1,299.20 x .008 = 10.39	1,299.20 x 11.4 = 14,810.88

NOTE: Employee contributions for CSRS employees have been 7% of pay (plus 1.45% for Medicare); but in 1999, the cost was raised to 7.25% of pay; 7.40% in 2000; and 7.50% in 2001. These higher contribution rates are in effect through December 2002. Employees under FERS are required to contribute 7.65% of their earnings for Social Security, 1.05% in 1999, plus 1.20% in 2000, and 1.30% in 2001. These higher deduction rates will be in effect through December 2001.

ATTACHMENT C

BIWEEKLY WITHHOLDING FOR BASIC INSURANCE¹⁰

The odd-numbered columns below represent insurance amounts in dollars, the even-numbered columns the dollar amounts of biweekly withholding for the employee's share of that amount of insurance; 16 1/2 cents biweekly buys \$1,000 worth of the Basic Insurance Amount, just as \$1.65 buys \$10,000 worth, and \$16.50 buys \$1000,000.

1.	2.	3.	4.	5.	6.
10,000	1.65	40,000	6.60	70,000	11.55
11,000	1.82	41,000	6.77	71,000	11.72
12,000	1.98	42,000	6.93	72,000	11.88
13,000	2.15	43,000	7.10	73,000	12.05
14,000	2.31	44,000	7.26	74,000	12.21
15,000	2.48	45,000	7.43	75,000	12.38
16,000	2.64	46,000	7.59	76,000	12.54
17,000	2.81	47,000	7.76	77,000	12.71
18,000	2.97	48,000	7.92	78,000	12.87
19,000	3.14	49,000	8.09	79,000	13.04
20,000	3.30	50,000	8.25	80,000	13.20
21,000	3.47	51,000	8.42	81,000	13.37
22,000	3.63	52,000	8.58	82,000	13.53
23,000	3.80	53,000	8.75	83,000	13.70
24,000	3.96	54,000	8.91	84,000	13.86
25,000	4.13	55,000	9.08	85,000	14.03
26,000	4.29	56,000	9.24	86,000	14.19
27,000	4.46	57,000	9.41	87,000	14.36
28,000	4.62	58,000	9.57	88,000	14.52
29,000	4.79	59,000	9.74	89,000	14.69
30,000	4.95	60,000	9.90	90,000	14.85
31,000	5.12	61,000	10.07	91,000	15.02
32,000	5.28	62,000	10.23	92,000	15.18
33,000	5.45	63,000	10.40	93,000	15.35
34,000	5.61	64,000	10.56	94,000	15.51
35,000	5.78	65,000	10.73	95,000	15.68
36,000	5.94	66,000	10.89	96,000	15.84
37,000	6.11	67,000	11.06	97,000	16.01
38,000	6.27	68,000	11.22	98,000	16.17
39,000	6.44	69,000	11.39	99,000	16.34

¹⁰ Check with the SPO for the current withholding information or check the OPM web site at:

<http://www.opm.gov/insure/life/handbook/withldtb.htm>

For semimonthly withholding amounts, multiply the biweekly rate by 1.0815. For monthly withholding amounts, multiply the biweekly rate by 2.165. The employee pays two-thirds of the cost of Basic Life coverage, the government one-third. The U.S. Postal Service assumes the full cost of FEGLI coverage. The maximum amount of FEGLI insurance is currently \$136,000.

ATTACHMENT C

TABLE OF WITHHOLDING RATES¹¹

Your Age	Basic Life Withholding per \$1,000 insurance		Option A-Standard Withholding per \$1,000 insurance		Option B-Additional Withholding per \$1,000 insurance		Option C-Family Withholding	
	Biweekly	Monthly	Biweekly	Monthly	Biweekly	Monthly	Biweekly	Monthly
Under age 35	\$.165 \$.3575		\$.40	\$.87	\$.04	\$.087	\$.30	\$.65
35 through 39	\$.165 \$.3575		\$.50	\$1.08	\$.05	\$.108	\$.31	\$.67
40 through 44	\$.165 \$.3575		\$.70	\$1.52	\$.07	\$.152	\$.52	\$1.13
45 through 49	\$.165 \$.3575		\$1.10	\$2.38	\$.11	\$.238	\$.70	\$1.52
50 through 54	\$.165 \$.3575		\$1.80	\$3.90	\$.18	\$.390	\$1.00	\$2.17
55 through 59	\$.165 \$.3575		\$3.00	\$6.50	\$.30	\$.650	\$1.50	\$3.25
60 and over	\$.165 \$.3575		\$7.00	\$15.17	\$.70	\$1.517	\$2.60	\$5.63

¹¹ Check with the SPO for the current withholding information or check the OPM web site at:

http://www.opm.gov/insure/life/em_rates.htm

QUESTIONS AND ANSWERS

**QUESTIONS AND ANSWERS ABOUT
RETENTION OF FEDERAL BENEFITS UNDER
P.L. 93-638, SECTION 104(e)-(h)**

1. Q. May an employee who resigns to accept tribal employment retain his/her Federal insurance policies by paying for them from private funds if unable to obtain tribal concurrence to retain them under section 104(e)-(h)?
 - A. The T/TO and the employee must both pay their shares in order for the benefits to be continued. Whatever arrangement the employee and the T/TO work out to fund the T/TO's share is between the T/TO and the employee. An employee who resigns to accept tribal employment has the same rights as any other employee separating from the Federal service. Therefore, Federal insurance may be converted or continued as discussed in this chapter.

2. Q. May a Federal employee going to work for a T/TO, maintain Federal retirement coverage and enroll for tribal retirement at the same time?
 - A. The P.L. 93-638 does not address whether an employee may have dual credit for retirement purposes under the Federal retirement system and the tribal retirement system.

The OPM Technical Services Office has advised that it is interpretation of the OPM that nothing in the law prohibits employees from participating in both retirement programs and, therefore, receiving dual credit for the service. However, OPM also advised that, if it appears that the employee(s) and/or the T/TO want the employee(s) to participate in both systems, a formal legal opinion should be requested from OPM at that time.

(NOTE: The Internal Revenue Service (IRS) would not be involved in determining whether or not the employee can participate in the two retirement systems. They would be involved only in determining if the employee would be eligible for an Individual Retirement Account or involved with the tribal government in determining whether the retirement plan would qualify under IRS Regulation 401A.)

3. Q. May a Federal employee going to work for the T/TO, if the T/TO and employee were agreeable to paying the necessary contributions, be covered by both social security and civil service retirement?

A.No. An employee may not have dual coverage. Employees may not be covered by both social security and civil service retirement. **NOTE:** In at least one case, the IRS has required that the T/TO withhold FICA taxes from an employee and pay the employer's contribution for an employee who was covered by the Civil Service Retirement System.

4. Q.May an employee going to work for the T/TO withdraw retirement contributions?

A.If an employee is not continuing retirement benefits, he/she may withdraw retirement contributions as any other employee would be able to. The CSRS employees who return to the Federal Government may redeposit money which they have withdrawn, but FERS employees may not. Employment with a T/TO as defined in P.L. 93-638, is not, of itself, creditable service for civil service retirement purposes. Therefore, if the employee and/or the T/TO elects to not retain civil service retirement coverage, the employee would be eligible to receive a refund of lump sum credit if the two conditions above are met.

5. Q.Is there a time limit for a Federal employee working for the T/TO to retain Federal benefits?

A.No. The P.L. 93-638 provides that an employee who is entitled to retain Federal benefits may do so if: 1) the employee and the T/TO elect to retain the coverage, rights and benefits; 2) if the necessary employee deductions and agency contributions for the period of employment with the T/TO are currently deposited in the appropriate funds; and 3) the period during which coverage, rights and benefits are retained under section 104(e)-(h) is deemed services as an employee. If all of the above conditions are met, the employee's elected coverage and benefits will continue as long as he/she remains employed by the T/TO and does not revoke those elections. If the employee revokes an election of a benefit(s), they may not be reinstated until the employee is reemployed in a Federal position in which he/she is eligible for coverage.

6. Q.How long do you have to exercise your reemployment rights with civil service?

A.The 5 C.F.R. Part 352, Reemployment Rights of Former Bureau of Indian Affairs and Indian Health Service Employees After Service Under the Indian Self-Determination Act in Tribal Organizations, addresses this issue.

An employee, who leaves Federal employment for employment with a T/TO and who is entitled to reemployment rights under Subpart

G, has reemployment eligibility for six years following the date employment commences in the T/TO unless exercised or otherwise terminated before that time.

7. Q. Is it possible for Federal employees to collect severance pay and then work for the T/TO and retain Federal benefits?

A. Yes. In order for an employee to be eligible to retain the Federal benefits, the employee must leave Federal employment to be employed without a break-in-service (or after a separation from service of three days or less) by the T/TO. To be eligible for severance pay the employee must receive a specific RIF notice. Once a specific RIF notice is issued, the employee could resign, accept employment by the T/TO, and carry over federal benefits if the necessary conditions are met.

8. Q. In a RIF, is each employee notified of the abolishment of his/her position and his/her rights as a Federal employee (i.e., severance pay, placement assistance, etc.)?

A. The agency must give a specific written notice to an employee at least 60 days before the effective date of his/her release. The specific notice must state what action the IHS intends to take, the effective date of the action, the employee's tenure group, subgroup and his/her adjusted service computation date based on performance of record, the competitive area and competitive level, where he/she may inspect the regulations and records pertaining to his/her case, and his/her appeal or grievance rights. See Chapter 6 for a fuller discussion of RIF under P.L. 93-638.

9. Q. What happens to those who retire from the Federal Government and are then employed by the T/TO?

A. The proposed rules to implement section 104(e)-(h) of P.L. 93-638, Part 831, Retirement, Subpart P, Employment of Federal Employees by Indian Tribal Organizations, provide that a civil service annuitant who is employed by a T/TO, shall not be considered a reemployed annuitant. If a civil service annuitant is employed by the T/TO, there is no reduction in the amount of the annuity. Since such employment is with the T/TO and not the Federal Government, the employee is not considered a reemployed annuitant for any purpose.

10. Q. If an employee is offered comparable employment (pay and benefits) with the T/TO and the employee refuses the employment, is the employee eligible for severance pay?

A. Employees who receive a specific RIF notice are eligible for severance pay whether or not they accept or decline employment with the T/TO.

CHAPTER 5

CHAPTER 5

REEMPLOYMENT RIGHTS AUTHORIZED BY SECTION 104(i) OF P.L. 93-638

1. GENERAL

The 5 C.F.R. part 352, Reemployment Rights of Former Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) Employees After Service Under the Indian Self-Determination Act in Tribal Organizations, governs reemployment rights authorized by section 104(i) of P.L. 93-638 to be exercised after service in a T/TO under the Act.

2. INTRODUCTION

Employees of the IHS are granted reemployment rights (subject to conditions set forth in this chapter) to the IHS or PHS, as appropriate, if they leave their Federal employment to be employed, with no break-in-service following separation from the IHS, to work in a function contracted by a T/TO from the IHS under P.L. 93-638. Indian preference does not apply to an individual with reemployment rights (5 C.F.R. 352.703).

3. DEFINITIONS

For the purpose of this chapter, terms are defined as follows:

A. Agency

The IHS. For reemployment purposes, the IHS shall be considered the agency to which IHS employees may return.

B. Competitive Area

The geographical and organizational limits within which employees compete for retention during a RIF. The IHS competitive areas are defined in an IHS memorandum from the Director, Office of Management Support to the IHS Personnel Officers dated March 26, 1998, and consists of the IHS personnel in each commuting area.

C. Tribal Organization

Means any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by a tribal governing body or bodies which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

4. PROCEDURES

A.Reemployment Rights

(1)Reemployment rights are granted only to:

An employee serving in a competitive position under a career or career-conditional appointment who has satisfactorily completed at least six months of a probationary period;
or

(2)Reemployment rights are not granted to:

a.An employee who has received a notice of involuntary separation because of RIF, or other cause, not directly related to contracting an IHS function to the T/TO under P.L. 93-638; or

b.An employee whose resignation has been accepted for reasons other than to accept tribal employment, with no break-in-service, in a function contracted by the T/TO under
P.L. 93-638; or

c.An employee serving under a Schedule C excepted appointment or a non-career executive assignment.

B. Effect of Declination of Other Benefits

Entitlement to reemployment rights does not depend on continuation of Federal employee benefits coverage under section 104(e)-(h) during the service with a T/TO. See Chapter 4 for information on continuation of benefits coverage.

C.Termination of Reemployment Rights

Reemployment rights terminate at the end of six years following the date employment commences in the T/TO unless exercised or otherwise terminated before that time.

D.Exercise of Reemployment Rights

Reemployment rights may be exercised only if the individual submits written application (see Exhibit 5-1) for reemployment with his/her former employing agency within 30 calendar days after:

- (1) Receipt of a notice of involuntary separation from tribal employment. For this purpose, involuntary separation means any separation against the will and without consent of the individual.
- (2) Reversion of the function to Federal operation, whether the reversion is through tribal or Federal action; or
- (3) Separation, with the joint consent of the T/TO and the Federal agency, for reasons of personal hardship or other special circumstances.

E. Termination of Former Employee's Entitlement to Reemployment Rights

A former employee's entitlement to reemployment terminates for the following reasons:

- (1) Failure to apply for reemployment within the time limits specified in paragraph D. above;
- (2) Resignation from tribal service without the joint consent of the T/TO and the Federal agency as described in paragraph D(3) above; or
- (3) Failure to accept, within 10 calendar days of receipt thereof, an offer of reemployment which is determined by the employing agency or the Merit Systems Protection Board (MSPB) on appeal to be a proper offer of reemployment.
- (4) Separation from tribal employment for cause sufficient to establish unsuitability for reemployment as the reason for cancellation of reemployment entitlement.

F. Reemployment Eligibility

An eligible employee is entitled to be reemployed by the IHS as promptly as possible, and, in any event, within 45 calendar days after receipt of the application for reemployment. Reemployment rights for applicants are applicable nationwide within IHS.

G. Entitlements

The applicant for reemployment is entitled to one of the following:

(1) Reemployment within the competitive area:

- a. In the position held immediately before leaving the IHS;
- b. In a position in the same competitive level; or
- c. In another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the IHS.

(2) If the applicant cannot be placed in one of the above, the PHS must extend reemployment rights (consistent with the applicant's mobility/availability) for assignment outside the competitive area. Under these circumstances, the applicant is entitled to a position, for which qualified and eligible, at the same grade as the last position held in the IHS.

(3) If necessary, in order to determine the position to which the applicant has a reemployment right within the competitive area, or the extended area, RIF procedures will be applied, and the applicant will be considered as if a current employee of the agency in applying RIF procedures.

(4) Before reemployment rights are extended beyond the competitive area, reemployment applicants who cannot be placed at their former grade in the same competitive area, at their option, may elect to be placed in a lower graded position in the same competitive area, if they can be placed in such a position using RIF procedures.

(5) The agency may satisfy the employee's right to reemployment by offering the employee a vacant position which, under RIF regulations, is in accord with the employee's rights.

(6) With the employee's consent, he/she may be placed in a vacant position, for which he/she is qualified and available, outside the organizational or geographic area of entitlement, either at the former grade or at a grade other than the one to which entitled.

H. Suitability Issues

An agency may refuse to reemploy an individual when he/she was separated from tribal employment for serious cause which establishes the employee is unsuitable for reemployment.

I. Appeal Rights

If an agency denies reemployment, or if the employee considers the reemployment not to be in accordance with his/her entitlements under statute and/or regulation, the individual may appeal the agency's action to the MSPB. Any such appeal must be in writing and be received by the appropriate office of the MSPB within 30 calendar days of receipt the notice of denial of reemployment, or within 30 calendar days of the effective date of reemployment if it is alleged that the position in which reemployed does not satisfy the employee's reemployment entitlements. In addition, the individual's appellate submission must comply with any further requirements of MSPB's regulations.

The agency shall comply with the provision of 5 U.S. Code, section 1201.21 regarding the information which must be supplied to the affected individual concerning his/her appellate rights.

EXHIBITS

**SAMPLE MEMORANDUM FOR EMPLOYEE
REQUESTING REEMPLOYMENT RIGHTS**

DATE:

TO: Servicing Personnel Office (of former employing agency)

FROM: (Employee who is requesting reemployment rights)

SUBJECT: Reemployment Rights Under P.L. 93-638, Section 104(i)

I am hereby making written application to exercise my reemployment rights under 5 C.F.R. Part 352 Subpart G (Section 104(i) of P.L. 93-638 for the following reason:

Receipt of a notice of involuntary separation from tribal employment _____ (Date)_____.

Reversion of the function to Federal (IHS) operation.

Separation (with the joint consent of the T/TO and the IHS) for reason of personal hardship or other special circumstances.

(Signature of Former Employee)

(Date)

QUESTIONS AND ANSWERS

QUESTIONS AND ANSWERS

REEMPLOYMENT RIGHTS AUTHORIZED BY SECTION 104(i) OF P.L. 93-638

1.Q. Will IHS employees be granted reemployment rights if they accept employment with a T/TO when the activity in which they are employed is contracted?

A. Yes. However, the employee may exercise these rights only under one or more of the following circumstances: (1) retrocession or reassumption of the program by the IHS; (2) involuntary separation by the T/TO; (3) hardship or other special circumstances.

2.Q. How long will the reemployment rights remain valid?

A. Generally, for six years from the date tribal employment began. However, reemployment rights may expire earlier due to such circumstances as: (1) acceptance or declination of a reemployment offer; (2) failure to apply for reemployment within 30 days of receipt of a notice of involuntary separation; (3) reversion of the function to the IHS operation; or (4) separation with joint consent of the IHS and the T/TO.

3.Q. To what position and grade level will the employee be entitled upon return to the Federal service?

A. The employee's initial entitlement will be to reemployment in a position identical to the one he/she held immediately before leaving the IHS, or in another position for which he/she is qualified at the same grade level and in the same competitive area as the position last held in the IHS.

4.Q. What if there are no positions vacant or otherwise in that same competitive area?

A. The IHS will then extend the reemployment rights, based on the employee's availability for assignment outside the competitive area, to available vacancies throughout the IHS.

5.Q. What if there are no vacancies within the IHS?

A. Federal regulations require that the IHS must honor the individuals reemployment rights. However, if no positions are available, it may be necessary to implement RIF procedures after the reemployment takes place.

Employees of the IHS are granted reemployment rights (subject to conditions set forth in this chapter) to the PHS if they leave their Federal employment to be employed, with no break-in-service following separation from the IHS, to work in a function contracted by a T/TO from the IHS under P.L. 93-638. Indian preference does not apply to an individual with reemployment rights.

6.Q. Will IHS employees who retire and go to work for a T/TO in a function of the IHS, contracted under P.L. 93-638, with no break in service be eligible for reemployment rights?

A.No. To be eligible for reemployment rights in accordance with 5 C.F.R. Part 352, Subpart G (352.703), the conditions are that the individual apply for reemployment within 30 days after: notice of receipt from the tribal organization of involuntary separation from employment; reversion of the function being performed to Federal operation; or separation from tribal employment with the joint consent of the T/TO and the Federal agency for reasons of personal hardship or other special circumstances. Separation, according to the Office of General Counsel, includes termination by resignation, as a result of adverse action or reduction in force but does not include retirement.

7.Q. After the original takeover of an IHS function by a T/TO, is an IHS employee who resigns and goes to work for a T/TO to perform that function entitled to reemployment rights?

A. Yes, 5 C.F.R. 352.703 does not specifically state that reemployment rights are granted only on original takeover. If the employee meets the criteria listed, then the employee should be notified of his/her reemployment rights.

8.Q. In a situation like that discussed in question 7., must the IHS employee be from the IHS Area where the P.L. 93-638 contract/compact was originated?

A.No, however, only IHS employees would be granted reemployment rights. For example, the IHS could not grant reemployment rights to a former BIA employee.

9.Q.If an employee is hired by a T/TO from outside the IHS Area where the original P.L. 93-638 contract/compact was originated, which Area personnel office should be responsible for administering the employees reemployment rights, maintaining the employees OPF, etc.?

