



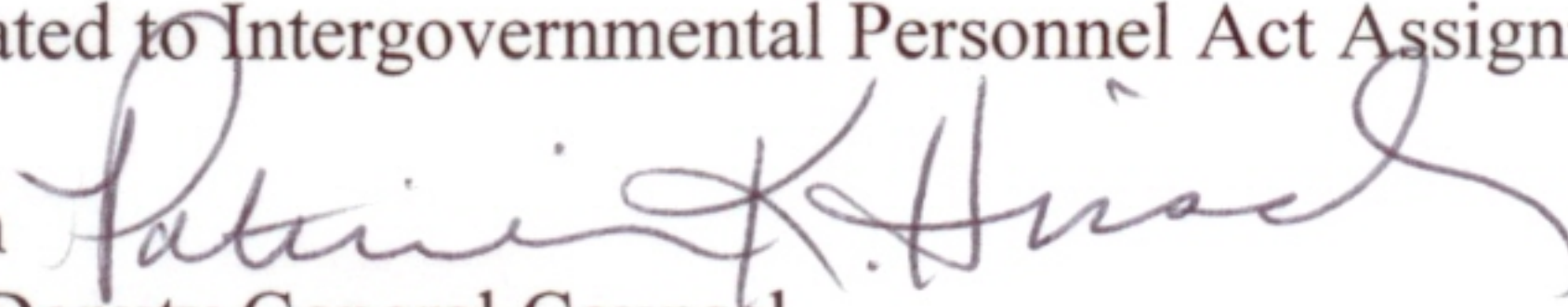
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF  
GENERAL COUNSEL

**EPA ETHICS ADVISORY 07-03**

**SUBJECT:** Ethics Issues Related to Intergovernmental Personnel Act Assignments

**FROM:** Patricia K. Hirsch   
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**TO:** Deputy Ethics Officials

The purpose of this Ethics Advisory is to address frequently asked questions that arise with respect to Intergovernmental Personnel Act (IPA) assignments between EPA and State/local governments, non-profit and other organizations (hereinafter referred to as "non-federal entities" or "host organizations"). This advisory provides specific guidance to EPA employees on IPA assignments, and also addresses the need for specific language regarding representation and travel to be included in the IPA scope of work. In addition to this Ethics Advisory, we are anticipating that an on-line training course covering these issues will be available for employees by October 1, 2007.

We encourage employees to contact their Deputy Ethics Official (DEO) to review proposed IPA agreements or to answer questions that are unanswered by this advisory. In the regions, please contact your DEO or the regional ethics counsel in the Office of Regional Counsel. In addition, you may contact Peggy Love, Deputy Ethics Official, Office of General Counsel, by phone at (202) 564-1784 or by e-mail at [love.peggy@epa.gov](mailto:love.peggy@epa.gov), or Justina Fugh, Senior Counsel for Ethics, by phone at (202) 564-1786 or by e-mail at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov).

**Background**

The Intergovernmental Personnel Act, Public Law 91-648 (the "Act"), provides for the temporary interchange of employees between the federal and non-federal sectors. The purpose of the Act is to facilitate intergovernmental cooperation by permitting the exchange of personnel and by allowing employees to perform assignments mutually beneficial to the organizations involved, and allowing employees to gain valuable experience in working at various levels of government.

Under the mobility provisions of the Act, employees may be assigned between the Federal government and State, local and Indian tribal governments, or other eligible



organizations. Under 5 C.F.R. Part 334, EPA has the authority to certify organizations for participation in the Agency's IPA mobility program.

EPA employees who go on an IPA assignment remain Federal employees and must also continue to abide by EPA regulations and policies during the term of their IPA assignment. This includes the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, which address provisions about misuse of position, impartiality in performing official duties, gifts, and fund-raising. EPA employees are also subject to Federal conflicts of interest and post-employment statutes. For a summary of these restrictions, see the U. S. Office of Government Ethics DAEOgram, DO-06-031, dated October 19, 2006, which is available at: [http://www.usoge.gov/pages/daeograms/dgr\\_files/2006/do06031.pdf](http://www.usoge.gov/pages/daeograms/dgr_files/2006/do06031.pdf)

Employees must also adhere to EPA's Policy for Competition of Assistance Agreements, EPA Order 5700.5A1 (January 2005), OMB Circular A-97, and the Federal Acquisition Regulation (FAR), 48 C.F.R. Part 15. A summary of these legal authorities can be found at the end of this document.

