

**Audit**



**Report**

OFFICE OF THE INSPECTOR GENERAL

**INTERGOVERNMENTAL PERSONNEL ACT  
EMPLOYEES IN THE OFFICE OF THE ASSISTANT TO  
THE SECRETARY OF DEFENSE (NUCLEAR AND  
CHEMICAL AND BIOLOGICAL DEFENSE PROGRAMS)**

Report No. 98-036

December 11, 1997

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### **Acronyms**

ATSD(NCB)	Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs)
CTR	Cooperative Threat Reduction
DATSD	Deputy Assistant to the Secretary of Defense
DoE	Department of Energy
DSWA	Defense Special Weapons Agency
FFRDC	Federally Funded Research and Development Center
IDA	Institute for Defense Analyses
IPA	Intergovernmental Personnel Act

December 11, 1997

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION  
AND TECHNOLOGY  
UNDER SECRETARY OF DEFENSE (PERSONNEL AND  
READINESS)  
GENERAL COUNSEL OF THE DEPARTMENT OF  
DEFENSE  
ASSISTANT TO THE SECRETARY OF DEFENSE  
(NUCLEAR AND CHEMICAL AND BIOLOGICAL  
DEFENSE PROGRAMS)  
DIRECTOR, ADMINISTRATION AND MANAGEMENT

SUBJECT: Audit Report on Intergovernmental Personnel Act Employees in the Office  
of the Assistant to the Secretary of Defense (Nuclear and Chemical and  
Biological Defense Programs) (Report No. 98-036)

We are providing this audit report for review and comment. We considered management comments on a draft of this report when preparing the final report. The audit was conducted in response to allegations made to the Defense Hotline.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. We request that the Under Secretary of Defense (Personnel and Readiness) provide additional comments on Recommendation 1.a., 1.b., and 1.c. and the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) provide additional comments on Recommendation 3. by February 11, 1998.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to (b) (6), Audit Program Director, at (703) 604 (b) (6) (DSN 664 (b) (6) or (b) (6), Audit Project Manager, at (703) 604 (b) (6) (DSN 664-9256). See Appendix D for the report distribution. The audit team members are listed inside the back cover.



Robert J. Lieberman  
Assistant Inspector General  
for Auditing

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## Office of the Inspector General, DoD

Report 98-036  
(Project No. 6CH-8003.01)

December 11, 1997

### Intergovernmental Personnel Act Employees in the Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs)

#### Executive Summary

**Introduction.** We performed the audit in response to allegations made to the Defense Hotline including the allegation that Sandia National Laboratory officials assigned to the Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) directed the Defense Special Weapons Agency to procure work from Department of Energy national laboratories. This is the second of two reports. The first report discusses two allegations related to Defense Special Weapons Agency procurements through the Department of Energy.

**Audit Objectives.** The overall audit objective was to determine whether use of Intergovernmental Personnel Act employees by the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) complies with applicable statutes and regulations. The specific audit objectives were to determine the merits of the allegation made to the Defense Hotline and to evaluate the management control program as it applied to the overall audit objective.


**Audit Results.** The Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) inappropriately used Intergovernmental Personnel Act assignments as a means of circumventing personnel and pay limitations. The Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) had 18 personnel on Intergovernmental Personnel Act agreements from FYs 1992 through 1996. DoD reimbursed none or only part of the salaries and expenses for 15 of the 18 personnel, with the contractors that employed them paying the balance. Three of the 15 personnel served in senior supervisory positions that were personally responsible for the direction and oversight of Defense Special Weapons Agency interagency cost reimbursement orders to Department of Energy national laboratories, thus resulting in potential conflict-of-interest situations. Another senior official, who was on an Intergovernmental Personnel Act assignment from the Institute for Defense Analyses, a DoD-sponsored federally funded research and development center contractor, was paid \$70,680 per year in military retired pay by DoD in addition to an annual compensation package of \$165,600 by the Institute, comprised of salary and employee benefits. Although Federal employee salary limitations do not apply when Intergovernmental Personnel Act assignees are detailed to Federal employee positions, three of the four senior officials were compensated at amounts that exceeded statutory compensation limits for Federal employees. The ATSD(NCB) subsequently attempted to resolve the potential conflicts of interest by post-assignment waivers. See Appendix A for details on the management control program.