A.The office where the P.L. 93-638 contract/compact originated should be responsible for all the aspects of the employee's reemployment rights, e.g., notifying the employee of the rights and maintenance of their OPF. The Area SPO where the employee was formerly employed, however, must notify the SPO at the new Area that the employee has been hired directly by one of their contract/compact T/TOs.

In addition, if the employee exercises reemployment rights, those rights revert back to the competitive area for the position held immediately before leaving the IHS. Therefore, placement would occur in the competitive area where the employee was located immediately prior to going to work for the T/TO. Once again, both SPOs would have to work together to assure the employee is treated appropriately.

10.Q.If an employee exercises reemployment rights, a position cannot be found for the employee in the IHS, and it is necessary to bring the employee into a position and immediately conduct a RIF, what is the competitive area for that employee.

A.Whether an employee is hired from within or from outside the Area where the P.L. 93-638 contract/compact was established, the competitive area where the employee has reemployment rights is the competitive area for the position held immediately before leaving the IHS. Therefore, the competitive area is where the RIF would be conducted.

11.Q.Are there any circumstances where the IHS can refuse to exercise an employee's reemployment rights?

A.Yes, as discussed in Section H of this chapter. If it is established that the employee was separated for cause, that is serious enough to establish that the employee is unsuitable for reemployment, then the IHS may refuse. In addition, if the employee's reemployment rights are to a position that is covered by P.L. 101-630, the Indian Child Protection Act, the employee must be cleared to determine if he/she is eligible for employment. If there is a problem with the employee's eligibility under

P.L. 101-630, and there are no positions that are not covered under the Act within the competitive area, then the Area could refuse to grant reemployment rights.

CHAPTER 6

CHAPTER 6

REDUCTION IN FORCE (RIF)

1. GENERAL

Whenever a function currently performed by the IHS is contracted to a T/TO under P.L. 93-638, RIF procedures must be applied to determine the actions to be taken with regard to any civil service employees who are not offered and do not accept tribal employment. (See Chapter 4 of this Handbook).

The RIF procedures are implemented as described in 5 C.F.R. 351. HHS Instruction 351-1, and IHS Circular 87-2 or subsequent documents. The T/To is not obligated to retain a Federal employee who would otherwise be subject to RIF procedures resulting from a P.L. 93-638 contract.

Prior to initiating any RIF proceedings, the SPO should notify the appropriate union officials in accordance with their respective bargaining unit agreement.

2. INTRODUCTION

A. Notification of RIF Actions

Authority to conduct RIFs has been delegated from the Director, IHS to Area Directors. However, RIFs involving separation of employees requires written notification from the Area to the Director, Division of Human Resources, at least 30 days before specific notices are issued. the information required in notification of RIF actions is provided in Exhibit 6-1.

B. Commissioned Corps Personnel Under RIF

- (1) Commissioned Officers are not subject to RIF procedures. However, if they are assigned to a unit affected by negotiation of a P.L. 93-638 contract, they will be reassigned under Commissioned Corps procedures within the PHS. Reassignment within the IHS (as a part of the PHS) is a possibility. However, reassignments within

the IHS must be consistent with Indian preference policies regarding the filling of vacancies as Indian preference is not waived in Officer assignments.

- (2) Under P.L. 96-135, the Assistant Secretary for Health may waive Indian preference to effect the assignment of a member of the Commissioned Corps if that reassignment is being done in connection with a RIF of civil service employees.

3. PROCEDURES

A. Determining the Position to be Affected

The contract proposal identifies how the positions will be filled and whether or not offers of employment will be made to the employees currently employed by the IHS. When RIF procedures are applied, employees located in other functions at the same service unit may be affected because the scope of competition for job retention usually extends to the entire service unit and not just to individual organizations or branches at the service unit. (A RIF Checklist and Timetable is provided at Exhibit 6-3).

B. Determining Retention Standing of Employees

The RIF procedures provide for retention on the basis of tenure group, veteran's preference, Indian Preference, length of service, and performance ratings. Retention registers are prepared to include all Civil service employees (both competitive and excepted¹² service) by competitive level. It is only after the retention registers are prepared that the full impact of the RIF on specific employees may be assessed.

(1) Tenure Groups

These groups serve as the first major distinction in determining employees' standing for retention in RIF. Tenure Group I employees, those with career tenure, will have higher retention standing than Tenure Group II (career-conditional) or Tenure Group III (TAPER, Indefinite, Term, Status Quo, or other employees whose appointments are nonpermanent but are made for periods of more than one year). If an employee's tenure will be career on or before the effective date of the RIF, he/she

¹² Excepted service refers only to employees appointed under Schedule A authority 213.3116(b)(8).

must be considered as a Group I employee as it is the employee's status on the effective date which is controlling for retention purposes. Temporary employees (excluding those temporary employees in the excepted service with more than one year of service) are in Tenure Group 0 and are automatically terminated when it is determined that a RIF must take place in their competitive level. Temporary employees in the excepted service with more than one year of service are in Tenure Group III.

(2) Veteran's Preference

Within each tenure group, employees are divided into subgroups according to their eligibility or ineligibility for veteran's preference. Subgroup AD (30% compensably disabled veterans) have the highest retention standing within their individual tenure groups. All other individuals with veterans' preference (i.e., 10 point compensable, 10 point other, 5 point) will be placed in Subgroup A within their individual tenure groups and will have higher retention standing within the tenure group than those individuals who do not have eligibility for veteran's preference. All individuals within the various tenure groups who are not eligible for veteran's preference will be placed in Subgroup B and will have the lowest retention standing within their tenure groups. It should be noted that retired military are to be considered preference eligibles in a RIF only if:

- a. His/her retirement was based on disability resulting from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war; or
- b. His/her service did not include 20 or more years of full-time active service (exclusive of periods of active duty for training); or
- c. Immediately prior to December 1, 1964, he/she was employed in a civilian office subject to subchapter I of chapter 35, title 5, U.S. Code, and on or after that date, he/she continued to be employed in a civilian office without a break-in-service of more than 30 days.

(3) Indian Preference

The IHS Circular 87-2, issued July 9, 1987, states that P.L. 96-135 requires that competitive and excepted service registers in the IHS be combined in the event of RIF and that employees entitled to Indian preference will be retained in preference to other employees within the same Subgroup. Once retention registers are established, RIF procedures are applied. A non-Indian may not be assigned to a vacant position during RIF without prior approval of the ASH.

Therefore, when preparing retention registers for a RIF in the IHS, Indian employees in a category will be retained over non-Indian employees in the same category, e.g., Indian employees in IAD will be retained over non-Indian employees in the same category; Indian employees in category IIA will be retained over non-Indian employees in the same category; etc. However, a non-Indian with veteran's preference and career tenure would be retained over an Indian with no veteran's preference, etc. See Exhibit 6-2 for a sample retention register in the IHS.

(4) Length of Service

After due consideration is given to tenure, veteran's preference, and Indian preference eligibilities the employee is placed in a retention category in seniority order based on length of creditable service. The length of service is adjusted to include credit for performance discussed below.

(5) Performance Ratings

Under the five-level system, employees will receive additional service credit based on the employee's last three annual performance ratings earned during the last four years computed on the following basis.

- a. 20 additional years of service for each outstanding rating;
- b. 16 additional years of service for each Exceeds Fully Successful rating; and
- c. 12 additional years of service for each Fully Successful rating.
- d. No additional service credit is given for performance ratings below fully successful.

Under the two-level performance appraisal system, performance crediting will be as equitable as possible, within the following limitations:

- a. Consistency - within a competitive area, the IHS will use the same number of years additional retention service credit for all ratings of record within the same summary level in the same pattern;
- b. Years - values must be at least 12 years, but no more than 20 years; and
- c. Poor Performance - additional service credit cannot be assigned for summary levels below the Fully Successful or equivalent level.

C. Release From Competitive Level

Employees are released from their competitive level in the inverse order of their standing on the retention register. Therefore, when RIF requires release of one or more of the competing employees from their competitive level,¹³ all employees in Group III are released before any employees in Groups I or II, and all employees in Group II are released before any employees in Group I.

For example, if employee A, who is actually assigned to the function which is being contracted to the T/TO, is in the same competitive level with employee B, who works in another organization at the same service unit, and employee A has higher retention standing, employee A may be assigned to employee B's position, and employee B will be released from the competitive level and enter round 2 of the competition for retention in RIF by assignment to another competitive level. Once employees are identified for release from the competitive level, there are several alternatives to be considered in taking further action¹⁴:

¹³ A competitive level consists of all positions in a competitive area which are the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

¹⁴ **NOTE:** On a complete take over under P.L. 93-638, if there were no other positions in the competitive area this portion would not apply

- (1) Assign them to positions for which qualified and which will last at least three (3) months; or
- (2) Furlough them. This option is only appropriate when the agency intends to recall the employee to duty within one year for return to the position from which furloughed. As most P.L. 93-638 contracts are negotiated for indefinite periods, furlough is not generally appropriate in instances of RIF arising from P.L. 93-638 contracts. However, if the furlough option is used, the agency may not separate a competing employee in RIF while another employee with lower retention standing in the same competitive level is on furlough or;
- (3) Separate them.

D. Assignment to a Position in Another Competitive Level

The right of a released Group I or II employee to a position in another competitive level depends on the existence of a position held by a lower standing employee (if positions affected are under 638, this is not feasible) and the employee's qualification would then determine an offer of reassignment to another competitive area, if there were available vacancies at that time. The Agency can satisfy an employee's rights to assignment by offering a position with the same representative rate. If there are two or more positions with the same representative rate the Agency may offer whichever one it chooses. The employee has no right to choose his/her assignment. If the employee can displace two or more employees in positions with the same representative rate, department policy requires that he or she be offered the retention standing. Employees that refuse an offer of assignment that is in accordance with their rights, may be separated.

(1) Assignment to Vacant Positions

An employee may be offered a vacant position, for which he/she qualifies. However he/she has no inherent right to placement in a vacant position because management is not required to fill vacant positions during RIF.

(2) Assignment Involving Displacement

as there would be no positions to offer for assignment in another competitive level.

When an agency releases a Group I or II employee from his/her competitive level, it must offer a position in another competitive level if a position is available, rather than furloughing or separating the employee. An available position is one that meets all of the following criteria:

- a. It is in the same competitive area;
- b. It will last at least three (3) months;
- c. It is occupied by an employee who is subject to displacement by the released employee, e.g., in a lower tenure group;
- d. It is a position for which the released employee is qualified; and
- e. It has a representative rate no higher than that of the position from which the Group I or II employee is being released.

If the agency has no vacant position to offer (or elects not to offer existing vacant positions), but has one or more available encumbered positions, as described above, the employee is entitled to the position with the highest representative rate.

(3) Displacement of Lower Subgroups-"Bumping"

When the agency chooses to, or has no choice but to satisfy an employee's right of assignment by offering an occupied position, it must look first to the available positions occupied by employees in lower subgroups (i.e., IA employees can displace a IB or anyone in Group II or III; a IIAD can displace or "bump" a IIA or IIB, or any Group III employee; etc.). Bumping is limited to three grades (or grade intervals) below the position from which the employee was released. An employee with a current rating of unacceptable has no bumping rights. In accordance with P.L. 96-135, if during the use of RIF procedures, it is determined that a reassignment or downgrading of an employee not entitled to Indian preference becomes necessary, the action resulting from RIF procedures may be taken without regard to Indian preference. For example, a non-Indian with higher retention rights may bump an Indian in a lower subgroup. A non-Indian may be assigned to a vacancy without regard to Indian preference provided a waiver is obtained under P.L. 96-135 from the ASH.

Under P.L. 93-638, if all positions involved in a program are contracted out, bumping does not apply provided that there are no other IHS positions in the competitive area. The T/TO is not obligated to retain the employee affected by RIF when an IPA Agreement has been terminated.

(5) Displacement of Same Subgroups - "Retreating"

Under P.L. 93-638, if all positions involved in a program are contracted out, the "Retreating" provision does not apply provided that there are no other IHS positions in the competitive area. When an agency chooses to, or has no choice but to satisfy an employee's right of assignment by offering him/her an occupied position, and when it cannot make a better offer on the basis of subgroup superiority, the agency looks for a position which is the same, or essentially identical, to a position previously held by the released employee in a Federal agency, and which is occupied by an employee with a later service and date in the same subgroup. In this situation, the group I or II employee can displace an employee with lower retention standing in the same subgroup. This right to displace on the basis of higher standing in the same subgroup is known informally as the "retreat" right. An employee with a current rating of unacceptable has no bumping rights. Under OPM's regulations, only a group I or II employee can retreat and only to a position which is the same, or essentially identical, to a position previously held by the released employee in a Federal agency. In determining whether an employee has a retreat right, the agency applies the following principles:

- a. The right is restricted to jobs in the employee's current competitive area¹⁵ although he/she may have served previously in a different area or in a different agency.
- b. Retreating is limited to no more than three grades (or grade intervals) below the position from which the employee was released. **Exception:** For a preference eligible with a compensable service-connected disability of 30 percent or more, the limit is five grades (or grade intervals).

¹⁵ In accordance with HHS Instruction 351-1, separate competitive areas are established for IHS in each commuting area.

c. Although the employee cannot retreat to a job in a different competitive area, he/she does have retreat rights in his/her current competitive area to a position which is the same, or essentially identical, to a position previously held by the released employee in a Federal agency in a different competitive area of his/her current agency or in a different agency. A position is considered substantially the same when the two positions are like enough that they would be in the same competitive level were they in the same competitive area.

(6) Assignment to Vacant Positions by Waiver of Qualification Requirements.

The agency may waive OPM's qualifications standards and requirements for a position if the employee is entitled to assignment in all respects other than qualifications, and the agency determines the employee has the capacity, adaptability, and special skills required by the position and is satisfied he/she is able to do the work without undue interruption to the work. An agency may not, however, waive a minimum education requirement prescribed by OPM. This exception is made at the discretion of the agency. When an employee's qualifications for a position are an issue in an appeal, MSPB applies OPM's regular qualification standards.

E. Issuance of RIF Notices

The IHS must issue specific written RIF notices to employees selected for release from a competitive level at least 60 full days before the effective date of the release. The notice period begins the day after the employee receives the notice. There is no limit on how far in advance of a reduction in force an agency may issue a notice of the proposed RIF.

The specific notice must state what action is to be taken, the effective date of the action, the employee's competitive area, competitive level, group, subgroup and service computation date, and the last three performance ratings. Further, it must state where the employee may inspect regulations and records pertinent to the case. The notice must also inform the employee of his/her appeal rights to MSPB, the time limits for submission of any appeal, and the address to which any appeal should be directed.

F. Positions Under P.L. 93-638 Contract

The T/TO will provide a minimum of 90 days notice to the Federal Personnel Office on employees who will be affected by RIF due to termination of their IPA agreement. This time frame allows for request of approval to implement RIF and issue notices which cannot be hand delivered but must meet mailing schedules.

G. Retained Grade and Pay

Employees who receive offers of a lower grade may be eligible for grade and pay retention. (See Appendix A).

H. Employee's Alternatives in RIF

While the agency determines what action will initially be taken with regard to employees in RIF (i.e., reassignment or demotion to vacant or available positions; furlough; or separation), the employees have various alternatives, including the declination of an agency offer of retention by reassignment or demotion. However, an employee who declines an offer of a position no more than two grades below his/her current grade, (other than retained grade), may be separated by RIF and forfeits any entitlement to severance pay (See Appendix B).

Employees separated under RIF who meet the criteria listed in Chapter 4 may be eligible for discontinued service retirement.

Competitive service employees separated in RIF will be eligible for participation in the OPM Interagency Placement Program (IPP) as discussed in Appendix D. Employees demoted as a result of RIF may be eligible for grade and pay retention as discussed in Appendix A of this chapter. And, finally, Group I and II employees separated in RIF are eligible for reemployment priority consideration as specified in Appendix E.

I. Indian Health Service Career Transition Assistance Plan (CTAP)

It is the policy of the IHS to actively assist surplus and displaced career or career-conditional (competitive and excepted service) employees in the IHS, whose positions are adversely affected by program reductions, personnel reductions, or transfers of function to a T/TO under P.L. 93-638, make effective transitions to other employment. Assistance will be provided for reassignments to vacant positions for which employees are qualified and interested,

throughout the IHS. A copy of the CTAP is provided at Appendix C.

EXHIBITS

INFORMATION REQUIRED IN NOTIFICATION OF RIF ACTIONS

1. What event or circumstance is the reason for the RIF? When did the event or circumstance occur?
2. What alternatives to RIF were considered (e.g., furlough, hiring freezes, etc.)? Why were they not selected?
3. What other steps are being taken to reduce costs or lower the level of personnel?
4. What level of attrition was used in deciding that a RIF is necessary?
5. What are the estimated number and types of positions to be abolished?
6. What are the estimated number of employees to be separated?
7. What is the estimated number of employees to be demoted?
8. What is the estimated number of employees to be geographically moved?
9. How much money will be saved by this RIF action?
10. How did you decide which units and programs within your organization to subject to personnel reductions? What geographic areas will be affected?
11. Will any members of the Senior Executive Service, Schedule A employees, or Schedule C employees be separated? If so, how many? Which ones? What will be the cost saving of this action?
12. Attach a copy of the proposed specific RIF notice to employees.
13. What is the planned time schedule for the RIF (i.e., issuance of specific notices, and effective date of the RIF)?
14. What placement efforts do you plan to help place affected employees?

SAMPLE RETENTION REGISTER

COMPETITIVE LEVEL: CLC-610-09-01

NURSE (CLINICAL) GS-610-09

	<u>Employee</u>	<u>Service Computation Date</u>	
Tenure Group I	<u>Subgroup AD</u>		
	Indian	03/07/71	
	Non-Indian	02/01/69	
	<u>Subgroup A</u>		
	Indian	06/23/50	
	Indian	08/06/70	
	Indian	01/15/74	
	Non-Indian	04/30/50	
	Non-Indian	05/10/62	
	<u>Subgroup B</u>		
	Indian	09/10/75	
	Indian	11/12/76	
	Non-Indian	04/05/70	
	Tenure Group II	<u>Subgroup AD</u>	
		Non-Indian	03/03/78
<u>Subgroup A</u>			
Indian		01/12/80	
Non-Indian		12/10/79	
<u>Subgroup B</u>			
Indian		05/10/73	
Indian		06/11/79	
Non-Indian		04/04/76	
Non-Indian	09/01/80		
Tenure Group III	Same concept as above.		

REDUCTION-IN-FORCE CHECKLIST AND TIMETABLE

<u>ACTION ITEMS</u>	<u>RESPONSIBLE OFFICIAL(S)</u>	<u>TARGET DATES</u>	
		<u>INITIATED</u>	<u>COMPLETED</u>
Identify affected positions	Tribe/SPO/Program Official		
Notify the union	SPO		
Review competitive level codes	SPO		
Verify employee records (tenure, veterans preference, SCD, performance ratings)	SPO		
Complete qualifications analysis on potentially affected employees	SPO		
Develop Specific Notices and attachments	SPO		
Initiate Placement Assistance Program Efforts	SPO		
Conduct employee counseling sessions	SPO		
Conduct "dry run" of RIF process	SPO		
Notify DHR of RIF (at least 30 days before notice is issued)	SPO		
Request Waiver of Indian Preference Under P.L. 96-135 (if necessary)	SPO		
Finalize retention registers	SPO		
Issue Specific Notices (no less than 60 calendar days prior to the effective date of the RIF)	SPO		
Process personnel actions	SPO		

APPENDICES

GRADE AND PAY RETENTION

Grade and pay retention provisions make it possible for employees to retain their grades for two years to avoid taking considerable cuts in salary as the result of reductions in grade for which they are not responsible.

Employees to be placed in lower graded positions as the result of RIF (if they have been at the higher grade for 52 weeks or more) or reclassification actions (if the positions have been classified at the higher grade for one year or more) may retain their current grade for two years from the date of reduction in grade. Pay for these employees will not be reduced during the two year period.

At the end of the two year period, the grade of these employees will be lowered:

If their current rate of pay is less than the highest level of pay in their new grade they will be placed at the step closest to their current level of pay which is not less than their current level of pay.