In addition, individuals who join EPA on IPA assignments from non-Federal entities are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635, as well as EPA supplemental regulations, 5 C.F.R. 6401, and policies (e.g., EPA's Policy for Competition of Assistance Agreements, EPA Order 5700.5A1 (January 2005), and OMB Circular A-97). Employees who join EPA on IPA assignments need to recognize that the post-employment restrictions will apply to them as well.

### **Frequently Asked Questions**

**Question 1.** Can an EPA employee working at a non-profit organization for his or her IPA assignment represent that non-profit entity in meetings with EPA or with other federal agencies?

**Answer 1:** As long as the scope of work in the employee's IPA agreement specifically permits the employee to represent that entity before the federal government, the employee may do so. Otherwise the employee could be violating the criminal statute that prohibits federal employees from representing another entity (in this case, the non-profit) back to the federal government.

Under 18 U.S.C. § 205, a federal employee generally may not act as "agent or attorney" before any federal agency regarding a "particular matter." To act as "agent or attorney" means to communicate with intent to influence on behalf of another person or organization. This prohibition applies to rulemaking as well as matters that involve specific parties, such as contracts and assistance agreements.



This prohibition does not apply when an employee is acting “in the proper discharge of his or her official duties.” According to the U.S. Department of Justice (DOJ), federal employees assigned to a state or local government or other non-federal entity under the Act are not prohibited by 18 U.S.C. § 205 from representing the interest of the non-federal entity before the federal government, including the employee's home agency, if such representational activity is affirmatively included with the scope of the employee's assignment as determined by the federal agency head [Office of Legal Counsel (OLC) opinion, January 11, 1999]. Therefore, it is necessary that the IPA scope of work affirmatively include permitting representation back to the federal government.

**Question 2.** Could an EPA employee working for a State or local government on environmental matters for his or her IPA assignment represent the State or local government in meetings with EPA or other Federal agencies?

**Answer 2:** As long as the scope of work in the employee’s IPA agreement specifically permits such representation, the employee may do so. With respect to EPA employees in particular, OLC opined that assignments to state and local agencies under an IPA agreement to carry out programs for which EPA and the states have a joint responsibility under the environmental statutes are considered the “proper discharge of official duties.” (OLC opinion, March 17, 1980). Accordingly, an EPA employee can act as “agent or attorney” before EPA or other federal departments and agencies even in connection with potentially controversial issues which are “integral to a substantive federal program” for which EPA and the states have joint responsibility.

Please note, however, that if the IPA scope of work contains only broad authority to carry out duties, such as “work of mutual concern” to EPA and the state or local governments, then the employee must be careful. The EPA employee may not act as “agent or attorney” before EPA or any other federal agency unless there is specific authority in the IPA agreement OR the work is integral to the joint program. See EPA Ethics Advisory 87-2, March 16, 1987.

**Question 3:** As part of his or her IPA duties, may an EPA employee assist in carrying out the duties in an EPA grant or contract that has been awarded to the non-federal entity?

**Answer 3:** As long as the scope of work in the employee’s IPA assignment agreement includes reference to work on the specific grant or contract, and he or she complies with all other applicable rules, statutes and policies, including the Standards of Conduct and the Federal Acquisition Regulation (FAR), the employee may assist with the grant. For example, non-public information cannot be divulged nor can his or her EPA position or title be used on behalf of the non-federal entity.

When the employee returns to EPA at the end of his or her IPA assignment, he/she will have a covered relationship with that non-federal entity as defined in 5 C.F.R. § 2635.502(b)(1)(iv). At that time, he/she will not be permitted to work on particular matters



involving specific parties when he/she knows that the non-federal entity is or represents a party to such matter, and he/she determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality, unless he/she receives authorization from an Agency ethics official. See 5 C.F.R. § 2635.502(a).

**Question 4a:** Can an EPA employee who served as an EPA Project Officer on a grant or contract to an entity later serve on an IPA to that entity?

**Answer 4a:** Maybe. The employee may serve on an IPA to the entity following a review of the circumstances leading up to the IPA assignment by the DEO. The DEO will need to make a determination that the EPA employee did not use his or her official position to coerce or persuade the entity to request the IPA assignment or otherwise use his or her public office for private gain. See 5 C.F.R. § 2635.702.

**Question 4b:** Assuming that the EPA employee who served as an EPA Project Officer on a grant or contract to an entity is permitted to later serve on an IPA to that entity, may the employee perform duties for the entity related to the EPA grant or contract that he or she worked on while in his or her position with EPA?