**Summary of Recommendations.** We recommend that the Under Secretary of Defense (Personnel and Readiness) issue policy that defines which, if any, inherently Governmental functions may be performed by Intergovernmental Personnel Act assignees and under what circumstances they may be performed; limits reimbursement

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of compensation for Intergovernmental Personnel Act assignees; and ends the hiring of individuals by federally funded research and development centers at DoD request specifically for Intergovernmental Personnel Act assignment qualification. We recommend that the General Counsel, DoD, issue policy that prohibits granting after-the-fact conflict-of-interest waivers for Intergovernmental Personnel Act assignments to DoD management and oversight positions, and requires the assignees to promptly make full disclosure of financial interests. We recommend that the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) terminate the Intergovernmental Personnel Act assignment agreement for Manager D.

**Management Comments.** We received comments on the draft of this report from the Principal Deputy Assistant Secretary of Defense (Force Management Policy); the General Counsel, DoD; the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs); and the Director, Administration and Management. The Principal Deputy Assistant Secretary of Defense (Force Management Policy) concurred, stating that guidance will be incorporated into the Civilian Personnel Manual that Intergovernmental Personnel Act assignments must conform to statutory and regulatory requirements and that compensation normally must not exceed Executive Level I plus benefits, with exceptions for special circumstances. The Principal Deputy stated his office does not have authority to restrict hiring requests specifically for Intergovernmental Personnel Act assignment qualification based on law and regulations, but stated that annual reports on the assignments may be requested to preclude potential abuse in this area. While the General Counsel <sup>OSD/JS: (b) (5)</sup>

 The Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) did not agree to terminate Manager D's assignment agreement. See Part I for a more detailed summary of management comments and Part III for the complete text of the management comments.

**Audit Response.** The Principal Deputy Assistant Secretary of Defense (Force Management Policy) comments and proposed guidance were partially responsive to the intent of the recommendation to issue policy guidance on Intergovernmental Personnel Act assignments. The Under Secretary should coordinate with the Office of Federal Procurement Policy and the Office of Personnel Management, as appropriate, to establish policy on the placement of Intergovernmental Personnel Act employees in key decision-making roles and their performance of inherently Governmental functions. We believe that the compensation for IPA assignments should normally not exceed Executive Level III. The General Counsel, DoD, comments and proposed guidance were responsive to the intent of the recommendation to issue policy requiring prompt and full advanced disclosure of all conflicting financial interests. The comments by the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) were not responsive to the recommendation to end the Intergovernmental Personnel Act assignment of Manager D. We believe that the Assistant to the Secretary should terminate Manager D's assignment agreement. We request that the Under Secretary of Defense (Personnel and Readiness) provide additional comments on recommendations to issue policy on Intergovernmental Personnel Act assignments and the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) provide additional comments on the recommendation to terminate the Intergovernmental Personnel Act assignment for Manager D by February 11, 1998.

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## **Part I - Audit Results**

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## Audit Background

We performed the audit in response to allegations made to the Defense Hotline including the allegation that Sandia National Laboratory officials who were assigned to the Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) (ATSD[NCB]), directed the Defense Special Weapons Agency (DSWA) to procure work from Department of Energy national laboratories. This is the second of two reports. The first report discusses two allegations related to DSWA procurements through the Department of Energy (DoE).

**Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) Mission.** The ATSD(NCB)<sup>1</sup> is responsible for DoD policy and plans for nuclear and chemical and biological weapon programs and oversight of DSWA and the On-Site Inspection Agency. The ATSD(NCB) delegated management responsibilities for nuclear programs, including the Cooperative Threat Reduction/Defense Conversion Program and technical support for Counterproliferation Programs and Treaty Compliance, to DSWA.

**Intergovernmental Personnel Act Statutory Provisions.** Congress passed the Intergovernmental Personnel Act (IPA) in 1970 (codified in United States Code, title 5, sections 3371 through 3376 [5 U.S.C. 3371 - 3376]) to provide professional, administrative and technical assistance to State and local governments and to improve intergovernmental cooperation in the administration of grant programs. The IPA allows for temporary assignment of personnel between Federal agencies, State and local governments, institutions of higher learning, and nonprofit organizations. The Act provides that an assignment can take one of two forms, either an appointment or a detail to an agency position. Appointees are generally considered to be employees of the agency during the appointment. Detailees are not considered to be agency employees, but are subject to Federal conflict-of-interest laws. The Act stipulates that IPA assignments can be for 2 years, and allows for an extension of not more than 2 additional years.