If their pay at that time exceeds the maximum rate for their new grades, they will retain their current rate of pay unless their retained rate exceeds 150% of the top rate of the grade to which they are reduced. They will receive only 50% of the annual comparability pay increases (but full locality pay increases) until their pay is lower than or equal to the maximum rate of their new grade. When that occurs they will receive full comparability pay increases.

Those employees whose current rate of pay exceeds the top level of their new grade will have their pay reduced to a rate that is equal to 150% of the top rate in their new grade. Comparability increases are the same as for any employee whose rate exceeds the top rate for the new grade.

In accordance with HHS Personnel Instruction 335-2 (abolished by HHS, but policy continues in IHS), a retained grade employee who ranks among the best qualified for a vacancy at the level of his or her retained grade must be selected in preference to other employees on the best qualified list. For non-Indian retained grade employees, this preference in selection only occurs if there are no qualified Indian candidates available for the position.

SEVERANCE

PAY

Government employees who currently have been employed continuously for at least 12 months and who lose their jobs through no fault of their own are entitled to severance pay. This includes employees who are separated in a RIF because of abolishment of their position or who are unable to accompany their positions in a transfer of function to another commuting area. There are some limitations on entitlement to severance pay. For example, if a separated employee is offered and declines a position in the Agency, in the same commuting area, that is no more than two grades below his/her current grade (without regard to retained grade), the employee is not entitled to severance pay. In addition, an employee who is entitled to an immediate annuity, or an annuity earned as a member of the uniformed services, is not entitled to severance pay. Employees who receive a specific RIF notice may then resign, go to work for the T/TO and still receive severance pay.

For those who are eligible, severance pay is computed on the basis of one week's salary for each year of the first ten years of service and two week's salary for each year of service after ten years (basic allowance). For employees over age 40, an age adjustment allowance is added to the basic allowance by computing ten percent (10%) of the basic allowance of each year over age 40. In both computations, full consideration is given to full quarters of a year. Military service is considered creditable service for severance pay purposes when it interrupts civilian service, and the employee returns to civilian service within the period for exercising restoration rights after military duty.

Indian Health Service Career Transition Assistance Plan

INTERAGENCY PLACEMENT PROGRAMS (STATUS EMPLOYEES ONLY)

The IHS is required to make positive efforts to place employees with career or career-conditional tenure who are scheduled to be displaced by RIF in another position. (See IHS Career Transition Assistance Plan in Appendix C). It is also required to put their names on a reemployment priority list if they are to be separated. For two years (one year for career-conditional employees) career employees will receive priority in filling vacancies in HHS in their commuting area for which they are qualified.

Displaced employees in the competitive service are also entitled to registration in the OPM Interagency Placement Program. When they are registered by their agency, the OPM will do a number of things looking toward their continued employment or reemployment, either in the same area or in other areas in which they are interested in working. If any agency submits a request to fill a position for which the displaced employee is qualified, the OPM will send the employee's name to the agency for priority consideration for appointment. This program's benefits are also available to employees with competitive status scheduled for displacement by RIF from permanent excepted positions. Also, career and career-conditional employees and employees with competitive status who are serving in excepted positions are entitled to benefits when scheduled to be displaced for failure to follow a transferring function.

A separated career or career-conditional employee also has eligibility for reinstatement. Thus, he/she may apply for employment directly to any Federal agency in which he/she desires to work.

REEMPLOYMENT PRIORITY LISTS

Every agency establishes and maintains a reemployment priority list (RPL) for each commuting area in which it separates group I or II employees by RIF.

The name of each employee is entered on the list for all positions in the commuting area for which he/she is qualified and available. The agency has only one list for the commuting area.

Unless a group I or II employee has declined assignment to a full-time, non-temporary, Federal position with a representative rate no lower than that of the position from which separated, the employee is entered on the list for all positions for which qualified and available. Eligibility is not limited to the last grade held. The employee's eligibility and the agency's obligation extend to all positions and grades for which the employee is qualified, including grades higher than those previously held.

If an employee resigns after receiving a specific RIF notice, the employee is not entitled to be placed on the RPL. The SPOs must ensure that employees intending to resign are informed of this provision in writing.

From the date of separation, the name of a group I employee remains on the list for two years, and a group II employee for one year. The names of employees who accept full time, non-temporary positions are removed from the list. The Agency may also delete a name from the list based on the employee's signed written request or on the declination of a non-temporary, full-time position with a representative rate no lower than that of the position from which separated by RIF. Employees' names are not removed from the list when they refuse temporary appointment or less than full-time employment (unless they were in a less than full-time position when separated).

Employees' names are removed from the list when they are reinstated to a non-temporary full-time job, regardless of its grade or pay. Employees' names are also removed from the list for all positions at and below the representative rate of a position which is declined. The agency should be careful to explain to employees the need for an accurate statement of availability so the employees will not get offers for which they really are not available.

REEMPLOYMENT PRIORITY LISTS (CONTINUED)

An employee's declination of a position outside the commuting area has no effect on his/her reemployment priority, unless the position declined is in a locality for which the employee had shown on the record that he/she was available.

Reference Chapter 5, Reemployment Rights Authorized by section 104(i) of P.L. 93-638 for Reemployment Rights for Former Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) Employees after Service under the Indian Self-Determination Act to Tribal Organizations.

CHAPTER 7

CHAPTER 7

ASSIGNMENT OF PHS COMMISSIONED OFFICERS TO TRIBAL ORGANIZATIONS

1. GENERAL

Public Law 93-638 does not provide for employment of commissioned corps personnel by T/TOs. However, individuals may be assigned to T/TOs under subsection (d) of section 214 of the Public Health Service (PHS) Act, P.L. 78-410.

2. INTRODUCTION

In accordance with section 104(b) of P.L. 93-638, as amended, upon the request of any Indian tribe, band, group, or community, the IHS can assign PHS commissioned officers (Officer) to T/TOs (including Alaska Native Villages and Native Health Corporations) that contract under Title I or compact under Title III of P.L. 93-638, as amended. The commissioned corps is thus a potential source of scarce talents and professional services for the T/TOs. The IHS assigns Officers to T/TOs that receive contracts under P.L. 93-638 by a Memorandum of Agreement (MOA) signed by the IHS and the T/TO. The Officer remains an employee of the PHS/IHS and is assigned to the T/TO while occupying an IHS position. The IHS coordinates assignments taking into account tribal needs and personnel availability.

A Officer may also be assigned to a T/TO on a LWOP detail pursuant to 42 U.S.C. 215.

3. PROCEDURES

A. Method of Assignment

(1) Requests

- a. Assignments of PHS Commissioned Officers should be initiated by the T/TO.

- b. To obtain the services of an Officer the
- 1 The T/TO requests the service from the IHS.
 - 2 The IHS forwards the request to the PHS and coordinates recruitment and assignment of suitable Officers.
 - 3 Individual should qualify for a PHS commission.
 - 4 The IHS is responsible for coordinating reassignment with T/TOs.

(2) Assignment Agreement

a. Written Assignment Agreement Required

Assignments are documented through a written MOA between the representative of the T/TO and the IHS Area Office Director. A sample agreement is provided at Exhibit 7-1.

- 1 A written agreement is executed to document the obligations and responsibilities of the T/TO and the individual Officer involved in the assignment, to provide a record of the rights of each of the parties to the agreement.
- 2 A separate agreement is written for each assignee.
- 3 Exhibit 7-1 is the format which contains the contents of a properly drawn two-party assignment agreement in which the IHS is a party.

b. Approval of a Proposed Agreement

A proposed assignment agreement is circulated for review and signature by the:

- 1 Authorizing official of the T/TO; and
- 2 The IHS approving official.

c. Distribution of the Assignment Agreement

Once an agreement has been approved, copies are distributed as follows:

- 1 One copy to the assignee;
- 2 One copy to the Federal supervisor; and
- 3 One copy to the approving official of the T/TO.

d. Terminating an Agreement

The agreement may be terminated by mutual consent of both parties, with reasonable notice to the Officer concerned, or upon 30 days advance notice to the Officer concerned, or upon 60 days' notice, in writing, by either party of its intention to terminate the agreement. The agreement may also be terminated by the Officer who decides to separate from Active Duty or transfers to another duty assignment.

(3) Rights and Benefits

a. Hours of Duty

The hours of duty are determined in agreement with the T/TO and the Officer.

b. Leave

- 1 The Officer is entitled to annual and sick leave in accordance with Federal law (42 U.S.C. 210-1), regulations, and policies. Sick leave should be granted as needed.
- 2 Leave should be approved jointly by the tribal and Federal supervisors. Leave records should be maintained by the Federal supervisor or designated Leave Maintenance Clerk in the Area.

(4) Applicability of Rules, Regulations, and Policies

The rules and policies governing the internal operation and management of the T/TO to which the

Officer is assigned apply to the Officer. If there is a conflict between any tribal and HHS/IHS rules, regulations, or policies, HHS rules, regulations or policies apply.

a. Standards of Conduct

- 1 Sections 203, 205, 207, 208, and 209 of Title 18, U.S.C., relating to conflicts of interest, apply to the Officer while on assignment, although the T/TO may not be subject to the sections of P.L. 93-638, as amended.
- 2 P.L. 93-638, as amended, provides that a Federal employee on assignment may represent a T/TO in a matter pending before the Government, unless there is an obvious conflict of interest.
- 3 The Officer on assignment to a T/TO may not engage in any political activities prohibited to Federal employees under the Hatch Act (5 U.S.C. 7324).

b. HHS/IHS Conduct Regulations

- 1 The regulations and policies of both HHS/IHS and the T/TO apply to Officers assigned to the T/TO.
- 2 The PHS/IHS is responsible for any disciplinary or adverse actions that may be required because of a Officers actions during an assignment to a T/TO.
- 3 Requests by Officers on MOA assignments for approval of outside work, writing or editing activities, etc., should be submitted through the appropriate tribal official to the Federal supervisor for approval/disapproval in accordance with HHS/IHS regulations and policies.

(5) Length of Assignment

Initial assignments may be made for not more than two calendar years but may be renewed in increments of two years or less.

(6) Funding

The assignment of an Officer represents part of the ongoing IHS program commitment and the cost is assumed directly by the IHS.

The Officer continues to be an employee of the PHS/IHS and remains on the payroll of, and is paid by, the IHS and is assigned to the T/TO while occupying an IHS position.

a. The IHS pays the following expenses incident to the employment and travel of the Officer:

- 1 Pay and allowances, including base pay, quarters and subsistence allowances, special pay, variable special pay, incentive special pay, board certified pay, longevity increases, and periodic increases;
- 2 Costs of travel of the Officer (including Dislocation Allowance, when applicable) and transportation of his/her dependents, household goods and personal effects to and from the place of assignment in accordance with the Joint Federal Travel Regulations;
- 3 All costs involving payment for annual leave earned but not used while on assignment up to a maximum of 60 days;
- 4 The Federal Government's share of costs for Social Security Coverage; and
- 5 Contingency expenses in the event of the Officers:
 - a Death;
 - b Death of a dependent and transportation of the body to the place of burial;
 - c Separation or retirement from the PHS/IHS; and
 - d Illness.

b. The T/TO pays:

- 1 Transportation expenses incurred as a result of temporary duty travel directed by the T/TO in accordance with tribal laws, regulations, and procedures (NOTE: all travel for Officers should be directed and approved on form HHS-1, Travel Order); and
- 2 Any professional state licensure fees when such a license is required by the T/TO.

(7) Supervision

An Officer receives day-to-day supervision from an individual designated by the T/TO and receives administrative supervision (e.g., the review of Commissioned Officer's Progress and Efficiency Report (COPER), approving administrative or annual leave, etc.) from the Federal supervisor.

B. Federal Tort Claims Act Coverage

The Officers assigned to a T/TO are protected against personal liability for medical malpractice under 42 U.S.C. 233, in pertinent part (a) and (b), and this protection of the Officer or employees is not affected by such assignment.

C. Equal Employment Opportunity (EEO)

Members of the PHS Commissioned Corps who are assigned or detailed to another agency or organization, or to a T/TO under a MOA, may only file a complaint under procedures found in the Commissioned Corps Personnel Instruction, CC 26.1, when the subject of the complaint is a matter under the control of the HHS. For matters not under the control of the HHS, the Officer shall file his/her complaint with the agency or organization to which assigned or detailed, in accordance with the MOA between the HHS and that organization.

D. Commissioned Officers Assigned to T/TO by an MOA

- (1) The Area should establish alternate plans to cover the possible return of the Officer to the IHS, with 60 days notice i.e., position and salary for the Officer. At a minimum, such planning should

include coordinating with the respective health discipline or category chief at the Area and may also include coordinating with the respective health discipline or category chief in IHS HQs.

- (2) A completed PHS 1662, Request for Personnel Action for Officers (see Exhibit 7-2), to assign the Officer to the T/TO should be submitted to the CPST. The Area Director, or designee, should include in the remarks section, the following statements "638 MOA-Tribal Detail" and "Temporary position and funds will be made available in the Area should the T/TO no longer require the services of the Officer." This should facilitate reassignment of the Officer while placement action is pending.

E. Return of Commissioned Officers from Assignment to a T/TO

- (1) A T/TO may wish to have an Officer reassigned from their program. The T/TO shall give the Area 60 days notice as established in the MOA.
 - a. During the notice period, all pay and allowances for the Officer are the responsibility of the T/TO.
 - b. After the notice period, the Area is be responsible for providing a temporary position and funds until the Officer is reassigned.
- (2) When an Area is notified by the T/TO that they no longer require the services of an Officer, the Area Director, or designee, should notify the CPST by memorandum (See Exhibit 7-3). The memorandum shall provide the following information to the CPST to aid in placement action:
 - a. The reason the T/TO requests that the Officer no longer be assigned to them;
 - b. Discussion of efforts to reassign the Officer within the Area to include:
 - 1 Availability of other positions and/or why Officer cannot be reassigned to another position in the Area;

- 2 Specific comments and recommendations from the Area category consultant, if one is designated:
- 3 A recommendation as to whether action other than reassignment is appropriate. If so, necessary documentation should be provided.

- (3) In the event the T/TO no longer requests the services of the Officer, or requests the Officer no longer be assigned to them, **priority** consideration will be given to IHS-wide placement, in determining the Officers next assignment. Priority consideration is not a selection entitlement, but means that the employee must be given bona fide consideration by the selecting official **before other candidates are sought.**
- NOTE:** *The Areas should provide documented justification to Commissioned Personnel Support Team (CPST) of the Office of Management Support (OMS), IHS, for not selecting the Officer needing reassignment before they are allowed to recruit further to fill a vacancy.*

Priority consideration should be in compliance with the Indian Preference policy, IHS Circular 87-2, as well as succeeding documents or related policies issued in the future.

- (4) The CPST, Division of Human Resources, OMS, IHS, is responsible for coordinating IHS-wide priority placement of Officers whose assignments are terminated by a T/TO. Placement efforts should be coordinated through the respective discipline or category chief in IHS HQs. The scope of consideration for placement of the Officer should be IHS-wide including the Area which made the assignment of the Officer to the T/TO under P.L. 93-638, as amended.
- (5) While placement efforts are pending, the Area to which the Officer is assigned should be responsible for the Officer's salary and position. In addition, should temporary duty (TDY) **outside** the Area be necessary pending placement, the Area from which the Officer is assigned should be responsible for all TDY costs, unless other arrangements are agreed to by the Area to which the Officer is assigned on TDY. Any costs for TDY

within the Area are the responsibility of the Area.

- (6) Salary, position, and TDY costs normally should not exceed 60-90 days. If the CPST is unable to coordinate another assignment for the Officer within 45 days, the name of the Officer should be referred to the Division of Commissioned Personnel, Office of the Surgeon General, for placement assistance or other appropriate administrative action (i.e., termination, inactivation, etc.).
- (7) The 60-90 day limit does not apply if involuntary action other than reassignment is required. However, the CPST should make every effort to minimize the time if action other than reassignment is required.

F. LWOP Detail to a State/Non-Profit Institution

Pursuant to 42 U.S.C. 215, Officer may also be assigned to a T/TO on a LWOP detail. However, LWOP details are not used very often. Exhibit 7-4, Sample Personnel Agreement: Leave Without Pay Detail to a State/Non-Profit Institution is the format which contains the contents of a properly drawn three-party agreement in which the IHS is a party.

EXHIBITS

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b)

Pursuant to the provisions of Section 104(b) of the Indian Self-Determination Act, as amended, the _____ (Area) of the Indian Health Service (IHS) and the _____ (T/TO) _____ hereby enter into an agreement for the assignment of _____ (name of Officer), _____ (soc. sec. no.), _____ (rank and title), _____ (organizational location) to _____ (name of T/TO).

I. JUSTIFICATION FOR THE ASSIGNMENT

- A. The reason(s) for the tribe or tribal organizations (T/TO) request for this assignment is/are as follows:
- B. The reason(s) for the IHS's approval of this assignment is/are as follows:
- C. The specific objectives of this assignment are as follows:

II. POSITION DATA AND SUPERVISION

The Officer is a member of the Commissioned Corps of the Public Health Service (PHS) and, as such, is assigned at the request of the IHS to the _____ T/TO _____

- A. The Officer is to be assigned to the position of _____ (position title) _____ in the _____ (organizational work unit) _____ at _____ (location of tribal facility) effective _____ (date) _____.
- B. The Officer will be directly responsible for performance of day-to-day activities under the supervision of _____ (title of the tribal official responsible to and for the Officer) _____.

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

C. The IHS official (to be known as the "IHS Federal Supervisor") who will exercise administrative supervision (including the review of Commissioned Officer Progress and Efficiency Reports, approving administrative or annual leave in conjunction with the forenamed tribal official, advocating in grievances against or by the Officer, etc.) over the Officer while on assignment is _____ (name, _____ position title, organization, and business _____ address--normally chief professional counterpart at Area or service unit level) _____.

D. The tribal official who will be responsible for the day-to-day supervision of the Officer while on assignment is (name, position title, organization, and business address) _____

_____ This official will be known as the "Tribal Supervisor."

E. The Officer has been placed in Billet # _____. See attached billet for a description of the specific duties of the Officer.

F. This agreement refers only to the conditions which will prevail when an individual PHS Commissioned Officer is assigned to a T/TO pursuant to the provisions of section 104(b) of the P.L. 93-638, as amended. It in no way obligates the IHS to provide specific resources or services other than for the time period and under the conditions specified. Moreover, it is contingent upon:

1. The continued willingness of the Officer to serve in the assignment and the T/TO's willingness to retain the Officer;
2. The PHS' approval to allow the Officer to continue to serve in the specified capacity; and

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

3. The availability of appropriated resources to support the assignment.

Furthermore, upon termination of this agreement, the IHS is not obligated to replace the Officer with someone of similar competency, although it will make a reasonable attempt to do so, within its capability to recruit or supply such an individual, if this is so desired by the T/TO.

- G. The Officer is subject to reassignment either temporarily or permanently by the Commissioned Corps. Temporary reassignments may be for the purpose of meeting the needs of a national or international emergency or crisis. Permanent reassignments may be made to meet the needs of the PHS.

III. COSTS OF THE REIMBURSABLE ASSIGNMENT

- A. The following compensation and expenses incident to the employment and travel of the Officer will be paid by the IHS directly to the Officer:
 1. Pay and allowance, including base pay, quarters and subsistence allowances, special pay, continuation pay (or variable incentive pay), longevity increases and periodic pay increases in accordance with Title 37, United States Code.
 2. Costs of travel of the Officer and transportation of his/her dependents, household goods and personal effects to and from the place of assignment in accordance with the Joint Travel Regulations of the Uniformed Services. (Travel and transportation expenses incurred as a result of temporary duty travel directed by the T/TO will be paid by the T/TO under tribal laws, regulations, and procedures.)

**MEMORANDUM OF AGREEMENT
UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)**

3. All costs involving annual leave earned but not used while on assignment.
4. The Federal Government's share of costs for Servicemen's Group Life Insurance and Social Security Coverage.

