

INTERGOVERNMENTAL PERSONNEL ACT

2011 OGE CONFERENCE

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Homeland
Security

Intergovernmental Personnel Act

5 U.S.C. §§ 3371-3375

- Permits assignments to and from universities and other non-federal entities
- Assignees may be either appointed or detailed
 - Appointees are Federal employees for most purposes
 - Detailees are not Federal employees for most purposes



Why have the IPA?

- Strengthen management capabilities of federal agencies, state, local and tribal governments and “other eligible organizations”
- Assisting the transfer and use of new technologies and approaches to solving governmental problems



Why have the IPA?

- Facilitating an effective means involving state and local officials in developing and implementing Federal policies and programs
- Providing program and developmental experience which will enhance the assignee's performance in his or her regular job



Who May Be Detailed to the Federal Gov't Under the IPA?

- ◉ State or Local Government Employees
- ◉ Tribal or Territory/Possession Employees
- ◉ Non-profit educational organization employees including:
 - Institutions of Higher Learning
 - Associations of State or Local Officials
 - Federal funded research and development centers (FFRDCs)
 - Consortiums of State Gov't and Contractors



Who may not be an IPA detailee?

- Federal, State or local government employees serving under noncareer, excepted service, noncompetitive, time-limited, temporary or term appointments
- Elected governmental officials
- Members of the military services, U.S. Public Health Service commissioned officers and NOAA officers
- Students doing research, graduate or teaching assistant duties or similar temp jobs



Mechanics of IPA Agency Programs

- 5 U.S.C. sections 3371-3375
- 5 CFR chapter 334
- OPM Provisions of the IPA Mobility Program:
<http://www.opm.gov/PROGRAMS/IPA/Mobility.asp>
- OF 69, [IPA] Assignment Agreement, especially Part 10, Conflicts of Interest and Employee Conduct



Key to a Successful IPA Program from an Ethics Perspective

- Be involved in drafting your agency regulations/directives to include completion of financial disclosure filing prior to accepting a detailee.
- Make sure that detailees get ethics training as part of their in-processing—don't let people bypass it by saying it says they have received it in the IPA Agreement form, Part 10.



Types of Assignments

- ⦿ Incoming details
 - Employee is not a Federal employee
- ⦿ Outgoing details
 - Employee remains employee of agency
- ⦿ Incoming appointments
 - Employee becomes a Federal employee
- ⦿ Outgoing appointments (LWOP)
 - Employee becomes employee of state; probably because of need to exercise authority



Incoming Detailees

- ⦿ During the period of assignment, a detailee is deemed an employee of the agency for the purpose of:
 - chapter 73 of title 5 (non-criminal conduct provisions),
 - sections 203, 205, 207, 208, and 209 of title 18,
 - Ethics in Government Act
 - the Federal Tort Claims Act and any other Federal tort liability statute.
 - OGE Standards of Conduct and Agency Supp'l Regulations



IPA Ethics Rules

- The criminal ethics statutes apply to assignees, regardless of appointment or detail
- Conflict of interest and post-employment statutes reinforce each other with respect to the detailee's home institution/agency



IPA Ethics Rules

- ◎ Some non-criminal provisions apply to detailees (5 U.S.C. Chap. 73):
 - loyalty and striking
 - alcohol and drug abuse
 - gifts to superiors
 - gifts from prohibited sources
 - Foreign Gifts and Decorations Act
 - Hatch Act



IPA Ethics Rules

- OGE amended the definition of “employee” at 5 CFR section 2635.102(h) to indicate the term includes IPA detailees , so now all the OGE Standards of Conduct apply to IPAs. See 71 Fed. Reg. 45735 (August 10, 2006)
- Financial disclosure rules now apply to all incoming detailed IPAs, OGE Informal Advisory Op 02 x 11, Application of Financial Disclosure Requirements to Detailees under the IPA (December 9, 2002)
- See OGE DAEOGRAM DO-06-031, Intergovernmental Personnel Act Summary, October 19, 2006



IPA Conflicts of Interest

- Conflict of interest statute applies to all incoming assignees
- Prohibits involvement in matters affecting the interests of the assignee, spouse, *or employer*
- Violation is subject to civil and criminal penalties, including up to five years imprisonment



IPA Conflicts of Interest

- ⦿ Assignee's continuing employment relationship with home institution/entity is a potential felony conflict of interest
- ⦿ Rule: Assignees may not participate in matters their university/state or local gov't has an interest in
 - includes making decisions or recommendations, giving advice, or influencing outcomes
 - includes both technical and business decisions



IPA Conflicts of Interest

- If assignee's university or state/local gov't /non-government entity is involved in a program or project, most technical, business, and program management activities will be prohibited, unless 208 waiver sought
- Many IPA conflict anomalies result from the duties contemplated by the assignment—check each IPA's agreement language upon their in-processing
- Example: 2006 GAO Report on DHS S&T Directorate: www.gao.gov/htact/d06206.html
- Regulatory Waiver: Particular matter of general applicability affecting financial interests of institution of higher learning on leave. 5 CFR 2640.203(b)
- No Certificate of Divestiture for IPA detailees .