**Answer 4b:** Just as in Answer 3, so long as the scope of work in the employee's IPA assignment agreement includes work on the specific grant or contract, and he or she complies with all other applicable rules, statutes and policies, including the Standards of Conduct and the Federal Acquisition Regulation (FAR), the employee may work on the grant or contract.

When the employee returns to EPA at the end of the IPA assignment, he/she will have a covered relationship with that non-federal entity as defined in 5 C.F.R. 2635.502(b)(1)(iv). After returning, he/she will not be permitted to work on particular matters involving the non-federal entity unless the DEO determines that the circumstances would not cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality. See 5 C.F.R. § 2635.502(a).

**Question 5:** Can an EPA employee on an IPA assignment to a non-federal entity help that entity write a competitive proposal to be submitted to EPA for a competitive grant or contract award?



**Answer 5:** No. For grants, EPA's Policy for Competition of Assistance Agreements, EPA Order 5700.5A1, prohibits EPA employees from providing advice or information that will give any applicants a competitive advantage. The policy further states that Agency employees must not do any of the following: prepare proposals/applications for applicants, share ideas with potential applicants or applicants that are contained in a competing proposal/application, review and comment on draft proposals/applications, assist potential applicants in responding to evaluation and selection factors, or provide information to a potential applicant or applicant on the Agency's approach to evaluating proposals/applications or selecting applicants for award that is not otherwise stated in the announcement.

Therefore, EPA employees on IPA assignments are prohibited from providing any assistance in preparing a competitive proposal or application that the entity intends to submit to EPA under a competitive grant announcement. This restriction supercedes any statement to the contrary that may be included in an IPA agreement scope of work or that may otherwise be permitted under the Standards of Conduct.

Similarly, for a competitive contract award, an EPA employee on an IPA assignment to a non-federal entity should not help that entity write a proposal to be submitted to EPA if that EPA employee's assistance would provide the non-federal entity with an unfair competitive advantage or preferential treatment or if that EPA employee's assistance would create a conflict of interest for that employee between his or her proposal interests and his or her Government duties.

Although the Federal Acquisition Regulation ("FAR," 48 C.F.R. Part 15), unlike the EPA Grant Competition Policy, does not speak directly to the subject question of an EPA employee helping to write a proposal for a non-federal entity to use in a competitive procurement environment, the FAR clearly prohibits providing an unfair competitive advantage or preferential treatment to any contractor in any contract award, absent statutory or regulatory authorization. For example, Section 48 C.F.R. 3.601(a) of the FAR specifically states that a Contracting Officer may not knowingly award a contract to a Government employee or to a business concern owned or substantially owned or controlled by one or more Government employees to ensure that the employee avoids any conflict of interest that might arise between his proposal interests and his Government duties and so that the Government will avoid the appearance of favoritism or preferential treatment by the Government to its own employees.

If an EPA employee has specific information not available generally to the public about a proposed acquisition and he utilizes that information to help write a competitive proposal for his IPA host organization, then an unfair competitive advantage would be created and the EPA employee might also be violating the Procurement Integrity Act, 41 U.S.C. § 423. The EPA employee, the non-federal entity, and EPA procurement officials should all be cognizant that an EPA competitive contract award to a non-federal entity where the successful competitive proposal was written with the help of an EPA employee could create an unacceptable appearance of unfair competitive advantage, preferential treatment, and/or favoritism, as well as conflicts of interest.



**Question 6:** Can an EPA employee on an IPA assignment help the non-federal entity to write a competitive grant or contract proposal to be submitted to another federal agency (other than EPA)?

**Answer 6:** EPA's Policy for the Competition of Assistance Agreements applies only to EPA awards, and does not extend to proposals to be submitted to other Federal agencies. So long as the scope of work includes assisting the host organization in writing such proposals, then EPA employees may do so. However, it is OGC's advice that such assistance be provided "behind the scenes" and that the EPA employee's name, EPA title and position are not included on the application. If it is absolutely necessary to include the EPA employee name, then s/he must be identified as an EPA employee on an IPA assignment to the host organization. There can be no reference to his/her EPA position or title alone.

**Question 7a:** Can an EPA employee who participates in an EPA grant competition by helping to draft a grant solicitation later serve on an IPA to the winning grant applicant?

**Answer 7a:** It is possible for an EPA employee who participated in an EPA grant competition by helping to draft a grant solicitation to later serve on an IPA to the winning grant application with the approval of their DEO.