B. ESTIMATED ANNUAL COSTS

Pay and allowances	\$ _____
Government's share of costs of Social Security and Insurance coverage, etc.	\$ _____
Travel and transportation expenses	\$ _____
Administrative costs	\$ _____
TOTAL	\$ _____

IV. CONTINGENCY EXPENSES

If any of the following events should occur while the Officer is on assignment, the expenses indicated will be defrayed by the PHS.

- A. In the event of the death of the Officer, expenses for:
 1. Transportation of dependents and shipment of household goods and personal effects to a place selected by the Officers' survivors.
 2. Burial, including transportation of remains to place of interment.
 3. Six months pay death gratuity.

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

4. Lump-sum leave payment for earned but unused annual leave not covered by subparagraph III. A.3. above.
 5. Transportation of survivors to and from the place of interment.
- B. In the event of the death of an Officer's dependent, transportation of the dependent's remains to the place of interment.
- C. In the event of separation or retirement, expenses for lump-sum payment for earned but unused annual leave not covered by subparagraph III.A.3. above.
- D. The PHS will pay the costs of inpatient transfers of Officers. Within the PHS, these costs are payable by the Beneficiary Medical Program.
- E. In the event of illness, any necessary transportation to and from a hospital.

V. RIGHTS AND BENEFITS

- A. Hours of duty are to be determined in agreement with the T/TO and the Officer in accordance with the T/TO's Personnel Policies.
- B. The Officer is entitled to annual and sick leave in accordance with Federal law (42 U.S.C. 210-1), regulations, and policies. Sick leave is granted as needed. The Officer has _____ days of annual leave to his/her credit on _____ (enter date)_____. The Officer's leave accrues at the rate of 30 days of annual leave per year or, at the rate of 2-1/2 days of leave per month and can be used at any time thereafter. Any leave in excess of 60 days on December 31 of any year is lost.

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

Annual, administrative, and sick leave will be approved jointly by both the tribal and Federal supervisors. Leave records (Form PHS-1345 (CO), "Request and Authority for Leave of Absence," and Form PHS-31, "Officer's Leave Record," will be maintained by the Federal supervisor.

The tribal supervisor will promptly report to the Federal supervisor, on Form PHS-1345 (CO), to the Federal supervisor leave approved and used. The Officer may be excused from duty on all Federal or tribal holidays without charge to annual leave if the tribal program is closed. If the Federal or tribal holiday falls within a period of approved annual leave, the holiday is charged as annual leave.

"Station leave" (i.e., leave of less than a full workday) may be granted by the Federal supervisor without charge to annual leave either orally or in writing.

The Federal supervisor will forward all reports of sick leave (on Form PHS-1345 (CO)) to the following address:

Director
Commissioned Personnel Operations,
OPM/OAM/PHS
Room 4-35, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

In addition, the Officer will promptly provide to the above address, specific information concerning each incidence of serious illness, protracted sick leave, and any hospitalization.

- C. The Officer's coverage under the Servicemen's Group Life Insurance Program and Social Security continue while on this assignment. The Officer's

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

share of costs for coverage will be withheld from his/her pay.

- D. The period of assignment is creditable toward longevity increases in basic pay.
- E. The Officer's entitlement to Post/Base Armed Forces Exchange and Commissary privileges at facilities of the Armed Forces and medical care for him/herself and dependents continues while on this assignment. Likewise, the period of this assignment is creditable service in determining eligibility for benefits administered by the Veteran's Administration (VA).
- F. An Officer's coverage under PHS retirement provisions continues while on this assignment.
- G. Commissioned Officers are covered under the Tort Claims Act (28 U.S.C. 2671-2680; 1346(b)) and the Hold Harmless section of the Emergency Health Personnel Act [42 U.S.C.233(f)] as long as they are practicing within the scope of their employment.
- H. The T/TO agrees to reimburse the Officer for any professional licensure fees when such a license is required by the T/TO, over and above that required by the PHS, for the performance of its work.

VI. APPLICABILITY OF RULES, REGULATIONS, AND POLICIES

- A. The rules and policies governing the internal operation and management of the T/TO to which assigned will apply to the Officer.
- B. Federal laws relating to conflicts of interest (Title 18 U.S.C. 203, 205, 207, 208, and 209), shall apply to the Officer while on assignment, although the T/TO may not be subject to the sections of P.L. 93-638, as amended.

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

- C. The Officer, as a Federal employee, shall not engage in any political activities prohibited to Federal employees under the (5 U.S.C. 7324 et seq. [the Hatch Act]).
- D. The rules and policies, of both the HHS and the T/TO, governing standards of conduct shall apply to the Officer, except that:
 - 1. The PHS, with the assistance of the tribal supervisor, will be responsible for any disciplinary or adverse action that may be appropriate.
 - 2. Requests for approval of outside employment (e.g., writing and editing, etc.) shall be submitted to the Federal supervisor, through the tribal supervisor, for approval or disapproval in accordance with HHS regulations and policies.
 - 3. Unless otherwise specified in this agreement, HHS laws, regulations, and policies will apply in instances where there is a conflict between HHS and, tribal laws, regulations, and policies.
- E. Commissioned Officers' Progress and Efficiency Reports (COPER) for the assigned Officer will be submitted annually to the Division of Commissioned Personnel (DCP), through established procedures. The tribal supervisor will be the Rating Official and the Federal supervisor will be the Reviewing Official.

MEMORANDUM OF AGREEMENT UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)

- F. The Officer will promptly report any change in dependency status affecting his/her rate of pay and allowances to the following address:

Commissioned Officers' Pay Branch,
Compensation Branch/DCP/OSG
Division of Commissioned Personnel
Room 4-50, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

- G. Commissioned Officer's are subject to recall by the Surgeon General of the PHS at any time. In the event that the Officer is recalled for an extended period of time, the IHS, although not obligated to do so, will attempt to recruit or supply a replacement, if so requested by the T/TO.

VII. PERIOD OF THE ASSIGNMENT

- A. This assignment is for a period of _____, beginning _____ (date) _____. (The period may not exceed two years but may be renewed in increments of two years or less.)
- B. This agreement may be terminated or otherwise modified by mutual consent of both parties, with reasonable notice to the Officer concerned, or upon 60 days' notice in writing by either party of its intention to terminate or otherwise modify the agreement.

VIII. METHOD OF PAYMENT

- A. This assignment represents part of the ongoing IHS program commitment and the cost of salaries and related fringe benefits will continue to be paid by the IHS.
- B. The Officer assigned under an MOA continues to be an employee of the IHS. The amount of funds

**MEMORANDUM OF AGREEMENT
UNDER P.L. 93-638, SECTION 104(b) (CONTINUED)**

provided for support of the MOA position remains in the IHS budget.

- C. A GSA vehicle will be provided to the Officer for transportation on official duties.

IX. APPROVALS

APPROVED:

FOR THE TRIBE/TRIBAL
ORGANIZATION

FOR THE INDIAN HEALTH
SERVICE

(Signature of tribal
official)

(Signature of IHS
Approving Official)

(Typed name and title
of tribal official)

(Name and title of IHS
approving official)

(Date)

(Date)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

PHS-1662
(6/97)

REQUEST FOR PERSONNEL ACTION - COMMISSIONED OFFICER
(Read instructions on reverse before completing this form.)

1. NAME (Last, First, Middle Initial)		2. PHONE NUMBERS (Include area code) Work () Home ()	
3a. SSAN	3b. PHS SERIAL NUMBER	3c. CATEGORY	3d. GRADE T _____ P _____
4a. OPDIV/PROGRAM CONTACT		4b. OPDIV/PROGRAM CONTACT PHONE NUMBER () Ext.	
6. TYPE OF ACTION REQUESTED <input type="checkbox"/> OTHER <input type="checkbox"/> CAD-GENERAL DUTY <input type="checkbox"/> TRANSFER <input type="checkbox"/> BILLET UPDATE <input type="checkbox"/> LIMITED TOUR _____ YEARS <input type="checkbox"/> CAD-JRCOSTEP <input type="checkbox"/> AMEND PO # _____ <input type="checkbox"/> REASSIGNMENT <input type="checkbox"/> LIMIT <input type="checkbox"/> REMOVE <input type="checkbox"/> EXTEND <input type="checkbox"/> CAD-SRCOSTEP <input type="checkbox"/> DETAIL <input type="checkbox"/> TRAINING <input type="checkbox"/> IN <input type="checkbox"/> OUT <input type="checkbox"/> RECALL FROM <input type="checkbox"/> INACTIVE <input type="checkbox"/> RETIRED			
6a. ASSIGNMENT INFORMATION/DATES (Must provide Effective Date. Provide other data if applicable to type of order. Use mm/dd/yy for dates).		6b. CONCURRENCE INFORMATION	
1. Effective Dates	4. Scholarship Obligation-Number of Years	1. Concurrence/Release given by:	
2. Date Released From Old Duty Station	5. Training Obligation End Date	2. Phone number: () 3. Date:	
3. Reporting Date	6. Short Tour/COSTEP End Date	6c. APPROVED LEAVE EN ROUTE <input type="checkbox"/> YES <input type="checkbox"/> NO DATES (mm/dd/yy) From: To:	
7. DUTY STATIONS		6d. TRAINING OR DETAIL CODES (Provide only if needed)	
a. FROM (Current Duty Station)		b. TO (New Duty Station)	
ADMINISTRATIVE CODE:			
BILLET NUMBER/TITLE:			
OPDIV/AGENCY/BUREAU:			
DIV/BRANCH/SECTION:			
MAILSTOP/ROOM NUMBER:			
COMPLETE ADDRESS: (Building, Street, City, State, ZIP Code)			
8. TEMPORARY DUTY EN ROUTE <input type="checkbox"/> YES <input type="checkbox"/> NO (If no, skip to Item B) DATES (mm/dd/yy) From: Through:		9a. MODE OF TRAVEL: (Air, POV, Common Carrier)	
LOCATION:		9b. SPECIFIC SCHEDULE/ITINERARY (If needed)	
REASON:			
10. SPECIAL TRAVEL ALLOWANCES OR INSTRUCTIONS			
11. NEW ACCOUNTING INFORMATION			
a. CAN (PAY) #:	b. Acct. Pt. (PAY) #:	c. DA/Timekeeper #:	d. CAN (TVL) #: e. Acct. Pt. (TVL) #:
12. REMARKS (If applicable, include training preceptor name/phone number)			

13. DIVISION AND OPDIV/PROGRAM CLEARANCE AND APPROVAL – Submission of this form to DCP by the requesting program certifies that all applicable hiring or assignment restrictions and security clearance requirements for this position have been met. <i>(Check as appropriate)</i>						
a. SECURITY INFORMATION <input type="checkbox"/> Non-Sensitive Position <input type="checkbox"/> Sensitive Position Date individual Cleared (mm/dd/yy):		b. TDP <input type="checkbox"/> Yes <input type="checkbox"/> No	c. WORKS WITH CHILDREN <input type="checkbox"/> Yes <input type="checkbox"/> No	d. ROG (Research Officer Group) <input type="checkbox"/> Yes <input type="checkbox"/> Change <input type="checkbox"/> No		e. ROG TENURE STATUS <input type="checkbox"/> A (ASSCO/Untenured) <input type="checkbox"/> F (Fellow) <input type="checkbox"/> R (Tenured) <input type="checkbox"/> K (Tenured Track) <input type="checkbox"/> N (NonROG)
14. APPROVAL <i>(Print or type Name (First - M.I. - Last), Title and Date).</i>						
BUDGET OFFICIAL-NAME		TITLE		SIGNATURE	DATE	
1ST REQUESTING OFFICIAL-NAME		TITLE		SIGNATURE	DATE	
2ND REQUESTING OFFICIAL-NAME		TITLE		SIGNATURE	DATE	
AGENCY/OPDIV/PROGRAM LIAISON OFFICIAL-NAME		TITLE		SIGNATURE	DATE	
15. DIVISION OF COMMISSIONED PERSONNEL (DCP) CLEARANCE						
Comments, if any:				SIGNATURE OF DCP OFFICIAL	DATE	
FOR DCP USE ONLY	Mileage:	Number of Days Travel:		OD	ODB	
				TAS	CB	
					PSB	
					MAB	

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INSTRUCTIONS FOR COMPLETING FORM PHS-1662 (Rev. 6/97)

An additional sheet of plain paper may be added to complete answers, if necessary
Be sure to put officer's/applicant's name and social Security Number (SSAN) on additional sheets.

See INSTRUCTION 2, Subchapter CC23.6 of the Commissioned Corps Personnel Manual (CCPM), for additional information.

PLEASE TYPE OR PRINT LEGIBLY

After completing this form, forward original to the division of Commissioned Personnel/HRS/PSC, ATTN: TAS, Room 4-20, 5600 Fishers Lane, Rockville, MD 20857-0001. **AT LEAST 20 CALENDAR DAYS BEFORE EFFECTIVE DATE OF REQUESTED ACTION OR 30 CALENDAR DAYS IN THE CASE OF TRAINING.** For Calls to Active Duty (CAD) allow additional time, as the 20-day rule does not begin until all of the application materials and the acceptance response have been received in the Division of Commissioned Personnel (DCP).

1. Show the officer's/applicant's full name (last name, first name, middle initial) as it appears on official documents.
2. Furnish officer's duty station/work phone number and applicant's work and home phone numbers (include area code).
3. Furnish officer's/applicant's SSAN, PHS Serial Number (SERNO) (if applicable), Category, and Temporary and Permanent grades (if applicable). Category response should be one of the following:

Medical	Scientist	Dietetics
Dental	Sanitarian	Therapy
Nurse	Veterinary	Health Services
Engineer	Pharmacy	
4. Furnish name and phone number of Operating Division (OPDIV) Program official to be contacted if further information or clarification is necessary.
5. Indicate nature of action requested. See INSTRUCTION 2, Subchapter CC23.6 of the CCPM for definitions of types of actions.
6. Effective date should be the date you want the personnel order to be effective. For orders with travel, this is the day travel begins. Indicate date officer/applicant is to report to his/her new assignment or the last day officer will be at the releasing station. DCP will make adjustments to CAD orders to include time required for travel to initial duty station. [NOTE: Reporting date should not be on a nonwork day such as a holiday or weekend unless the OPDIV/Program specifically wants the officer to report on such a day, and in the case of a CAD the reporting date should not be on the 31st of any month.] Show obligation end date, if applicable. Name and phone number of official concurring in release date must be furnished. If annual leave en route is approved, so indicate and provide actual dates of annual leave.
7. Furnish officer's current duty station information and "NEW" duty station information. If a CAD order, furnish officer/applicant's home address in Item 7(a) "Current Duty Station" and furnish "New" duty station information.
8. If temporary duty en route to new permanent duty station is requested, furnish the specific dates and place at which temporary duty will be performed and the purpose of such request.
9. Show mode of travel and the officer's/applicant's specific schedule if travel is by means other than privately owned vehicle (POV), e.g., air, train, bus, etc.
10. Indicate whether there are any special travel allowances of instructions about travel expenses, e.g., extra baggage, mixed mode, ferry system, etc.
11. Furnish the Common Accounting Number (CAN) for Pay, Accounting Point (Pay) number, Designated Agent/Timekeeper number, CAN for Travel number, and Accounting Point (travel/Transportation) number of the office to which the officer will be assigned.
12. Use for any additional necessary remarks.
13. It is mandatory to answer all questions concerning required clearances. Authority for:

Testing Designated Position (TDP):	See HHS Personnel Manual Instruction 792-5(INTERIM);
Child Care Services (CCS):	See 42 USC 13041E; and
Research Officer Group (ROG):	See INSTRUCTION 1, Subchapter CC23.6, of the CCPM.
14. Division and OPDIV/Program officials requesting action must sign and date form. If you have any questions, contact your OPDIV/Program Commissioned Corps Liaison.
15. DCP will sign off and issue a personnel order only after all required documentation is furnished.

**SAMPLE MEMORANDUM REQUESTING
REASSIGNMENT OF A COMMISSIONED OFFICER
(CONTINUED)**

3. (Provide a recommendation as to whether action other than reassignment is appropriate. If so, provide necessary documentation).

(Signature of Area Director)

SAMPLE PERSONNEL AGREEMENT: LEAVE WITHOUT PAY (LWOP) DETAIL TO A STATE/NON-PROFIT INSTITUTION (NPI)

Pursuant to 42 U.S.C. 215, the [enter PHS Agency], Public Health Service (PHS), and the [enter State Agency and State/NPI], hereby enter into an agreement for the leave without pay (LWOP) detail of [enter name, grade, title, and Social Security Number of the officer], [enter PHS organizational and geographic location] to the State Agency/NPI].

I. JUSTIFICATION FOR THE LWOP DETAIL

- A. The reason(s) for the State/NPI's request for this LWOP detail is (are) as follows:
- B. The reason(s) for the Public Health Service's approval of this LWOP detail is (are) as follows:
- C. The specific objectives of this LWOP detail are as follows:

II. POSITION DATA AND SUPERVISION

- A. The officer is to be assigned to the position of [enter position title] in the [enter organizational work-unit] at [enter work location and mailing address of the officer].
- B. The Federal official who will exercise administrative supervision over the officer while on LWOP detail is [enter name, title of position, organization, and business address]. This official will be known as the Federal supervisor.
- C. The officer will be directly responsible to [enter name, title of position, organization, and business address of the State/NPI official directly responsible for the day-to-day supervision of the officer]. This officer will be known as the non-Federal supervisor.
- D. The duties of the officer will be as follows: (give brief description of the duties).

III. EXPENSES PAYABLE BY THE STATE/NPI

- A. Compensation, including pay and allowances, will be paid by the State/NPI in accordance their regulations and procedures in the annual amount of \$ [enter amount], effective [enter date]. Pay and allowances may include monetary or in kind provision for the following: base pay, subsistence, quarters, housing /overseas housing cost, cost of living differential, and all special pays. The pay and benefits package, including overtime pay, will not exceed 110% of the officer's compensation in the Federal system. The State/NPI will be responsible for making the required Federal and state deductions. If there is a change in the rate of State/NPI compensation, the State/NPI will immediately notify the following office:

Compensation Branch
Division of Commissioned Personnel/OSG
Room 4-50, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

- B. Overtime or other premium pay, if any, will be paid by the State/NPI under its regulations and procedures in the amount of [enter amount] and will be based on the State/NPI salary.
- C. Travel and transportation expenses incurred as a result of travel directed by the State/NPI will be paid by the State/NPI, in accordance with State/NPI regulations and procedures.

Transportation costs of an officer from the duty station, home, etc., to and from a Uniformed Services Medical Treatment Facility or any other medical facility under travel orders when temporary duty is involved are the fiscal responsibility of the State/NPI.

- D. A lump-sum leave payment will be made by the State/NPI for leave earned but not used while on LWOP. (Include only if State/NPI regulations and procedures permit such payment.)

- E. Other assessed charges as indicated in Exhibit VII, below, will be paid by the State/NPI.
- F. The State/NPI agrees to reimburse PHS for other costs of **[enter costs to be reimbursed]**. Note any additional expenses which may be identified for reimbursement by the State/NPI.

IV. EXPENSES PAYABLE BY PHS

The following expenses incident to the individual's employment with the State/NPI will be paid by PHS directly to, or on behalf of, the officer.

- A. The expenses of travel of the officer and transportation of his/her dependents, household goods and personal effects to and from the place of detail will be paid by PHS in accordance with the provisions of the Joint Federal Travel Regulations of the Uniformed Services (hereinafter JFTR). The PHS Agency may require reimbursement for these costs.
- B. In the event of separation from PHS or retirement while on LWOP if the officer is not precluded by provisions of a special pay contract, PHS will pay for travel, transportation of dependents and shipment of household goods and personal effects to the officer's home in accordance with the JFTR and any lump-sum payment for earned but unused Federal annual leave.
- C. The PHS will pay the costs of inpatient to inpatient transfers of officers. Within PHS, these costs are payable by the Beneficiary Medical Program.
- D. If any of the following events should occur while the officer is on LWOP, the expenses indicated will be paid by **[enter responsible PHS program]**, PHS. PHS may also request that the State/NPI pay for the following costs:

1. In the event of the death of the officer, expenses for:
 - (a) Transportation of dependents and shipment of household goods and personal effects to a place selected by the officer's survivors.
 - (b) Burial, including transportation of remains to place of interment.
 - (c) A \$6,000 death gratuity.
 - (d) Lump-sum leave payment for Federal leave, not to exceed 60 days, to the officer's credit upon entry into the LWOP detail.
 - (e) Transportation of survivors to and from the place of interment.
 2. In the event of the death of an officer's dependent, transportation of the dependent's remains to the place of interment.
- E. Officers detailed to the State/NPI will continue to be afforded Federal malpractice protection under applicable laws and regulations.