Representational Activities

○ Part-time IPAs

- agreement may allow percentage of time for work for home institution
- but, §§ 203/205 apply to detailees*
 - incoming IPAs may not represent before the gov't
 - may continue non-representational duties
 - contrast this with *outgoing* IPAs, who may be authorized to represent the outside institution before the government.

*Tribal IPA detailees may be exempt from 203/205 prohibitions by law, and IPAs assigned less than 130 days during any period of 365 consecutive days is subject to these provisions only to the extent they apply to special government employees (SGEs).



Post-employment

- Post-employment restrictions apply fully
- After assignment ends, assignee may not represent home institution to federal government:
 - forever: on contracts, grants or agreements the assignee worked on during federal assignment
 - for two years: on matters the assignee didn't actually work on, but was responsible for
 - for one year: on any matter if the assignee was paid at 86.5% of level II of the Executive Schedule (\$155,440)
- Procurement Integrity Act, 41 U.S.C. Section 423 applies to IPA detailees.



IPA Ethics Guidelines

- Proposed assignments should be screened for potential conflicts prior to execution by the sponsoring office
- Administrative review is not sufficient, because IPA duty descriptions are often kept generic for flexibility
- Once in gov't, assignees must maintain strict disqualification from involvement with home institution / non-federal entity



IPA Ethics Guidelines

- Ensure that assignees' IPA status is widely known within organization
- Detailees are required by OGE regulation to receive initial ethics training, but a training requirement should still be explicitly added to IPA agreements to put detailees and agency program and Human Relations staff on notice.
- Tailor ethics training to the needs of IPA detailees/appointees

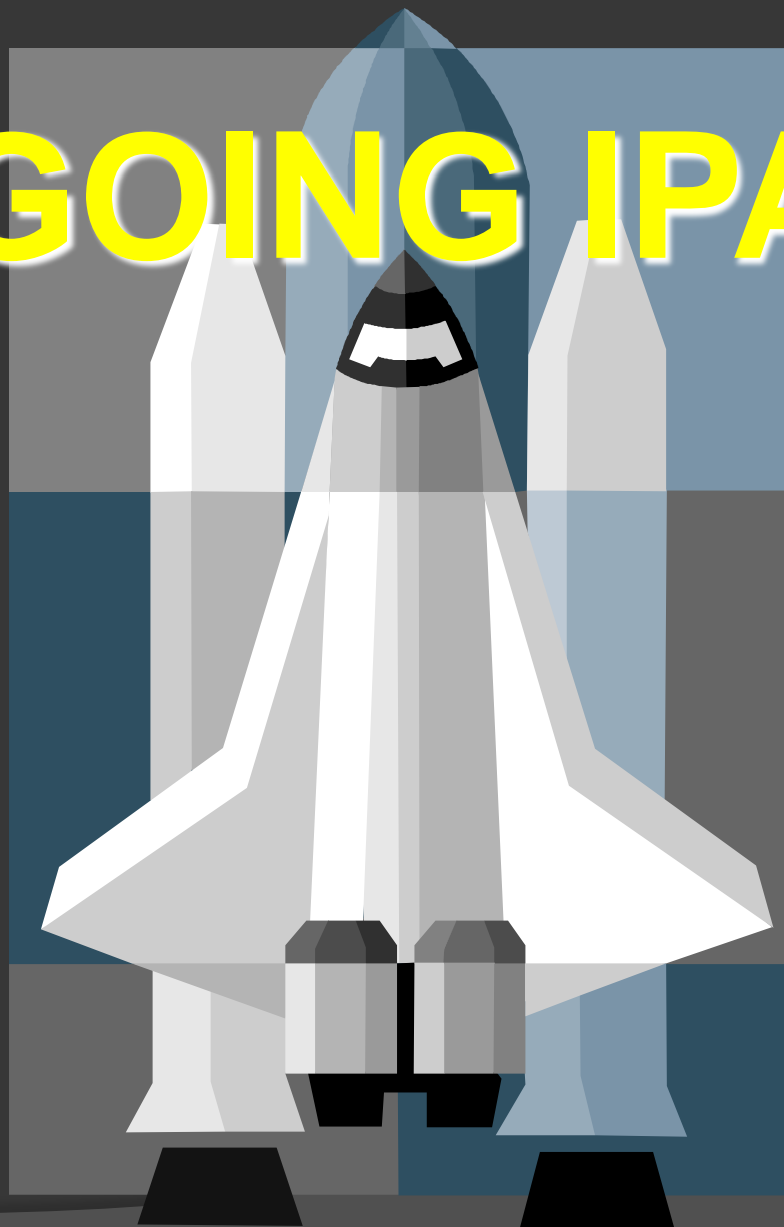


IPA Ethics Guidelines

- Detailees should be provided with written ethics materials upon entry to the federal agency
- Detailees should be offered an opportunity to meet with local counsel to discuss potential conflicts and ethics issues, and should be provided contact information for the agency ethics office to help answer questions.