Some EPA program employees help draft grant solicitations. EPA then posts individual grant solicitations (or funding announcements) on its website and at [www.grants.gov](http://www.grants.gov) so that the public will know that EPA is looking for applicants for a specific grant funding opportunity. The solicitation tells prospective grant applicants what type of project EPA will fund, who is eligible to apply, how to apply, what criteria EPA will utilize in evaluating proposals/applications, and what weight EPA will place on the criteria, as well as other pertinent information.

Under the Section 2635.101(b)(14) of the Standards of Ethical Conduct, employees need to avoid even the appearance that they are violating any of the standards. In this question, the employee's DEO should review the circumstances surrounding the prospective assignment to ensure the absence of an actual or apparent conflict of interest, 5 C.F.R. § 2635.402, and that the employee did not use his official position to coerce or persuade the entity to request the IPA assignment or otherwise use his public office for private gain. See 5 C.F.R. § 2635.702.

**Question 7b:** Can an EPA employee who participates in an EPA grant competition by evaluating proposals/applications later serve on an IPA to the winning grant applicant?

**Answer 7b.** It depends on the facts. An EPA employee who participated in an EPA grant competition by evaluating proposals/applications could be giving the appearance that he was using his public office for private gain in violation of 5 C.F.R. § 2635.702 if he later served on an IPA to the winning grant applicant. The employee's DEO should evaluate the circumstances and make a determination that the employee was not using his official position to



persuade the winning entity to offer him an IPA assignment or otherwise giving the appearance of a lack of impartiality in the performance of his official duties in evaluating the applications. See 5 C.F.R. § 2635.501(a).

**Question 8:** Can an EPA employee on an IPA assignment to a non-federal entity write a letter of support for an innovative research award on behalf of the organization? If so, can the letter be written on EPA stationery?

**Answer 8:** In this circumstance, the EPA employee should not use his or her official title or EPA stationery to write a letter in support of a nomination for an innovative research award. If the applicant worked with the EPA employee on a project at EPA, then he or she could write a letter of recommendation and mention their working relationship in the letter, but he or she should sign the letter in his or her personal capacity and use his or her personal stationery to avoid giving the appearance that EPA is endorsing the organization.

As part of the IPA duties, the EPA employee may write letters on behalf of the organization. If the scope of work permits the employee to represent the entity back to the federal government, then he or she may also use the entity's letterhead for letters back to the federal government on its behalf. The employee should not, however, write letters on its behalf using EPA letterhead, nor should the employee's EPA position be used on behalf of the organization.

Under the ethics rules and Ethics Advisory 07-02, an EPA employee may write a letter of recommendation or reference using official title or position **only** in response to a request for an employment recommendation or character reference based on personal knowledge of the ability or character of an individual with whom he has dealt with in the course of Federal employment or whom he is recommending for Federal employment, in accordance with 5 C.F.R. § 2635.702(b).

**Question 9:** Can an EPA employee on an IPA assignment to a non-federal entity participate in a planning committee meeting for a conference when the organization sponsoring the meeting will be competing for EPA funding for the conference?

**Answer 9:** No. Permitting an EPA employee to assist a non-federal entity to obtain EPA funding improperly creates the appearance of partiality, or favoritism, by the Agency regarding the grant application, contrary to 5 C.F.R. § 2635.101(b)(8) and (14) and 2635.502. It could also create the appearance that EPA is giving the organization an unfair competitive advantage in violation of Section 4 of EPA's Policy for Competition of Assistance Agreements.

**Question 10a:** If an EPA employee is expected to travel while on the IPA assignment, can the non-federal entity pay for the employee's travel expenses?

**Answer 10a:** If the scope of work indicates that the host organization will pay for travel that is necessary to carry out the IPA assignee's duties on behalf of the non-federal entity, then the travel can be accepted pursuant to the Act. For travel that is addressed clearly in the scope of work as being the host organization's responsibility, there is no need to complete the EPA travel acceptance form.



If travel is a possibility, then the scope of work must clearly address who is paying for travel, EPA or the non-federal entity. The IPA assignee travels under the non-federal entity's travel reimbursement policies and may not use his or her federal travel credit card while on official federal travel. Similarly, he or she may not use the GSA contracts with airlines and other transportation carriers. Travel relating to the EPA (e.g., travel to the EPA duty station for a performance review by an Agency supervisor) or travel the Agency agrees to pay as part of the IPA assignment must be paid by EPA. In these cases, the IPA assignee travels under federal travel orders and the federal travel regulations.

To the extent this answer is contrary to Ethics Advisory 01-02 [May 15, 2001], this Advisory takes precedence.

**Question 10b.** Does the EPA employee accepting travel from the non-federal organization have to use the travel acceptance form, EPA Form 2610-3, Approval to Accept Travel Expenses Under the Ethics Reform Act of 1990?