V. RIGHTS AND BENEFITS

- A. The officer is entitled to utilize accumulated annual and sick leave in accordance with State/NPI regulations and procedures, but not to exceed entitlement under Federal law (42 U.S.C. 210-1). State/NPI leave will accrue at the rate of [enter number of hours of annual leave] hours of annual leave per [enter time period] and [enter number of hours of sick leave] hours of sick leave per [enter time period].

The officer's Federal leave balance is frozen as of the date of the day prior to entry into LWOP status. However, an officer who enters LWOP status with more than 60 days of annual leave to his/her credit will have his/her leave balance reduced to 60 days on December 31 if he/she continues to be in LWOP status on that date.

Upon the officer's return to duty with PHS, his/her Federal leave account will be reopened.

- B. The officer's share of costs for coverage under SGLI should be paid by him/her no less frequently than each quarter to the Compensation Branch at the following address:

Compensation Branch
Division of Commissioned Personnel/OSG
Room 4-50, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

- C. The period of LWOP is creditable for meeting the length of service requirements for longevity increases in the Federal Government. These increases will be authorized when due even though the officer is on LWOP.
- D. The officer is not covered by Social Security as a result of Federal status while on LWOP. (Include statement concerning coverage, if any, as result of employment by the State/NPI.)
- E. The officer's entitlement to post exchange and commissary privileges at facilities of the Armed Forces and medical care for self and dependents continues while on LWOP. Likewise, an LWOP detail is creditable service in determining eligibility for benefits administered by the Department of Veterans Affairs (VA).
- F. An officer's coverage under PHS retirement provisions continues while on LWOP. Therefore, while on LWOP the officer will not participate in any retirement program administered by the State/NPI.
- G. The State/NPI agrees to reimburse the officer for any professional State licensure fees when such license is required by the State/NPI, over and above that required by the PHS, for the performance of its work.

VI. APPLICABILITY OF RULES, REGULATIONS AND POLICIES

- A. The rules and policies governing the internal operation and management of the State/NPI, such as hours of duty, will apply to the officer.
- B. Federal law relating to conflicts of interest (18 U.S.C. 203, 205, 207, 208, and 209) shall apply to the officer while on LWOP detail.
- C. The officer shall not engage in any political activities prohibited to Federal employees under 5 U.S.C. 7324 et seq. (the former Hatch Political Activity Act).
- D. The rules and policies of both the Department of Health and Human Services (HHS) and of the State/NPI governing standards of conduct shall apply to the officer, except that:
 - 1. PHS will be responsible for any PHS disciplinary or adverse action that may be appropriate.
 - 2. Requests for approval of outside employment (e.g., writing and editing) shall be submitted to the Federal supervisor, through the non-Federal supervisor, for approval or disapproval in accordance with HHS regulations and policies.
 - 3. Unless otherwise specified in this personnel agreement, Federal laws, regulations, and policies will apply in instances where there is a conflict between Federal and State/NPI laws, regulations, and policies.
- E. The State/NPI will complete an annual evaluation on form PHS-838, Commissioned Officers' Effectiveness Report of whether the services of the detailed officer were satisfactory.
- F. The officer will promptly report any change in dependency status affecting the rate of quarters allowance to the Compensation Branch, DCP, at the address in this Exhibit, Section V.B.

VII. PERIOD OF THE LWOP ASSIGNMENT

- A. This detail is for a period of two years [or enter length of detail, if less than two years], beginning [enter date].
- B. Upon mutual agreement of both parties and the officer, LWOP details may be extended, with the approval of the Surgeon general, for a maximum of not more than two additional years; except that, under extraordinary circumstances that involve the health and safety of individuals, further extensions may be granted.
- C. This agreement may be terminated or otherwise modified by mutual consent of both parties, with reasonable notice to the officer concerned, or upon 60 days notice in writing presented by one party to the other party of its intention to terminate or otherwise modify the agreement.

VIII. METHOD OF REIMBURSEMENT

- A. PHS will bill the [enter name of State/NPI Agency] on a quarterly basis for expenses incurred in the preceding quarter for the items covered in this agreement in this Exhibit, Section III.E. (See Exhibit V, below, for a sample memorandum to use for this purpose).
- B. Bills will be submitted to [enter title of State/NPI official, organization, and address].

IX. ESTIMATED ANNUAL COST TO THE STATE/NPI

Costs to be Reimbursed to PHS by the State/NPI:

Travel and Transportation	\$ _____
Other assessed charges	\$ _____
TOTAL	\$ _____

APPROVED:

FOR THE STATE/NPI

FOR THE PUBLIC HEALTH SERVICE

(Signature)

(Signature)

(Title)

(Title)

(Date)

(Date)

FOR THE PROGRAM

(Signature)

(Title)

(Date)

X. ESTIMATED ANNUAL COST TO THE PHS

There is no cost to the PHS.

TOTAL \$ 0

*There is no cost to the PHS

APPROVED:

FOR THE STATE/NPI

FOR THE PUBLIC HEALTH SERVICE

(Signature)

(Signature)

(Title)

(Title)

(Date)

(Date)

FOR THE PHS PROGRAM

(Signature)

(Title)

(Date)

CHAPTER 8

CHAPTER 8

STANDARDS OF CONDUCT

1. GENERAL

All IHS employees (civil service and commissioned corps), are governed by established standards of conduct stated in the Ethics Reform Act of 1989, and as codified in 5 C.F.R. 2635. This Act covers ethical conduct as it relates to gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position; and outside activities. In addition all employees are also governed by HHS/IHS policies on outside work activities and acceptance of cash or in-kind services regardless of whether or not they are on detail or other type of assignment to a T/TO. Commissioned Officers have additional standards established by the Director, Division of Commissioned Personnel (DCP).

2. INTRODUCTION

Public service is a public trust. Each employee has a responsibility to the U.S. Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain.

3. GENERAL PRINCIPLES

A. Applicability of Principles

The following general principles apply to every employee and form the basis for standards of conduct within the IHS:

- (1) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (2) Employees shall not engage in financial transactions using non public Government information or allow

improper use of such information to further any private interest.

- (3) Employees shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the IHS, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (4) Employees shall put forth honest effort in the performance of their duties.
- (5) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
- (6) Employees shall not use public office for private gain.
- (7) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (8) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- (9) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (10) Employees shall disclose waste, fraud, abuse and corruption to appropriate authorities.
- (11) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.
- (12) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, handicap, or sexual orientation.
- (13) Employees shall endeavor to avoid any actions creating the appearance that they are violating the

law or ethical standards. Whether or not standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

B. Responsibilities

Employees, Federal supervisors, and tribal officials all share the responsibility for ensuring that these high standards of ethical conduct are maintained.

4. PROCEDURES

A. Standards of Conduct

(1) The Ethics Reform Act of 1989 and regulations and policies of the HHS, IHS, and the T/TO apply to Federal employees assigned to the T/TO, except that:

- a. The IHS will be responsible for any disciplinary or adverse actions that may be required because of an IHS employee's actions during an assignment to a T/TO.
- b. Requests, by IHS employees on assignment to a T/TO, for advance approval of outside work, writing or editing activities, etc., should be submitted through the appropriate tribal official to the Federal supervisor for approval/disapproval on Form HHS-520 (see Exhibit 8-1) in accordance with current HHS/IHS regulations, policies and delegations of authority.
- c. Where there is any conflict between tribal and HHS/IHS policy or requirements, HHS/IHS requirements prevail unless an appropriate waiver is obtained.

(2) Political Activity

The IHS employees on an IPA may engage in limited political activities as outlined in the Hatch Act Reform Amendments of 1993. These amendments modified the prohibition of Federal employees to engage in political activity under the Hatch Act (5 U.S.C. 7321-7326).

- a. Prohibited activities include:

- 1 Use of official authority or influence to interfere with an election.
- 2 Be a candidate for public office in a partisan election.
- 3 Engage in political activity while on duty, while in government office, while wearing a uniform or official government insignia, or while using a government vehicle.
- 4 Wear a partisan political button while on government premises or while engaged in official duty.
- 5 Knowingly solicit or discourage the political activity of any person who has business before the employees office or who is subject of an agency investigation or enforcement action.
- 6 Collect political contributions from other Federal employees unless both employees are members of the same federal labor organization or employee organization and the employee solicited is not a subordinate employee.
- 7 Solicit political contributions from the general public.

b. Permitted activities include:

- 1 Register and vote.
- 2 Express opinions about candidates and issues in private and in public (even when done in a concerted way to elicit support for a candidate or party).
- 3 Assist in both partisan and nonpartisan voter registration drives and serve as a registrar.
- 4 Participate at the voting place on election day as either a partisan or nonpartisan clerk, judge, checker, challenger, or poll-watcher.

- 5 Drive voters to the polls whether as a gesture of goodwill, as part of an effort by a civic or other nonpolitical organization, or as part of a concerted, organized effort on behalf of partisan candidates or political parties.
- 6 Contribute money to candidates, parties and political organizations subject to limits established by the Federal Election Commission.
- 7 Attend political fund raising functions.
- 8 Attend, participate in, organize, or manage political rallies, conventions, and meetings.
- 9 Join as an active member, or serve as officer of a political party, organization or club.
- 10 Sign and circulate nominating petitions.
- 11 Campaign for or against referendum questions, constitutional amendments, and municipal ordinances.
- 12 Campaign for or against candidates in both partisan and nonpartisan elections (off duty, off premises, and without any indication of a government connection).
- 13 Run as a candidate for public office in a nonpartisan election.

B. Acceptance of Payment in Cash or Kind to Cover Travel Expenses

The authority to accept payment in cash or kind, from nonfederal¹⁵ sources is provided in 42 U.S.C. 3506 as follows:

"To the extent and under the conditions provided by regulations of the Secretary, officers (including

¹⁵Nonfederal sources refers to any organization, association, corporation, individual, or any governmental unit other than the Federal Government.

Commissioned Officer of the Public Health Service) and employees of the Department of Health and Human Services may hereafter, in connection with their attendance at meetings, or in performing advisory services concerned with the functions or activities of the Department, be permitted to accept payment, in cash or in kind, from nonfederal agencies, organizations, and individuals, for travel and subsistence expenses, to be retained by them to cover the cost thereof or deposited to the credit of the appropriation from which the cost thereof is paid, as may be provided in such regulations."

- (1) An IHS employee (Civil Service or Commissioned Officer) may encounter circumstances in which it will be necessary to obtain advance approval before accepting cash¹⁶ or in-kind service¹⁷ for tribal or other expenses related to tribal employment.
- (2) The acceptance of payment in cash or kind will be in accordance with HHS (HHS Chapter 1-80 of the Travel Manual) and IHS policies and procedures.
- (3) The acceptance of payment in cash or kind will be authorized in advance by the appropriate official designated to approve such payments.

The form, Request to Accept Payment of Travel Expenses from a Nonfederal Source, HHS-348 (Exhibit 8-2), should be used to request approval for acceptance of payment in cash or in kind for travel. The form should be submitted at least 30 days in advance to the Program Integrity and Ethics Team, Room 6-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, for approval.

- (4) Requests for approval to accept cash or in-kind service does not apply to travel paid for as a

¹⁶Cash means currency, coin, checks, drafts, or other commercial paper which is convertible into currency or coin.

¹⁷Services in-kind refers to transportation, meals, lodging, and other items related to travel, or to tickets or paid bills for such travel and related expenses.

necessary expense by the T/O in accordance with the applicable assignment agreement.

- (5) Requests for approval should be submitted for payments of travel not covered in the assignment agreement, fees, expenses, etc., from any third party other than HHS, or the T/O.

C. Privacy Act

- (1) The Privacy Act prohibits disclosure to tribal officials of information contained in an employee's official personnel file, including performance ratings, without obtaining the prior written consent of the subject individual.¹⁸

For example, if a T/O submits a proposal that is accepted under P.L. 93-638 to provide programs and services, it may wish to employ one or more IHS employees via an IPA assignment. In considering employees, the T/O may request to look at performance data contained in the employees official records.

The above example does not present a situation which would permit disclosure of the information under any of the exceptions to the general rule of nondisclosure. The example does not describe a situation where a routine disclosure may be used. Unless the written consent of the employee is obtained, the IHS is prohibited from disclosing performance related information.

- (2) The OPM regulations regarding official personnel records provide that the office or agency is prohibited from disclosing a record from a system of records without obtaining the prior written consent of the data subject except as provided in 5 C.F.R. section 297.401.¹⁹

¹⁸Memorandum dated May 5, 1982, Subject: Privacy Act Disclosure to the Director, Billings Area Indian Health Service from Office of General Counsel, Region VIII, Denver, Colorado.

¹⁹5 C.F.R. section 297.401; 5 C.F.R. section 297.501; 5 U.S.C. Part 552a; 45 C.F.R. Part 5b; see also, 46 Fed. Reg. 52661, Systems Notice 09-09-0018 for permitted routine uses.

D. Representing the T/TO

An IHS employee may represent a T/TO in a matter pending before the Government. The Federal assignee should advise, in writing, the head of the department, agency, court, or commission with which he/she is dealing or appearing on behalf of the T/TO, of any personal and substantial involvement he/she may have had as an officer or employee of the U.S. in connection with the matter involved.

E. Statutes and Regulations

Before the employee (Civil Service or Commissioned Officer) consents to a tribal assignment, he/she should be informed of the provisions of the foregoing statutes or regulations, or provided copies of the information. Assignment agreements will contain an acknowledgment of the individual's receipt of this information.

F. Financial Interest of Potential Direct Hire Employees

Under 18 U.S.C. 208(a), a Federal employee may not personally and substantially participate in any particular matter which may affect the financial interest of a prospective employer. If the employee has agreed to be hired by the T/TO or is considering the offer of tribal employment, he/she has a financial interest for the purposes of 18 U.S.C. 208(a). However, the OGC has advised that such an employee is not barred from providing "assistance to the tribe in formulating its contract application under . . . [P.L. 93-638]." The opinion pointed out that the legislative history of P.L. 93-638 demonstrates that Congress wanted to encourage tribes to contract under the Act and "required IHS and its employees to assist in facilitating the process." Accordingly, the OGC concluded "that the expectation of future employment with a tribe should not be interpreted to be a prohibited financial interest which might interfere with employees offering needed assistance to their prospective tribal employer."²⁰

²⁰Memorandum dated May 10, 1985, Subject: Possible impact of 18 U.S.C. 208 on contracting activities of certain IHS employees pursuant to the Indian Self-Determination Act from the Assistant General Counsel, Business and Administrative Law Division to the Deputy Assistant General Counsel, Public Health Division, Office of the General Counsel.

EXHIBITS

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

January 5, 1999

MEMORANDUM

TO: Deputy Ethics Counselors
Ethics Contacts

FROM: Edgar M. Swindell /s/ *Edgar M. Swindell*
Acting Associate General Counsel for Ethics
Designated Agency Ethics Official

SUBJECT: Notice to Applicants for Prior Approval of Outside Activities

As you know, certain outside activities require prior approval reflected on an HHS Form 520. The form pre-dates the promulgation of the February 1993 government-wide Standards of Ethical conduct Regulations and the July 1996 HHS Supplemental Agency Ethics Regulations. Although we continue to use the previous form, these regulatory sources specify the standards and procedures that are to be utilized in evaluating outside activity requests.

Utilizing a familiar form has a certain commendable efficiency. However, I am concerned, both from the standpoint of the employee who submits the form and that of the supervisor or other reviewer who evaluates its content, that all are mindful of the standards that apply and the purpose and effect to be derived from the approval granted. Employees who apply for approval may misapprehend the significance of approval. It is imperative, therefore, that each operating and staff division renew its efforts to educate supervisors and staff employees concerning the outside activity rules and the recusal obligations at the federal workplace that result from outside employment relationships.

To that end, under my authority as the Designated Agency Ethics Official pursuant to the delegation and appointment by the Secretary dated November 12, 1997, I am hereby instituting a new procedure Department-wide. While this office continues to evaluate the design and content of the HHS Form 520 for possible revision, I am directing that the attached notice be delivered immediately to all supervisors and other individuals responsible for review of outside activity requests. Further, the notice should be reproduced as a double-sided attachment to the HHS Form 520, with the notice on one side and the regulatory excerpts on the reverse, and distributed to each applicant for approval at the point at which the disposition is communicated to the employee. Each reviewing official should annotate in the block for item 17 on the reverse side of the HHS Form 520 that the applicant was provided a copy of the notice. Compliance with this requirement will be an audit item subject to specific review by the office and/or the Office of Government Ethics.

Page 2 - Deputy Ethics Counselors

These actions may increase certain administrative burdens. Moreover, the notice, to a certain extent, is redundant in that all government employees are deemed, as a matter of law, to have knowledge of the regulatory requirements. Nevertheless, the benefits to be derived--by Deputy Ethics Counselors, supervisors, and employees alike--in a clear statement of the purpose and effect of an HHS Form 520 are significant. Accordingly, I ask your full cooperation in implementing this change.

Please disseminate this requirement widely and maintain a copy of this instruction in your ethics program administration permanent records. Also, consult your labor relations staff concerning any requirements that may apply to dissemination of the document to union representatives and bargaining unit employees.

If you have questions, you may contact the Ethics Division at (202) 690-7258.

Attachment

cc: Deputy General Counsels
Associate General Counsels
Chief Counsels, Regions I-X

NOTICE TO APPLICANTS FOR PRIOR APPROVAL OF OUTSIDE ACTIVITIES

APPROVAL OF AN HHS FORM 520 DOES NOT RELEASE YOU FROM A CONTINUING LEGAL OBLIGATION TO DISQUALIFY YOURSELF FROM OFFICIAL ASSIGNMENTS AFFECTING YOUR OUTSIDE EMPLOYER. WHILE PERFORMING AN APPROVED OUTSIDE ACTIVITY, ANY ACTIONS TAKEN IN CONFLICT WITH APPLICABLE ETHICS LAWS MAY SUBJECT YOU TO CRIMINAL PROSECUTION OR DISCIPLINARY PROCEEDINGS.

Caution. When you work for a company, organization, or other employer outside your government job, your relationship with that outside employer has certain legal and ethical consequences. The approval of an outside activity does not mean that you are free of conflicts of interest. You must still follow all substantive ethics requirements after approval is granted. Consult the ethics regulations at 5 C.F.R. §§2653.802 and 5501.106(d)(4) which are reprinted on the reverse side of this notice.

Conflicts Resolution. An approved HHS Form 520 does not signify that you need not be concerned about conflicts of interest. Under the law, conflicts of interest arising out of outside employment can be resolved in advance in only three ways: (1) you can inform your supervisor and disqualify yourself from participating in a conflicting government matter (often called a recusal); (2) you can ask for and receive, if certain legal requirements are satisfied, a separate legal document from your appointing official or designee that specifically permits you to work on the government matter (known as a waiver, an exemption, or an authorization); or (3) you can resign from either your government or outside job.

Effect of Prior Approval. The outside activities prior approval process has very limited purposes. When a supervisor or other reviewer approves an HHS Form 520 for your outside activity, only two assessments are being made, which are discussed below. You reasonably may rely on these specific determinations only if you provided all relevant information on the form and the circumstances under review do not thereafter change. You remain responsible for the legal consequences of any change in personal or business affairs.

First, based on the information which you provide, the reviewer determines whether your proposed activity is plainly prohibited by applicable statutes or regulations. For example, if you want to lobby federal agencies on behalf of a non-profit organization that employs you, prior approval will be denied because a criminal statute prohibits such representational activities.