OUTGOING IPA'S



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5 U.S.C. §§ 3371-3375

The IPA authorizes the temporary assignment of Federal employees to State and local governments, and certain other organizations.



Intergovernmental Personnel Act

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Who?

- ⦿ Any Federal employee except:
 - Non-career appointees,
 - limited emergency appointees in the Senior Executive Service, and
 - employees serving in excepted service by reason of its confidential, policy-determining, policy-making, or policy-advocating character



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What?

- Work of *mutual concern* to the Federal agency and to the State/local/other organization
- Federal agency must determine that the work to be performed “will be beneficial to both” the agency and the host organization



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Where?

- Permits assignment of agency employees to State, local, and tribal governments, institutions of higher education, and to “other organizations”



Intergovernmental Personnel Act

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Where?

- “other organizations” includes:
 - A national or regional organization representing member State and local governments;
 - An association of State or local public officials;
 - Non-profits that primarily offers professional advisory, research, educational, or development services to governments or universities concerned with public management; or
 - FFRDC



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When?

- Initial assignments for up to 2 years
- May be extended for up to 2 more years.



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When?

- Employee must promise to serve in Federal service for period equal to time assigned on IPA.
- Failure to do so makes employee liable to the United States for reimbursement of IPA (minus salary and benefits)



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How?

- Detail
- Leave without Pay

Difference in administration, pay, and benefits of the employee.



IPA Agreement

- Must be written
- Between the three parties (Fed agency, Fed employee, State/local/tribal/other)
- Must express the obligations and responsibilities of the parties
- Must express the duties of the employee.



IPA Agreement

- Length of IPA
- Who pays for what
- Who directs employee
- Most important - what will the employee be doing



IPA Ethics Issues

- ◉ Financial Disclosure – (s)he still files
- ◉ Ethics Training – (s)he still attends
- ◉ Advisory Services – we still provide



Salary Supplementation

18 U.S.C. § 209

- 18 U.S.C. § 209 excepts payment from States, counties, and municipalities
- No exception in 209 for institutions of higher education or other organizations



Representation – 18 USC § 205

Employee may represent the non-Federal entity if:

- ⦿ the representation is on a matter of *mutual concern* to the agency and the non-Federal entity
- ⦿ such representational activity is affirmatively made a part of the employee's official duties under the IPA agreement.

- OLC Opinion , January 11, 1999



Conflict of Interest – 18 USC § 208

Outside Employer

- Non-Federal entity is an outside employer
- However, 208 not violated because the activity is allowed by statute (see OGE Advisory Opinion 99 x 17).



Conflict of Interest – 18 USC § 208

Prospective Employer

- If employee in negotiations with non-Federal entity, non-Federal entity is a prospective employer
- There is no exception



Conflict of Interest – 18 USC § 208

Prospective Employer

- If employee quits Federal job to join the non-Federal entity, is there a 208 violation?



Conflict of Interest – 18 USC § 208

Prospective Employer

- Employee may not negotiate for employment with non-Federal entity absent waiver (see 5 C.F.R. § 2640.301 for waiver requirements).
- “Out of the Blue” offers



Conflict Waivers

- ⦿ Standard: “interest is not so substantial”
 - Very difficult standard for IPAs’ home institution
 - Principal employment, principal loyalty is not to the Government
- ⦿ OGE is reluctant to concur in waivers
- ⦿ Prone to abuse



Post-Employment – 18 USC § 207

Post-Employment restrictions fully apply.

- A particular matter involving specific parties on which employee participated personally and substantially while on IPA
- Senior Employee 1-year bars



Gifts – 5 C.F.R. Subpart B

- Strong presumption that the non-Federal entity is a prohibited source.
- Given because of official position?
- Gift rules likely to apply and to bar any gift that doesn't fall into the exceptions.



Gifts – 5 C.F.R. Subpart B

Exceptions

- \$20 or less (not more than \$50/year)
- Widely-attended gathering
- Awards



Appearance of Bias

5 CFR § 2635.502

Employee prohibited for 1 year from working on a matter in which his/her former employer is a party.

Should we apply this to the employee's former IPA employee?



Non-Public Information

5 CFR § 2635.703

Employee may not share non-public information with the non-Federal entity outside of the scope of the employee's duties.



Questions?

The End