**Answer 10b:** No. If the scope of work indicates that the host organization will pay for travel that is necessary to carry out the IPA assignee's duties on behalf of the non-federal entity, then travel can be accepted pursuant to the Act, and the employee does not need to complete the travel acceptance form. As in the response to Question 10a, to the extent this answer conflicts with Ethics Advisory 01-02 [May 15, 2001], this advisory takes precedence.

**Question 11:** Can an EPA employee on an IPA assignment to a non-federal entity participate in any fund-raising events for that organization?

**Answer 11:** No. EPA employees are not permitted to solicit funds as part of their official duties, with the exception of the Combined Federal Campaign. In addition, employees are not permitted to use their official title, position, or authority to fund-raise. See 5 C.F.R. § 2635.808. Under these rules, an EPA employee on an IPA assignment is precluded from any fund-raising activity for the organization as part of the IPA assignment.

**Question 12:** Are there any restrictions that apply when the employee returns to EPA?

**Answer 12:** When the employee returns to EPA at the end of his or her IPA assignment, he or she will have a covered relationship as defined in 5 C.F.R. § 2635.502(b)(1)(iv) with that non-federal entity. Under the impartiality provisions, he or she should not be permitted to work on particular matters involving specific parties when he or she knows that a person with whom he or she has a covered relationship is or represents a party to such matter, and he or she determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality, unless he or she first receives authorization from his or her DEO pursuant to 5 C.F.R. § 2635.502(a).

**Question 13:** What happens if the host organization approaches the EPA employee about a job with that organization?

**Answer 13:** Under 18 U.S.C. §208 and the Standards of Ethical Conduct, Section 2635.604, the EPA employee is required to disqualify himself/herself from participation in any particular matter



that will have a direct and predictable effect on the financial interests of a person with whom he or she is negotiating prospective employment. Disqualification is required when the EPA employee agrees to discuss the prospect of employment with the host organization, regardless of who makes the first contact. To disqualify himself/herself, the EPA employee must notify his or her EPA supervisor that he or she has entered into employment negotiations with the host organization. While oral notice is sufficient, in order to maintain a record of the action, OGC recommends written notice. Disqualification ends when either the employee or the prospective employer rejects the possibility of employment and all discussions of future employment terminate.

**Question 14:** I'm not an EPA employee, but I am working here on an IPA. Do the federal rules apply to me? What are the post employment rules that apply to me when I leave?

**Answer 14:** Individuals who join EPA on IPA assignments from non-Federal entities are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, as well as EPA supplemental regulations, and policies (e.g., EPA's Policy for Competition of Assistance Agreements). Employees who join EPA on IPA assignments need to recognize that the post-employment restrictions will apply to them as well.



## SYNOPSIS OF PERTINENT LEGAL AUTHORITIES

EPA employees on an IPA assignment remain Federal employees and are required to adhere to the following legal authorities:

1. Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635.
2. 18 U.S.C. §203, Compensation to Members of Congress, officers, and others in matters affecting the Government.
3. 18 U.S.C. §205, restrictions against communicating with federal agencies with the intent to influence on behalf of outside parties (including organizations to which they are detailed) regarding any “particular matter” unless the employee is acting “in the proper discharge of . . . official duties.”
4. 18 U.S.C. §207, Restrictions on former officers, employees, and elected officials of the executive and legislative branches.
5. 18 U.S.C. §208, Acts affecting a personal financial interest.
6. 18 U.S.C. §209, Salary of Government officials and employees payable only by United States.
7. EPA Ethics Advisory 87-2, March 16, 1987, Employees on IPA Assignments.
8. EPA Ethics Advisory 92-06, Revised Rule on Acceptance of Travel Expenses.
9. U. S. Office of Government Ethics Advisory, DO-06-031, 10/19/2006, which is available at [http://www.usoge.gov/pages/daeograms/dgr\\_files/2006/do0603.pdf](http://www.usoge.gov/pages/daeograms/dgr_files/2006/do0603.pdf).
10. EPA’s Policy for Competition of Assistance Agreements, EPA Order 5700.5A1 (January 2005). This policy prohibits EPA employees from providing advice or information that will give applicants a competitive advantage and is available at <http://epawww.ep.gov/rmpolicy/ads/orders/700a1.pdf>.
11. OMB Circular A-97. Section 6a of OMB Circular A-97, which implements Section 302 of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577).
12. Federal Acquisition Regulation (FAR), 48 C.F.R. Part 15.

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