Second, assuming your proposed activity is not specifically prohibited, the reviewer determines whether, under the circumstances, approval should be denied for other reasons specified under the law. For example, the reviewer may deny approval if the facts show that you used your government position to obtain an outside compensated business opportunity. Another common reason for denying approval is that the outside activity may prevent you from handling work that is expected of you. Because the outside activity may cause you to have to disqualify yourself from a broad range of job assignments, or even a few crucial projects, that will affect your outside employer, it may be impossible for you to discharge fully your government duties. If, however, your outside activity is approved, the reviewer has determined that the matters in which you will not be allowed to participate are not "so central or critical to the performance of [your] official duties" that your ability to perform the duties of your position would be materially impaired. In other words, you cannot work on a government matter affecting your outside employer, but the reviewer expects that you will be able to stay away from these assignments and still do your job.

Recusal Obligation. When performing your federal duties, you must avoid participating in any government matter that will affect your own self-interest in continuing your outside job. For example, you would have to disqualify yourself from participating in any official matter that might put your outside employer out of business or seriously affect its finances, either positively or negatively, so that the odds of your remaining employed are also affected. Also, when you work for an outside employer, the financial interests of that company or organization are considered to be your own. This means that you cannot participate in government matters that will affect that company or organization. You cannot work on a government matter that involves your outside employer as a specific party, such as a contract, grant, audit, or investigation. The law also requires you to stay away from government matters that are larger in scope, such as deliberations and decisions on developing, implementing, or enforcing statutes, regulations, policies, studies, or proposals, that will have an effect on a large class of employers like the one for which you work on the outside. For example, if you have an outside position as an employee of a hospital, a drug company, or a non-profit organization, you cannot participate personally in any significant way in a policy decision that affects the financial interests of the industry or organizational sector in which these employers operate. A waiver often can be granted for such "particular matters of general applicability," if you notify your appointing official in advance and receive a written determination.

Scope of Recusal. Although many employees understand the need to disqualify themselves from participating in an official matter that affects their outside employer, they often believe erroneously they can pick and choose among the various aspects of a particular matter and stay away only from the important decisions. Such incomplete recusals will not protect you from a criminal conflict of interest violation. Unless a waiver, approved in advance, identifies specific permitted activities, you must refrain entirely and absolutely from participating personally and substantially in a government matter that affects your own financial interest or that of an outside employer. When you are involved significantly in proposing, planning, advising, deciding, or implementing some official action, and you do so individually or by actively directing subordinates, your participation is personal and substantial.

HHS Form 520 Notice (January 1999)

EXCERPTS FROM THE STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES SUPPLEMENTAL AGENCY ETHICS REGULATIONS:

TITLE 5 CODE OF FEDERAL REGULATIONS

§2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

- (a) If it is prohibited by statute or by an agency supplemental regulation; or
- (b) If, under the standards set forth in §§2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a non-profit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of §2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

§§5501.106(d)(4) Standard for approval.

HHS FORM 520 Regulation Excerpts (January 1999)

Approval shall be granted unless it is determined that the outside employment or other outside activity is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

Note: The granting of approval for an outside activity does not relieve the employee of the obligation to abide by all applicable laws governing employee conduct nor does approval constitute a sanction of any violation. Approval involves an assessment that the general activity as described on the submission does not appear likely to violate any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that, nevertheless, pose ethical concerns.

Example 1: A clerical employee with a degree in library science volunteers to work on the acquisitions committee at a local public library. Serving on a panel that renders advice to a non-federal entity is subject to prior approval. Because recommending books for the library collection normally would not pose a conflict with the typing duties assigned the employee, the request would be approved.

Example 2: While serving on the library acquisitions committee, the clerical employee in the preceding example is asked to help the library business office locate a missing book order. Shipment of the order is delayed because the publisher has declared bankruptcy and its assets, including inventory in the warehouse, have been frozen to satisfy the claims of the Internal Revenue Service and other creditors. The employee may not contact the Federal bankruptcy trustee to seek, on behalf of the public library, the release of the books. Even though the employee's service on the acquisitions committee had been approved, a criminal statute, 18 U.S.C. 205, would preclude any representation by a Federal employee of an outside entity before a Federal court or agency with respect to a matter in which the United States is a party or has a direct and substantial interest.

REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY*
(Ref.: HHS Standards of Conduct Regulations)

Initial Reques
 Revised Reques
 Renewal

1. NAME (Last, First, Initial)	2. ORGANIZATIONAL LOCATION (Operating Division, Bureau, Division)
3. TITLE OF POSITION	4. GRADE AND SALARY (Federal)
*5. NAME, ADDRESS AND BUSINESS OF PERSON OR ORGANIZATION FOR WHOM OUTSIDE SERVICES WILL BE PERFORMED	6. LOCATION WHERE SERVICES WILL BE PERFORMED

7. NATURE OF ACTIVITY (Indicate type of activity, e.g., teaching, consultative services, and give full description of specific duties or services to be performed. Specify, when possible, the scheduled days of week and hours of day proposed activity will be performed.)

8. ESTIMATED TIME INVOLVED

a. PERIOD COVERED FROM TO	b. ESTIMATED TOTAL TIME DEVOTED TO ACTIVITY (If on a continuing basis, give estimated time per year)
------------------------------	--

c. WILL WORK BE PERFORMED ENTIRELY OUTSIDE USUAL WORKING HOURS?
 YES NO IF "NO," INDICATE ESTIMATED NUMBER OF HOURS OR DAYS OF ABSENCE FROM WORK

9. DO YOUR OFFICIAL DUTIES RELATE IN ANY WAY TO THE PROPOSED ACTIVITY?
 NO YES (Describe)

*10. IF PROVIDING CONSULTATIVE OR PROFESSIONAL SERVICES, ARE YOUR WOULD-BE ASSOCIATES RECEIVING OR WILL THEY SEEK, A GRANT OR CONTRACT FROM A FEDERAL AGENCY?
 NO YES (Describe)

11. METHOD OR BASIS OF COMPENSATION
 FEE HONORARIUM PER DIEM PER ANNUM
 ROYALTY EXPENSES OTHER (Specify)

12. WILL COMPENSATION BE DERIVED FROM A HHS GRANT OR CONTRACT?
 NO YES (Describe)

13. THIS REQUEST IS MADE WITH FULL KNOWLEDGE OF DEPARTMENT AND OPERATING DIVISION POLICY AND PROCEDURES ON OUTSIDE ACTIVITIES. THE STATEMENTS I HAVE MADE ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

14. SIGNATURE OF EMPLOYEE	15. DATE	16. ADDITIONAL INFORMATION ATTACHED <input type="checkbox"/> YES <input type="checkbox"/> NO
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17. ACTION RECOMMENDED BY REVIEWING OFFICIAL

a. <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	b. SIGNATURE	c. TITLE	d. DATE
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18. ACTION TAKEN

a. <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	b. SIGNATURE	c. TITLE	d. DATE
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*See reverse of form
HHS 520 (1/82)

(INSTRUCTIONS ON BACK OF FORM)

EF

INSTRUCTIONS

*Item 5 - Self-Employment: If applicable, indicate self-employment, the type of service (as medical, legal, etc.), whether alone or with partners, giving their names, and, if providing professional services to a large number of clients or patients, estimate the total number rather than listing them separately.

*Item 10 - Federal Grants or contracts Involved: Describe the federal grants or contracts (type, granting or contracting department, etc.). Full details must be provided on any aspect of professional and consultative services which involves, directly or indirectly, the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between institutions and government units and the Federal Government.

*Item 16 - Attachments: Be sure to sign copies of all attachments submitted.

*ITEM 17 - COMMENTS OF REVIEWING OFFICIAL

*ITEM 18 - REASON FOR DISAPPROVAL

GPO 915-670

**REQUEST FOR APPROVAL TO ACCEPT PAYMENT OF TRAVEL EXPENSES
FROM A NON FEDERAL SOURCE _____
(date)**

Use this form to request, approve, and report acceptance of payments as provided in DHHS Travel Manual chapter 1-70. Submit request to recommending official as soon as possible, but not later than 15 days before scheduled departure.

1. NAME AND TITLE OF TRAVELER	2. NAME AND ADDRESS OF SPONSORING ORGANIZATION
3. TRAVELER'S ORGANIZATION	

4. PURPOSE OF TRIP _____

5. PAYMENT TO BE MADE FOR: _____ Travel _____ Subsistence
 Authority for Travel: _____ 31 USC 1353 _____ 42 USC 3506 _____ 5 USC 7342
 (See DHHS Travel Manual Chapter 1-70)

METHOD OF PAYMENT:

A. _____ DIRECT REIMBURSEMENT TO APPROPRIATION \$ _____ INDICATE VALUE OF PAYMENT:
 APPROPRIATION No. _____

B. _____ IN KIND \$ _____ Travel \$ _____
 Lodgings \$ _____

**C. _____ IN CASH for retention by traveler \$ _____ Meals \$ _____
 Other \$ _____

**NOTE: CASH MAY ONLY BE ACCEPTED UNDER 42 U.S.C. 3506 AUTHORITY

6. PAYMENT TO BE USED FOR TRAVEL _____ Round Trip _____ One Way (see itinerary below)

STARTING DATE	ENDING DATE	FROM	TO

7. IS THE DEPARTMENT PAYING PART OF THE TRAVEL COST? (If any specify which part and amount) _____

8. RECOMMENDATION -- See reverse side of form -- _____

9. AUTHORIZATION
 Authorizing Official _____ TITLE _____ DATE _____

10. TRAVELER'S CERTIFICATION (Complete after trip)

I CERTIFY THAT WHILE ON OFFICIAL TRAVEL THE ABOVE AMOUNTS ARE CORRECT AND I DID NOT RECEIVE (1) ANY HONORARIA, OR (2) ANY CASH FOR MY RETENTION FROM THE SPONSORING ORGANIZATION. I FURTHER UNDERSTAND THAT ANY ACCOMMODATIONS, MEALS OR INCIDENTAL EXPENSES ACCEPTED THAT ARE NOT NORMALLY REIMBURSED BY GOVERNMENT TRAVEL REGULATIONS, AND NOT FULLY REIMBURSED BY THE SPONSORING ORGANIZATION WILL HAVE TO BE BORNE OUT OF MY PERSONAL FUNDS.

TRAVELLER'S SIGNATURE _____ DATE _____

111S-348 (Revised 8/92)

BACKGROUND INFORMATION ON REQUEST FOR APPROVAL TO
ACCEPT PAYMENT OF TRAVEL EXPENSES FROM A NON FEDERAL SOURCE

TRAVELER: _____

1. Is the sponsoring organization using Federal Funds to defray the costs of this trip?
Yes _____ No _____ (If yes, reimbursement may NOT be accepted.)
2. Is the Letter of Invitation attached? Yes _____
(Letter of Invitation must outline in detail the types of expenses offered and the amount of the expenses. Requests without a letter of invitation will not be considered for approval.)
3. Is the traveler an officer, director, trustee, partner or an employee of the sponsoring organization? Yes _____ No _____ (Please attach a copy of an approved HHS-520, Outside Activity)
4. Are there any circumstances under which the acceptance of expenses in this instance would create a conflict or the appearance of a conflict of interest?
Yes _____ No _____
5. Is the sponsoring organization offering to pay amounts which are in excess of those ordinarily allowed by applicable Federal Travel Regulations? For example, are amounts in excess of the maximum Per Diem rates and/or is the mode of transportation above coach? Yes _____ No _____
6. Is this request for acceptance of payment for an accompanying spouse of a DHHS employee? Yes _____ No _____ (If yes, employee's travel order # _____)

-NOTE: IF THE ANSWER TO QUESTION 3, 4, 5, OR 6 ABOVE IS YES, A SEPARATE LETTER MUST BE ATTACHED TO THIS REQUEST PROVIDING JUSTIFICATION AND REASONS WHY THIS TRIP SHOULD BE AUTHORIZED-

7. How does this trip meet the Department's priorities and goals?
8. Why can't this trip be paid for with DHHS funds?

I HEREBY CERTIFY THAT THE ACCEPTANCE OF THIS REQUEST IS IN ACCORDANCE WITH THE POLICIES CONTAINED IN CHAPTER 1-70 OF THE DHHS TRAVEL MANUAL. TO THE BEST OF MY KNOWLEDGE, I ALSO CERTIFY THAT FEDERAL GRANT OR CONTRACT FUNDS ARE NOT BEING USED TO DEFRAY IN WHOLE OR IN PART THE EXPENSES OF THIS REQUEST. THEREFORE, I RECOMMEND APPROVAL OF THIS REQUEST AS BEING IN THE BEST INTEREST OF THE GOVERNMENT.

Recommending Official Title Date

Recommending Official Title Date

**SAMPLE TRANSMITTAL MEMORANDUM
FOR APPROVAL OF ACCEPTANCE OF
PAYMENT OF TRAVEL EXPENSES IN
CASH OR IN-KIND**

DATE:

TO: Director, Office of Management Support

FROM:

SUBJECT: Request for Approval to Accept Payment of
Travel Expenses from a Non-Federal Source

Please approve the attached Request for Approval to Accept Payment of Travel Expenses. The request is supported by a request indicating the offer by an organization not using Federal grant or contract funds.

(Signature)

Attachment

CHAPTER 9

CHAPTER 9

TRIBAL PERSONNEL MANAGEMENT SYSTEMS

1. GENERAL

Personnel management is a system for recruiting, developing, maintaining, motivating, and caring for the work team. Personnel management involves planning, organizing, directing, and controlling the human resources of the organization during the procurement, development, maintenance, and utilization of these human resources in order to economically and effectively achieve the objectives of the organization. This chapter describes the elements of a personnel management system and how to use them for acquiring and using personnel to accomplish the T/TO's objectives. A T/TO might want to consider these elements even though not required by Federal regulation.

2. INTRODUCTION

Public Law 93-638, as amended, and the DOI/HHS regulations at 25 C.F.R. Part 900--Contracts Under the Indian Self-Determination and Education Assistance Act, contains no requirements for T/TOs to develop a personnel management system in order to be eligible for grants or contracts under the authority of P.L. 93-638.

Subpart C--Contract Proposal Contents at section 900.8(g) (7) of the regulations requires that an initial contract proposal must contain "Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any."

If a T/TO proposes to include personnel costs in its contract support cost (CSC) request, an identification of the amount of direct CSCs, including personnel (differentiating between salary and fringe benefits) is required by section 900.8(h) (2) (i) of the regulations.

Section 900.8(k) of the regulations requires that the proposal include "The extent of any planned use of Federal resources."

3. PURPOSE

The purpose of a personnel management system is to provide the guidelines and procedures which govern the activities of the organization's employees. The personnel management system provides a reference to the manager concerning issues which face every employee daily. Personnel management is part of the manager's function of directing the T/TOs' employees and provides a consistent and impartial framework to use in directing employees' activities. The personnel system provides guidance to the manager from the creation of a job opening; through the hiring of an individual to fill that job; the supervision of that individual's daily work activities; until after the employee is terminated.

The primary objectives of a personnel management system are to provide standards and procedures for selection of personnel; match individual skills to work to be performed; furnish meaningful training for personnel growth and enrichment; and ensure compliance with labor laws.

4. ELEMENTS OF A PERSONNEL MANAGEMENT SYSTEM

Certain elements of the personnel system are required by regulation; other elements are good management practice. The T/TO personnel system should contain certain elements. Beyond this minimum requirement, however, the T/TO should be concerned with the time and effort involved in developing the system and the size of the system in relation to the program. The personnel management system should consider the size and scope of the program. An organization with four people does not need the same system as an organization with 150. Therefore, the system should be tailored to the needs of the specific organization.

Exhibit 9-1 lists the specific elements of a personnel system and indicates which element applies to the organization depending upon its size. The policy and procedures to be established are listed in Exhibit 9-2.

The major elements which make up the personnel management system are:

- Position classification and Analysis;
- Wage and Salary Administration;
- Recruitment and Selection;
- Performance evaluation/appraisal; and
- Employee Relations, which includes:
 - Employee conduct;
 - Employee disciplinary procedures;
 - Employee grievance procedures;
 - Employee training and personal development;
 - Employee work rules; and
 - Employee benefits and services.

A. Position Classification and Analysis

(1) Job Analysis

Job analysis is the determination of the tasks that comprise a job; the determination of the skills, knowledge, abilities, and responsibilities required of the individual occupying that position and the description of the unique characteristics which differentiate the position from others. Job analysis includes:

- a. Relating jobs with similar or familiar characteristics into a logical grouping or class;
- b. Identifying the characteristic activities which occur within each job class; and
- c. Identifying the unique characteristics of each position within a group or class.

(2) Position Classification

Developing position descriptions (suggested format provided at Exhibit 9-3) that are a written explanation of the organizational relationships, duties, authorities, and responsibilities that comprise a specific position and should contain:

- a. Position title;
- b. Location of position;
- c. Position summary or overview statement;

- d. Duties and responsibilities;
- e. Supervision given or received;
- f. Relationship to other departments or outside agencies;
- g. Working conditions and hazards; and
- h. Materials, tools, and equipment used.

(3) Position Specifications

The position qualification statement (suggested format provided at Exhibit 9-4) or position specification should include a description of the necessary characteristics an individual should have to do the job including:

- a. Educational requirements;
- b. Experience;
- c. Training;
- d. Judgment;
- e. Initiative;
- f. Physical ability or skills;
- g. Responsibility;
- h. Communication skills;
- i. Emotional and social characteristics;
- j. Behavioral requirements;
- k. Special skills, knowledges, or abilities required; and
- l. Licensing and certification requirements.

(4) Minimum Standards

Minimum standards can be met by developing position qualification statements for each position in the T/TO.

- (5) Job analysis may be performed through the use of:
 - a. Observation;
 - b. Questionnaires;
 - c. Interviews;
 - d. Checklists; and
 - e. Logging of tasks performed.
- (6) Data resulting from job analysis is used for:
 - a. Organization and manpower planning;
 - b. Recruitment, selection and placement;
 - c. Establishing rates of pay;
 - d. Redesign of the job; and
 - e. Employee training and human resources development.

B. Wage and Salary Administration

Wage and salary administration is the establishment and implementation of sound policies and methods of employee compensation.

- (1) Administration requires the development of a:
 - a. Job evaluation program; and
 - b. Wage and salary plan.
- (2) Job evaluation involves:
 - a. Analysis of the job; and
 - b. Rating of the job including:
 - 1 Non-quantitative systems;
 - 2 Quantitative systems;
 - 3 Assignment of dollar values.

- (3) Wage and salary plans involve establishing:
 - a. Basis for payment, e.g. time or output: and
 - b. Pay structures include:
 - 1 Criteria for payment;
 - 2 Categories;
 - 3 Pay Ranges;
 - 4 Incentives; and
 - 5 Control of wages and salaries.
- (4) The system developed should:
 - a. Recognize differences in jobs and compensate accordingly;
 - b. Keep wages and salaries comparable to those of the local market;
 - c. Provide equal pay for equal work;
 - d. Compensate for superior talent and ability; and
 - e. Provide a procedure for wage complaints.

C. Recruitment and Selection

Recruitment and selection involves identifying the types and numbers of personnel needed, advertising for job openings, interviewing, accepting or rejecting applicants, and hiring the employees that are the most capable.

- (1) Estimating types and numbers of needed personnel involves considering:
 - a. Turnover;
 - b. Nature of present work force;
 - c. Rate of growth; and
 - d. Labor market.

(2) Source considerations include developing a policy for obtaining personnel by:

- a. Promotion from within the organization; and
 - b. Hiring from outside (employment agencies, unions, advertising, schools).
- (3) Selection involves the sorting of qualified from unqualified applicants and includes the development of:
 - a. A selection procedure;
 - b. An application form and evaluation procedure;
 - c. Selection tests for:
 - 1 General mental ability;
 - 2 Special aptitude(s);
 - 3 Achievement; and
 - 4 Situational.
 - d. Interview procedures such as:
 - 1 Planned;
 - 2 Patterned; and
 - 3 Stress.
 - e. Reference checks (sample format provided at Exhibit 9-6)
 - f. Informing applicants regarding the consideration given their applications (sample format provided at Exhibit 9-7).
- (4) The overall tribal recruitment and selection policy should take into consideration all applicable:
 - a. Labor laws;
 - b. Executive orders;

- c. Preferential consideration, i.e., Indian Preference;
- d. Court rulings;
- e. Equal employment opportunity, e.g., affirmative action; and
- f. Nepotism.

(5) Establishment of probationary policies for new employees.

D. Performance Evaluation/Appraisal

Performance appraisal is the systematic evaluation of the individual with respect to his/her performance on the job and his/her potential for development. Guidelines for performance appraisal objective statements are provided at Exhibit 9-5.

- (1) Performance appraisal requires the development of:
 - a. Performance standards
 - b. Appraisal methods and techniques may include:
 - 1 Rating scales;
 - 2 Employee comparison;
 - 3 Checklists; and
 - 4 Group appraisal.
 - c. Performance records
 - d. A reward or penalty program which includes:
 - 1 Provision for periodic performance evaluations of the employee against the standards;
 - 2 Written procedures for performance appraisal; and
 - 3 Comparing performance of employees against standards established.

- e. A promotion program
 - 1 Rank in job or individual;
 - 2 Promotion steps;
 - 3 Promotion planning;
 - 4 Selection criteria.
- f. A Policy for termination and discharge.

- (2) Employee appraisals may be used for:
 - a. Creating and maintaining performance levels;
 - b. Highlighting needs and opportunity for employee development;
 - c. Developing mutual understanding between supervisor and subordinate;
 - d. Guide for promotions, layoffs and terminations; and
 - e. Basis for wage and salary treatment.

E. Employee Relations

There are several areas related to the daily activities of the employee with which the manager of the T/TO should be concerned. They include:

- (1) Employee conduct

Employee conduct procedures govern the activities of the employees at all times while at work and such activities in their off duty hours that may affect the organization.

- (2) Employee disciplinary procedures

Employee disciplinary procedures should describe the reasons why disciplined behavior is desirable and provide a rational and uniform approach to the problem of correcting employees behavior. The procedures should include:

- a. A clear set of rules defining areas of violation;
- b. The responsibility of supervisors at all levels to enforce adherence to the disciplinary procedures;
- c. Types of disciplinary action that can be implemented and what formal actions are necessary to implement each type of disciplinary action; and
- d. Establishment of steps to handle the disciplinary action. These steps should include:
 - 1 Stating the disciplinary problem;
 - 2 Collecting available information about the case;
 - 3 Establishing alternative types of penalties;
 - 4 Selecting the penalty;
 - 5 Applying the penalty; and
 - 6 Following through on the case.

F. Employee Grievance Procedures

Grievance procedures are the process through which management addresses any dissatisfaction or feeling of injustice that employees may have regarding their employment situation. The grievance procedure should establish steps to handle the grievance.

- (1) The steps to handle a grievance should include:
 - a. Determining the cause and describing the nature of the grievance as fully as possible;
 - b. Gathering available facts concerning the grievance, e.g., how, where, when, why it occurred;
 - c. Establishing a tentative solution to the grievance;

- d. Checking the validity of the solution by gathering additional information;
- e. Applying the solution to the grievance; and
- f. Following up to ensure satisfactory judgment.

(2) Determining type of system

- a. Formal
 - 1 Multi-step procedure; and
 - 2 Written rules.
- b. Informal system
 - 1 Personal counseling;
 - 2 Open door policy;
 - 3 Internal audit;
 - 4 Ombudsman;
 - 5 Multi-step grievance procedure; and
 - 6 Minimal rules.

(3) Policy considerations

- a. Causes for discipline;
- b. Proving misconduct;
- c. Discipline procedure; and
- d. Types of penalties.

G. Employee Training and Personnel Development

Training is the organized procedure by which people acquire knowledge and/or skills for a definite purpose. Effective training will result in employees applying their newly acquired knowledge and skills on the job in a way that will benefit the organization.

- (1) The system should provide for:

- a. Identifying training needs; and
- b. Utilizing an appropriate method.
 - 1 On-the-job;
 - 2 Classroom (lecture, conference, case study, role playing, programmed instruction); and
 - 3 Other methods (demonstration, simulation and games).
- c. Evaluating training:
 - 1 Critiques;
 - 2 Interviews; and
 - 3 Tests.

(2) Training may result in:

- a. Reduction of learning time to reach acceptable performance level;
- b. Improved performance;
- c. Positive attitudes; and
- d. Solution of operational problems;

H. Employee Work Rules

- (1) Standards of Conduct; and
- (2) Standards of Work Performance.

I. Employee Benefits and Services

Benefits and services means the tangible value of the supplemental compensation received by the employee over and above the basic pay check.

- (1) Factors to be considered in adopting benefits and services:
 - (a) Cost and ability to pay;

- (b) Desires of the employees;
 - (c) Need to attract and retain employees;
 - (d) Tax considerations;
 - (e) Administration problems.
- (2) Types of employee benefits and services
- a. Employee security
 - 1 Legally required contribution (FICA, unemployment insurance, worker's compensation, etc.);
 - 2 Pensions;
 - 3 Life insurance;
 - 4 Hospitalization;
 - 5 Medical and surgical payments;
 - 6 Paid sick leave;
 - 7 Separation pay;
 - 8 Accident Insurance; and
 - 9 Contributions to savings plans.
 - b. Pay for time not worked
 - 1 Holiday pay;
 - 2 Vacation pay;
 - 3 Paid leave for personal business;
 - 4 Military service allowance;
 - 5 Jury duty;
 - 6 Voting time pay; and
 - 7 Other administratively excused absence, as appropriate.

- c. Bonuses and awards
 - 1 Christmas bonus;
 - 2 Anniversary awards;
 - 3 Performance awards; and
 - 4 Other, as appropriate.
- d. Service programs:
 - 1 Social and recreational programs (parties, picnics, etc.);
 - 2 Other aid and services (credit unions, scholarship funds, purchasing services, employee newspapers).
- e. Special pay
 - 1 Commissioned Corps Retention Special Pay Equivalent (RSPE);
 - 2 Commissioned Corps Additional Special Pay (ASPE);
 - 3 Moving Costs for First Post of Duty; and
 - 4 Continuing Medical Education (CME).

(3) Establishing the benefits and services plan

There should be written policies and procedures that are uniformly applicable and meet applicable law.

EXHIBITS

PERSONNEL SYSTEM GUIDELINES

<u>Subject Matter</u>	<u>Small Organization</u> ²¹	<u>Medium Organization</u> ²²	<u>Large Organization</u> ²³
<u>Involvement and Responsibility for Development and Administration of Personnel System</u>			
1. Tribal Government			X
2. Personnel Committee			X
3. Program Director	X	X	X
<u>Position Classification and Analysis</u>			
4. Employment Groups or Classes			X
5. Employee Categories/ Status		X	X
6. Position Description	X	X	X
7. Position Specification	X	X	X
<u>Wage and Salary Administration</u>			
8. Benefit Program		X	X
9. Deduction Procedures			X
10. Overtime Policy		X	X
11. Wage/Salary Procedures			X
12. Expenses, Employees			X
13. Wage Evaluation Procedures			X
14. Pay Period		X	X
<u>Recruitment and Selection</u>			
15. Affirmative Action Plan			X
16. Equal Employment Opportunity	X	X	X

²¹0 - 50 employees

²²50 - 100 employees

²³100 or more employees

PERSONNEL SYSTEM GUIDELINES (CONTINUED)

<u>Subject Matter</u>	<u>Small Organization</u> ²⁴	<u>Medium Organization</u> ²⁵	<u>Large Organization</u> ²⁶
<u>Recruitment and Selection (Continued)</u>			
17. Indian Preference	X	X	X
18. Nepotism	X	X	X
19. Reference Checks		X	X
20. Preemployment Interviews			X
21. Recruitment Procedures	X	X	X
22. Selection Procedures	X	X	X
23. Probationary Employment Policies		X	X
24. Applicant Evaluation		X	X
<u>Performance Evaluation/Appraisal</u>			
25. Performance Standards		X	X
26. Promotion Plan			X
27. Termination and Discharge Procedures		X	X
28. Appraisal Methods and Techniques		X	X
<u>Employee Relations</u>			
29. Induction/Orientation			X
30. Employee Conduct Guide			X
31. Causes for Disciplinary Action/Penalties			X
32. Disciplinary Guide			X
33. Disciplinary Procedures		X	X
34. Grievance Procedures		X	
35. Holiday Pay	X	X	X
36. Hours of Work	X	X	X

²⁴0 - 50 employees

²⁵50 - 100 employees

²⁶100 or more employees

PERSONNEL SYSTEM GUIDELINES (CONTINUED)

<u>Subject Matter</u>	<u>Small Organization</u> ²⁷	<u>Medium Organization</u> ²⁸	<u>Large Organization</u> ²⁹
<u>Employee Relations (Continued)</u>			
37. Leave Policy	X	X	X
38. Travel Procedures	X	X	X
39. Bonuses and Awards	X	X	X
40. Compensatory Time	X	X	X
42. Garnishments			X
41. Employee Training and Personal Development			X
42. Personnel Records	X	X	X

²⁷0 - 50 employees

²⁸50 - 100 employees

²⁹100 or more employees

ELEMENTS OF A PERSONNEL SYSTEM

<u>Policy/Procedures</u>	<u>Required for Contracting</u>	<u>Affected by or Required for Other Federal Laws</u>
1. Employment Classes		X
2. Position Specifications		X
3. Position Descriptions		X
4. Personnel Records	X	X
5. Wage and Salary		X
6. Benefit Program		X
7. Overtime		X
8. Position Evaluation Techniques		
9. Equal Employment Opportunity	X	X
10. Affirmative Action Plan		X
11. Indian Preference	X	X
12. Nepotism	X	X
13. Reference Checks		X
14. Interview		
15. Recruitment/Selection	X	X
16. Orientation/Induction		
17. Employee Conduct/Discipline		
18. Grievances		
19. Performance Standards		
20. Performance Evaluation		
21. Holiday	X	
22. Hours of Work	X	
23. Leave Policy	X	
24. Travel	X	X
25. Anti Kick Back		X
26. Compensatory Time		X
27. Garnishments		X
28. Employee Training and Development		

POSITION DESCRIPTION (FORMAT)

Position Title: May be selected from the Federal Dictionary of Occupational Titles or be descriptive of the duties performed.

Location of Position: Location of position both organizationally and geographically.

Position Summary or Overview Statement: Overview of job duties, responsibilities, and authority. Describe the type of direction or supervision given to the incumbent by the supervisor.

Duties and Responsibilities: List in order of priority and try to describe what portion of time each duty will comprise.

Relationships (three types):

- a. List the job title of supervisor and the type of supervision received.
- b. List the job titles of positions, if any, subordinate to the position described and specify type of supervision exercised over subordinates.
- c. List any relationships which may exist.

Working Conditions and Hazards: Describe the working conditions and hazards related to safety or health of the employee.

Materials, tools, and equipment used: List the materials, tools, and equipment the employee will be required to use.

POSITION QUALIFICATION STATEMENT

Position Title: _____

General Description of Duties: _____

Special Training or Instruction Required: _____

Educational Requirements: _____

Experience Requirements: _____

Other Special Qualifications e.g., judgment, initiative, physical abilities or skills, licensure, etc.): _____

Responsible to: _____

(Title of Supervisor)

GUIDELINES FOR PERFORMANCE APPRAISAL OBJECTIVE STATEMENTS

The performance appraisal objective statements should meet the following criteria:

1. Specify a time frame for accomplishment.
2. Specify a single end result and project a maximum cost projected.
3. State the objectives in quantitative terms when possible.
4. Begin with the word "to" followed by an action verb.
5. Relate to the organization's goals and policies and be attainable by the individual.
6. Be recorded in writing and agreed to by both the employee and supervisor.

SAMPLE REFERENCE CHECK FORM (FOR EMPLOYMENT)

____ (Name of Applicant) _____, _____ (Social Security Number) _____

has applied to us for a position as _____ (Title of Position) _____

Applicant claims to have been in your employ from _____ (Date) _____

to _____ (Date) _____. Having had an opportunity to observe the

applicant as an employee, your frank answers to the questions

below will be valuable to us, and would be greatly appreciated.

We assure you that your replies will not be revealed to the _____

applicant, or anyone else, under any circumstances. _____

1. Are the above dates of employment correct? Yes ___ No ____.
If not what period was the individual employed? From _____ (Date) _____
To _____ (Date) _____.

2. What position did he/she hold? _____

3. Was his/her attendance regular? Yes ___ No _____. If not,
what was the cause of the absences? _____

4. Did he/she maintain acceptable work relationships with
his/her co-workers and/or clients? Yes ___ No _____. If not,
please explain. _____

5. Was his/her work performance acceptable with regard to
quality, quantity, timeliness? Yes ___ No _____. If not,
please explain. _____

SAMPLE REFERENCE CHECK FORM (FOR EMPLOYMENT) (CONTINUED)

6. What was the reason for leaving? _____

7. Was his/her leave record acceptable? Yes ___ No ___. If no,
please explain. _____

8. Would you reemploy for a similar position? Yes ___ No ____.
If not, please explain. _____

9. In view of your knowledge of his/her character, ability, and
dependability, how would you rate him/her as an employee?
Unsatisfactory _____ Below Average _____ Average _____
Above Average _____ Outstanding _____

Optional:

Please provide a day time telephone number where you may be
reached for additional information _____.

SAMPLE NOTICE OF ACCEPTANCE OR REJECTION (OF EMPLOYMENT APPLICATION)

Dear _____ (Name of Applicant) _____ :

Thank you for your application. Your application received consideration along with other qualified candidates for the position of _____ (Position Title/Classification) _____.

Vacancy Announcement Number _____.

_____ The position as announced was filled by a qualified Indian Preference eligible.

_____ Your name was given to the selecting official but you were not selected for the position.

_____ The position as announced is not being filled at this time.

_____ You failed to meet the position specifications.

_____ Your application will be retained as a permanent part of the above cited vacancy announcement file.

_____ Other (specify).

Your application did not receive consideration and is being returned because:

_____ Your application was received after the specified closing date.

_____ Consideration was limited to in-house employees and to outside candidates who have Indian preference eligibility.

_____ Other (specify).

We hope that you will have continued interest in employment with _____ (Name of T/TO) _____.

Sincerely yours,

(Name of Tribal Representative)

CHAPTER 10

CHAPTER 10

TRIBAL PERSONNEL MANAGEMENT SYSTEM REVIEW

1. GENERAL

This chapter provides guidance concerning the elements of a tribal personnel management system review and how to use them for reviewing the personnel system to accomplish the T/TO's objectives. This review will assist the T/TO in determining if there is a personnel system in place and if position descriptions have been established for personnel to be employed under a P.L. 93-638 contract proposal. It also describes elements a T/TO might want to consider even though not required by Federal regulation.

2. INTRODUCTION

Public Law 93-638, as amended, and the DOI/HHS regulations at 25 C.F.R. Part 900--Contracts under the Indian Self-Determination and Education Assistance Act, contain no requirements that the IHS review and approve the T/TO's personnel system. However, the elements below may be utilized by Federal personnel if requested by a T/TO to provide technical assistance.

A. Adequacy of Trained Personnel

(1) The adequacy of trained personnel available to the T/TO to carry out the proposed contract may be presumed if any of the following conditions exists:

- a. If the T/TO has a personnel system that prescribes minimum occupational qualification standards, which shall not be less than minimum Civil Service standards where applicable and procedures for the selection of personnel on the basis of such qualifications, and the personnel to be used under the proposed contract are to be employed under the personnel system.

b. If there is no tribal personnel system, it will be assumed that the personnel to be employed under the proposed contract are adequately trained if the T/TO has established position descriptions for key personnel to be employed under the contract and will establish within a reasonable time a personnel system similar to the one described in paragraph (c) (5) (i) of this section.

(2) The phrase "where applicable" in a. above refers to situations where a OPM qualification standard exists for that particular occupation.

(3) Evidence of adequacy may be shown by either:

a. A qualification standard which is based on a job analysis (analysis of requirements of the job) of the position being filled; or

b. A qualification standard which is similar with respect to length and quality of experience and education to OPM standards in comparable occupations, e.g. other administrative, scientific, or medical occupations.

B. Development of Tribal Personnel Management System

The T/TOs are eligible for grants to obtain technical assistance in the development of personnel systems and for Federal training programs.

3. PURPOSE OF THE PERSONNEL MANAGEMENT SYSTEM REVIEW

A. Establish Guidelines

To establish guidelines and to identify criteria to be used for evaluating the personnel system of a T/TO and/or adequacy of trained personnel:

(1) If the T/TO has a personnel system that prescribes minimum occupational qualification standards; and

(2) If there is no tribal personnel system.

B. Establish Time Frames

To establish a reasonable time frame within which a tribal personnel system will be established and operational, if there is no tribal personnel system.

C. Compliance

To assure that the T/TOs have conformed with the applicable Federal personnel laws, rules and regulations, and that appropriate corrective action is taken when a violation is found.

4. PROCEDURES

A. Formal Review

A formal review should be conducted to determine whether a personnel system is in place and functioning as described in the personnel policies. In most cases, this can only be accomplished adequately by an on-site visit.

B. Identifying Adequacy of Position Descriptions

(1) Factor Evaluation System (FES)

The FES (introduced to a majority of the T/TOs as the most effective process for development of position descriptions) or comparable system may be implemented as the standard procedure for evaluating position descriptions. Copies of "Writing Position Descriptions in the FES Format" will be provided by the SPO to the T/TO.

(2) Position descriptions for T/TOs should be reviewed to determine whether they include:

- a. Position title;
- b. Location of the position;
- c. Position summary or overview statement;
- d. Duties and responsibilities;
- e. Supervision given or received;
- f. Relationship to other departments or outside agencies;

- g. Working condition and hazards; and
 - h. Materials, tools, and equipment used.
- (3) Position descriptions for direct patient care positions to be filled by direct hire not involving a program assumption, should correspond to the scope of work in the contract proposal.
 - (4) Position descriptions involving a program assumption of current health care services or programs, should include, as a minimum, all the major duties described in the Federal position descriptions for the positions being contracted.

C. Adequacy of Tribal Personnel Systems

- (1) The T/TO's personnel policies and procedures should be submitted as part of the contract proposal. They are a key factor in identifying the basic criteria for the T/TO's personnel system.
- (2) The personnel officer or his/her designee should assess the adequacy of tribal personnel systems using the evaluation criteria provided in section A. above. A Personnel System Checklist is provided at Exhibit 10-1. The information determines what the personnel policies of the T/TOs personnel system are.
- (3) The personnel system review should verify that requirements imposed by the State are met. The review may be facilitated by involving a representative from the appropriate State Department of Labor.
- (4) An on-site review of the T/TO's personnel system may be required to verify satisfactory implementation of proposed system. A Guide for conducting such on site reviews is provided at Exhibit 10-2. Technical assistance needs may also be identified through this review process.
- (5) A narrative report of findings and recommendations should be developed and a copy provided to the T/TO. A copy of the Personnel System Checklist should also be provided.

EXHIBITS

PERSONNEL SYSTEM CHECKLIST

Instructions for completing checklist: Insert an "x" on the appropriate line to document whether the requirement has been met.

<u>Subject Matter</u>	<u>Small Organization³⁰</u>	<u>Medium Organization³¹</u>	<u>Large Organization³²</u>
-----------------------	--	---	--

Involvement and Responsibility
for Development and Administration of
Personnel System

- | | | | |
|---------------------------|--|-------|-------|
| 1. Tribal Government | | | _____ |
| 2. Personnel Committee | | | _____ |
| 3. Program Director _____ | | _____ | _____ |

Position Classification and Analysis

- | | | | |
|------------------------------------|--|-------|-------|
| 4. Employment Groups or
Classes | | | _____ |
| 5. Employee Categories Status | | _____ | _____ |
| 6. Position
Description _____ | | _____ | _____ |
| 7. Position
Specification _____ | | _____ | _____ |

Wage and Salary Administration

- | | | | |
|--------------------------------|--|-------|-------|
| 8. Benefit Program | | _____ | _____ |
| 9. Deduction Procedures | | | _____ |
| 10. Overtime Policy | | _____ | _____ |
| 11. Wage/Salary Procedures | | | _____ |
| 12. Expenses, Employees | | | _____ |
| 13. Wage Evaluation Procedures | | | _____ |
| 14. Pay Period _____ | | _____ | _____ |

Recruitment and Selection

- | | | | |
|-----------------------------|--|--|-------|
| 15. Affirmative Action Plan | | | _____ |
|-----------------------------|--|--|-------|

³⁰0 - 50 employees

³¹50 - 100 employees

³²100 or more employees

PERSONNEL SYSTEM CHECKLIST (CONTINUED)

<u>Subject Matter</u>	<u>Small Organization³³</u>	<u>Medium Organization³⁴</u>	<u>Large Organization³⁵</u>
-----------------------	--	---	--

Recruitment and Selection (Continued)

- | | | | |
|--------------------------------------|-------|-------|-------|
| 16. Equal Employment Opportunity | _____ | _____ | _____ |
| 17. Indian Preference | _____ | _____ | _____ |
| 18. Nepotism | _____ | _____ | _____ |
| 19. Reference Checks | _____ | _____ | _____ |
| 20. Preemployment Interviews | _____ | _____ | _____ |
| 21. Recruitment Procedures | _____ | _____ | _____ |
| 22. Selection Procedures | _____ | _____ | _____ |
| 23. Probationary Employment Policies | _____ | _____ | _____ |
| 24. Applicant Evaluation | _____ | _____ | _____ |

Performance Evaluation/Appraisal

- | | | | |
|--|-------|-------|-------|
| 25. Performance Standards | _____ | _____ | _____ |
| 26. Promotion Plan | _____ | _____ | _____ |
| 27. Termination and Discharge Procedures | _____ | _____ | _____ |
| 28. Appraisal Methods and Techniques | _____ | _____ | _____ |

Employee Relations

- | | | | |
|--|-------|-------|-------|
| 29. Induction/Orientation | _____ | _____ | _____ |
| 30. Employee Conduct Guide | _____ | _____ | _____ |
| 31. Causes for Disciplinary Action/Penalties | _____ | _____ | _____ |
| 32. Disciplinary Guide | _____ | _____ | _____ |
| 33. Disciplinary Procedures | _____ | _____ | _____ |

³³0 - 50 employees

³⁴50 - 100 employees

³⁵100 or more employees

PERSONNEL SYSTEM CHECKLIST (CONTINUED)

<u>Subject Matter</u>	<u>Small Organization</u> ³⁶	<u>Medium Organization</u> ³⁷	<u>Large Organization</u> ³⁸
<u>Employee Relations (Continued)</u>			
34. Grievance Procedures		_____	_____
35. Holiday Pay	_____	_____	_____
36. Hours of Work	_____	_____	_____
37. Leave Policy	_____	_____	_____
38. Travel Procedures	_____	_____	_____
39. Bonuses and Awards	_____	_____	_____
40. Compensatory Time	_____	_____	_____
41. Garnishments			_____
42. Employee Training and Personal Development			_____
43. Personnel Records	_____	_____	_____

Comments: _____

(Signature of Reviewer)

³⁶0 - 50 employees
³⁷50 - 100 employees
³⁸100 or more employees

GUIDE FOR CONDUCTING REVIEWS OF TRIBE/TRIBAL ORGANIZATION'S PERSONNEL SYSTEM

Position Classification and Analysis

Wage and Salary Administration

Recruitment and Selection

Performance Evaluation/Appraisal

Employee Relations

POSITION CLASSIFICATION AND COMPENSATION

Instructions for completing checklist: Insert an "x" on the appropriate line to document compliance.

In Compliance
Yes No

1. Administration Requirements

a. Administrative systems and processes should be designed to meet requirements and objectives of the organization including:

(1) A system for periodic review and analysis of all positions, position structures, and position descriptions; _____

(2) A system for training supervisors in the principles and purposes of position management and classification. _____

b. Position descriptions for all positions with the organization are accurate and complete. _____

2. Records and Files

a. Active Position Description File

(1) The active position file contains a folder or other suitable container for each organizational segment serviced which includes:

a A certified copy of position description, for each basic position reviewed; _____

b An organization chart which reflects the organizational structure, lines of authority, and positions established. This information should agree with the contents of established position descriptions; _____

POSITION CLASSIFICATION AND COMPENSATION (CONTINUED)

		In Compliance	
		<u>Yes</u>	<u>No</u>
2. <u>Records and Files (Continued)</u>			
<u>c</u> Position Descriptions which reflect:			
<u>1</u> Identifying the title and number;	___	___	
<u>2</u> Number of identical-additional positions established to the basic position, if any;	___	___	
<u>3</u> Organizational location of position;	___	___	
<u>4</u> Position classification (class, category and qualifications);	___	___	
<u>5</u> Signature and title of the immediate supervisor or other individual authorized to assign duties and responsibilities, and the individual authorized to approve position descriptions;	___	___	
<u>6</u> FLSA status (exempt, nonexempt).	___	___	
b. The material should be easily accessible for use of all personnel as a source of reference in the evaluation and classification of positions.	___	___	
3. <u>Reproduction and Distribution of Position Descriptions</u>			
a. As a minimum, copies of position descriptions for new positions are distributed as follows:			
Copy 1 - Active Position Description File	___	___	
Copy 2 - Supervisor of organizational segment in which position exists	___	___	
Copy 3 - Employee	___	___	
Copy 4 - Personnel Folder	___	___	

WAGE AND SALARY ADMINISTRATION

In Compliance
Yes No

1. Salaries

The T/TOs system reflects the following items in regard to determining salaries, to ensure equal pay for equal work:

- | | | |
|---|-------|-------|
| (a) Documentation regarding how salaries will be determined; | _____ | _____ |
| (b) Identification of how salaries will be assigned to position class and category; | _____ | _____ |
| (c) Documentation of salary survey to determine equitable salary rates. | _____ | _____ |

RECRUITMENT AND SELECTION

Instructions for completing checklist: Insert an "x" on the appropriate line to document compliance.

	In Compliance	
	<u>Yes</u>	<u>No</u>
1. <u>Qualification Standards Files</u> . This file should include the following material on a current basis:		
a. Handbook X-118C for Wage Grade Positions (for reference only)	_____	_____
b. Qualification Standard Handbook for General Schedule Positions (for reference only)	_____	_____
c. Supplementary qualification requirements and competitive promotion examination announcements developed for use in the Promotion Program, for filling positions within a P.L. 93-638 contract.	_____	_____
d. Selective placement factors used and a statement that possession of selective factor is essential to satisfactory performance in the position to be filled.	_____	_____
2. <u>Applicant Supply File (ASF)</u>		
a. The system should include these basic records:		
(1) Vacancy announcement, i.e. temporary or permanent position;	_____	_____
(2) Application file of all individuals who applied.		

RECRUITMENT AND SELECTION (CONTINUED)

	In Compliance	
	<u>Yes</u>	<u>No</u>
2. <u>Applicant Supply File (Continued)</u>		
b. The ASF vacancy announcement should be maintained as a continuous up-to-date record of the types of positions for which applications will be accepted.	—	—
(1) It should contain:		
(a) Position title, class, and category;	—	—
(b) Categories of individuals from whom applications will be accepted;	—	—
(c) Geographic restrictions, if any, placed on acceptance of applications.	—	—
c. The established limitations on acceptance of applications are being observed.	—	—
d. Resumes or applications, in the ASF contain the following information:		
(1) Date application received;	—	—
(2) Position or positions for which application was made;	—	—
(3) Indian Preference eligibility documentation, as appropriate for P.L. 93-638 contracts;	—	—
(4) Date qualifications were determined;	—	—
(5) A statement of the qualification standard used;	—	—

RECRUITMENT AND SELECTION (CONTINUED)

		In Compliance	
		<u>Yes</u>	<u>No</u>
	(6) A record of notifications to applicants advising whether or not qualified and if not qualified the reason.	---	---
e.	Established time frames for retention/disposition of applications is being adhered to.	---	---
3.	<u>Promotion Plans</u>		
a.	The promotion plan should reflect coverage of positions serviced and be in consonance with the requirements contained in applicable directives. It should include:		
(1)	Identification of position being filled;	---	---
(2)	Qualification standards to be used, by inclusion or reference;	---	---
(3)	Provisions regarding the use of selective factors;	---	---
(4)	Definition of areas of consideration and provisions for circumstances permitting consideration of candidates outside that area;	---	---
(5)	A statement of methods of locating and identifying candidates;	---	---
(6)	Provisions regarding the evaluation of candidates;	---	---
(7)	A statement of supervisor's responsibility/authority to make selections;	---	---
(8)	A statement of actions excluded from promotion plan coverage.	---	---

PERFORMANCE EVALUATION/APPRAISAL

Instructions for completing checklist: Insert an "x" on the appropriate line to document compliance.

	In Compliance	
	<u>Yes</u>	<u>No</u>
1. <u>Employee Appraisals</u>		
Employee appraisals are done in accordance with established appraisal cycles and are utilized in decisions regarding:		
a. Incentive awards and other forms of employee recognition;	_____	_____
b. Retention or dismissal of probationers;	_____	_____
c. Promotion or other internal assignment action;	_____	_____
d. Employee development;	_____	_____
e. Salary increase;	_____	_____
f. Demotion or termination.	_____	_____

EMPLOYEE RELATIONS

Instructions for completing checklist: Insert an "x" on the appropriate line to document compliance.

In Compliance
Yes No

1. Administration Requirements

An employee relations program is established which meets the following objectives:

- | | | |
|--|-------|-------|
| a. To maintain a system of providing advice and guidance in resolving personnel problems, adverse actions, grievances appeals. | _____ | _____ |
| b. To ensure that reasonable needs are met for service and assistance to employees in matters affecting their well-being. | _____ | _____ |
| c. To take a planned approach to providing information regarding employee rights, obligations, privileges, and policy/regulatory requirements including: | | |
| (1) The use of probationary periods; | _____ | _____ |
| (2) Performance evaluations; | _____ | _____ |
| (3) Employee counseling and motivation; | _____ | _____ |
| (4) Adverse actions and disciplinary procedures. | _____ | _____ |

2. Employee Training and Personal Development

Training systems, plans, and procedures are established as follows:

- a. A published plan and system for managing efforts to ensure that training needs are identified; training costs are included in budgeting processes; periodic assessments of training effectiveness are made and;

EMPLOYEE RELATIONS (CONTINUED)

		In Compliance	
		<u>Yes</u>	<u>No</u>
2.	<u>Employee Training and Personal Development (Continued)</u>		
	maximum use is made of available in-house resources;	—	—
	b. A system for providing training to meet continuing requirements, such as basic management or personnel administration training for new supervisors, employee orientation, labor-management relations, equal employment opportunity, etc;	—	—
	c. A system for evaluating the results and quality of training provided;	—	—
	d. A plan for assessment of work assignment practices and replacement capability to identify need for cross-training, development of backup capability, motivational work assignments, and similar considerations.	—	—
3.	<u>Fringe Benefits</u>		
	a. Written policies are established with respect to the following fringe benefits:		
	(1) Retirement;	—	—
	(2) Health Insurance;	—	—
	(3) Life Insurance;	—	—
	(4) Disability Insurance;	—	—
	(5) Sick Leave;	—	—
	(6) Bonuses;	—	—

EMPLOYEE RELATIONS (CONTINUED)

		In Compliance	
		<u>Yes</u>	<u>No</u>
3. <u>Fringe Benefits (Continued)</u>			
(7) Vacations;		___	___
(8) Use of organization facilities.		___	___
b. Written policies and standards are established with respect to the following nonrecurring personnel costs for Officers (see Chapter 7):			
(1) Commissioned Corps retention special pay equivalent;		___	___
(2) Commissioned Corps continuation pay equivalent;		___	___
(3) Moving costs for first post of duty;		___	___
(4) Continuing medical education.		___	___
c. Benefit systems established are reasonable as compared to those of similar types of organizations.			
		___	___
4. <u>Personnel Records</u>			
a. Organization			
Folders should be filed alphabetically for the entire area services as follows:			
(1) Folders for all active employees.		___	___
(2) If divided into more than one alphabetical grouping, groups, should be readily identifiable and maintained within the personnel office designated as the appointing authority.		___	___

EMPLOYEE RELATIONS (CONTINUED)

	In Compliance	
	<u>Yes</u>	<u>No</u>
4. <u>Personnel Records (continued)</u>		
(3) Folders of separated employees maintained in accordance with established retention periods.	___	___
b. Access		
Files safeguarded from unauthorized disclosure:		
(1) Policies governing release of information are documented;	___	___
(2) A charge out system is in operation;	___	___
(3) Appropriate action is taken to assure return of folders;	___	___
(4) Files are securely maintained/stored.	___	___
c. Content		
(1) Filing of documents in official personnel folders is done on a timely basis;	___	___
(2) The contents are in compliance with established personnel policies.	___	___
d. Disposition		
Upon the separation of an employee, the following actions are taken by the Personnel Office prior to retiring the folder to the inactive file.		
(1) The folder is screened to assure that permanent material is retained and extraneous material is removed;	___	___
(2) Appropriate offices are notified of separations prior to disposition of records.	___	___

EMPLOYEE RELATIONS (CONTINUED)

		In Compliance	
		<u>Yes</u>	<u>No</u>
5.	<u>Employee Services Program</u>		
a.	Employees are counseled as necessary on retirement and life insurance, health benefits, compensations, and on-the-job injury;	___	___
b.	Personnel Office provides assistance for claims with benefits;	___	___
c.	Procedures are established for treatment and reporting of employees on-the-job injuries.	___	___
6.	<u>Bonuses and Awards</u>		
a.	Awards Files		
	Awards Files are established to document:		
(1)	Recommendation for cash award for special acts and services;	___	___
(2)	Recommendation for honorary awards;	___	___
(3)	Recommendation for salary increase or other monetary award based on performance.	___	___
b.	Administrative Files		
	Administrative files are established and maintained which consist of:		
(1)	Correspondence;	___	___
(2)	Reports;	___	___
(3)	Publicity releases;	___	___
(4)	Other papers incident to the administration of the awards program.	___	___

EMPLOYEE RELATIONS (CONTINUED)

		In Compliance	
		<u>Yes</u>	<u>No</u>
6.	<u>Bonuses and Awards (continued)</u>		
c.	Employees Personnel Folders		
	Employees personnel folders contain a record of monetary and honorary awards, letters of commendation and service recognition, etc.	___	___
7.	<u>Discipline and Adverse Actions</u>		
a.	The personnel office participates in all cases before official disciplinary action is begun to:		
	(1) Ensure that supervisors and employees are fully informed concerning appeal rights and grievance procedures;	___	___
	(2) Ensure that all formal grievances and appeals are accepted and processed through the appropriate levels within the prescribed time limits and in accordance with directives.	___	___
b.	Letters of notification are signed by appropriate authority and the coordination copy annotated to reflect date, time, and place of delivery and the name of the individual who delivered the notice;	___	___
c.	Disciplinary/adverse actions issued are in compliance with established procedural requirements.	___	___
d.	Official reprimands and other letters of notification (suspension, RIF, etc.) are maintained according to established records procedures;	___	___
e.	Suspense systems are in place to ensure disposal of official reprimands in accordance with personnel procedures.	___	___

CHAPTER 11

CHAPTER 11

RETROCESSION

1. GENERAL

A T/TO that initially requested a contract may also request a retrocession of a contract program, in whole or in part, for any reason, before the expiration of the term of the contract. The retrocession is effective on the date which is the earliest date among: 1) one year from the date of the T/TO's request; 2) the date the contract expires; or 3) a mutually agreed-upon date.

2. INTRODUCTION

This chapter describes the procedures and guidelines concerning the personnel aspects of retrocession--the actions which occur when a function taken over by an T/TO under P.L. 93-638 reverts back to the IHS.

3. PROCEDURES

A. Employee Benefits in a Retrocession

The following guidelines apply to an employee's benefits when a retrocession occurs:

- (1) If an IHS employee was hired by the T/TO, continued his/her benefits under section 104(e) of P.L. 93-638, and is returning to the IHS in a retrocession, the employee's retirement, life

insurance and health benefits will continue without interruption.³⁹

- (2) If an IHS employee was hired by the T/TO, did not continue his/her benefits under section 104(e), and is returning to the IHS in a retrocession, the employee's benefits would be treated like those for any other employee who is being reinstated after a break in Federal service.

B. Pay Setting

- (1) Reemployment Rights

Under P.L. 93-638, as amended, and 5 C.F.R. Part 352, Subpart G, employees who leave the IHS to work for a T/TO are granted reemployment rights for six years to their former position (or to another position for which the employee is qualified and eligible for the same grade or level as their former position). Employees are entitled to their former grade. There is no authority to pay employees more than the top step of their former grade, even if their tribal salaries exceeded that amount.

- (2) Step Increases

Employees returning from a T/TO cannot be credited with the step increases they would have received if they had remained in the Federal service.

- (3) Career Ladder Promotions

The regulations covering employees going to tribal employment under P.L. 93-638 provide that such employees be considered for all promotions for

³⁹Section 3(b) of P.L. 99-221, signed December 26, 1985, amended section 210(a)(5)(B)(i) of the Social Security Act and section 3121(b)(5)(B)(i) of the Internal Revenue code of 1954 to permit persons who have left Federal employment to be employed, with no break-in-service following separation from the IHS, to work for a program contracted with IHS by a tribe/tribal organization under the provisions of P.L. 93-638, to be exempted from the requirements that they participate in the social security system when exercising reemployment rights authorized by section 104(i) of P.L. 93-638 after service with an Indian tribe/tribal organization.

which the employee would be considered if they were not absent.

C. Non-Status Individuals Hired by the T/TO

(1) If all employees with reemployment rights have been placed and the IHS wants to facilitate a smooth transition of the function by picking up non-status individuals hired directly by the T/TO, there are several alternatives that can be used:

- a. If the individuals are Indians, they can be hired under the IHS excepted service examining plan and the Schedule A authority 213.3116(b)(8).
- b. Since the T/TO was performing a function under contract with the IHS and that function is now being transferred to the Federal Government, the people performing the function under the contract can be brought into the Federal service, if prior approval is obtained from the OPM. Indian preference would apply, so the jobs would have to be advertised to determine if there are any Indian applicants.
- c. The non-status individuals may also apply for consideration on a competitive OPM civil service register and be hired by the IHS if they are within reach. (Indian preference would still apply, so the jobs would have to be advertised to identify any Indian applicants.)
- d. If a retrocession occurred on short notice, non-status individuals could be hired using a 30-day emergency appointments, with a 30-day extension if necessary.
- e. For jobs at GS-12 and below, temporary appointments up to one year could be made under applicant supply file procedures, without going to a OPM competitive civil service register. Indian preference would apply, so jobs would have to be advertised to identify any Indian applicants and veterans would still block non veterans.

(2) Reemployment Rights at Higher Grades

If the T/TO has increased the level of service (and the level of an employee's job) and the IHS wants to continue this higher level of service, the IHS would have to look at the duties of the employee's job and determine its proper classification and its relationship to the employee's former position in the IHS.

- a. If the higher grade is based on a gradual accretion of duties, the employee could be placed in the higher grade under his/her reemployment rights. Time-in-grade restrictions would not apply if the employee has been off the IHS rolls for more than one year.
- b. If the job has changed so much that it is really a new job, it is a vacancy and should be advertised under the merit promotion process. If the organization has a limited ceiling, it could limit the area of consideration under the provisions of the IHS Merit Promotion Plan (section VII.C.4. of the plan). Indian preference would apply.

D. Sick Leave

The P.L. 93-638 does not contain a provision for employees returning from a T/TO, under reemployment rights, to have sick leave accounts restored to their status at the time the employees left the Federal service. Sick leave accounts cannot be restored if more than three years have elapsed since employees left the IHS.

Under section 104(e)(2) of P.L. 93-638, as amended, employees who retain retirement coverage while working for the T/TO are credited their sick leave for retirement purposes during their service with the T/TO.

NOTES

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