**Amendment for National Laboratory Employee Assignments.** The National Defense Authorization Act for FY 1995, Public Law 103-337, section 1068; amended 5 U.S.C. 3371(4) to specifically include federally funded research and development centers (FFRDCs) in the definition of "other organizations" whose employees are eligible to participate in IPA assignments. The effect of that change was to allow all FFRDCs (which includes DoE national laboratories) to participate without Office of Personnel Management approval, whether they are operated by not-for-profit, or by for-profit organizations. For-profit contractors operate 5 of the 19 DoE national laboratories, including Sandia National

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<sup>1</sup>The ATSD(NCB) was formerly the ATSD for Atomic Energy.



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Laboratory. Six of the 17 DoE employees on IPA assignments to the Office of the ATSD(NCB) were from DoE national laboratories operated by for-profit contractors. All of the assignees from DoE laboratories discussed in this report were detailed to DoD and remained employees of their respective laboratories.

**Implementing Guidance.** The Office of Personnel Management issued implementing guidance in Federal Personnel Manual, chapter 334<sup>2</sup>, which specifies four objectives for IPA assignments:

- o Strengthen management capabilities of Federal and non-Federal participating organizations.
- o Assist in the transfer and use of new technologies and approaches to solving governmental problems.
- o Serve as a means of involving non-Federal officials in developing and implementing Federal programs.
- o Provide developmental experience to enhance the assignee's performance in his or her regular job.

The Federal Personnel Manual requires that IPA assignments be formalized with written agreements. Office of Personnel Management Optional Form 69, "Assignment Agreement: Title IV of the Intergovernmental Personnel Act of 1970," may be used for this purpose. Other rules and criteria for IPA assignments and agreements are:

- o Each agreement may cover only one specific employee.
- o Assignments should be for no more than 2 years. However, the Federal agency head may extend the assignment to a maximum of 4 years.
- o Before taking an IPA assignment to a Federal agency, the assignee must have worked for the participating non-Federal institution for at least 90 days in a career position.
- o Agreements must record the responsibilities of all agreeing parties--the Federal agency, the participating institution, and the assignee.

The Federal Personnel Manual states that assignments arranged to meet personal interests of employees, to circumvent personnel ceilings, or to avoid unpleasant personnel decisions are contrary to the spirit and intent of the IPA mobility assignment program.

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<sup>2</sup>The Office of Personnel Management decided to "sunset" this provision in December 1993 in response to a National Performance Review recommendation. However, the provision is still the best available guidance on existing IPA laws and regulations on the use of IPAs.

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**Salary Limitations.** Neither the IPA nor the FY 1995 IPA amendment addresses pay limitations for IPA salaries. Public Law 101-509, "1990 Federal Employees Pay Comparability Act," (5 U.S.C. 5301 et seq) limits Senior Executive Service employee salaries to Executive Schedule Level III (\$123,100) and cabinet officer (including Secretary of Defense) salaries to Executive Schedule Level I (\$148,400). The DoD adds 19.2 percent to those salaries for employee benefits.

**Inherently Governmental Functions.** The Office of Management and Budget's Office of Federal Procurement Policy Letter 92-1, "Inherently Governmental Functions," September 23, 1992, provides guidance on inherently Governmental functions that must be performed by Government employees. Examples of inherently Governmental functions include:

- o determination of agency policy, such as the content and application of regulations;
- o determination of budget policy, guidance, and strategy;
- o determination of Federal program priorities or budget requests; and
- o direction or control of Federal Employees.

**Standards of Ethical Conduct.** The Office of Government Ethics has issued standards of ethical conduct for officers and employees of the executive branch of the Federal Government. These standards are in the Code of Federal Regulations, title 5, section 2635. The standards outline the basic obligation of public service and address specific areas of ethical conduct by Federal employees. They also address conflicting financial interests and impartiality while performing official duties. The General Counsel, DoD, is responsible for the administration of the ethics program in Office of the Secretary of Defense.

**Statutory Provisions for Retired Military.** United States Code, title 5, section 3326, requires a 180-day time constraint for civil service appointments of retired military officers unless prior authorization is granted by the applicable Service Secretary. The Civil Service Reform Act of 1978, Public Law 95-454, amended 5 U.S.C. 5532 to limit combined civil service salaries and Armed Services retirement payments to an equivalent of Level V of the Executive Schedule. That provision requires a reduction of retirement pay based on a specific formula and an additional reduction when the combined retirement and civil service payments reach the ceiling. Overpayments are recouped through established procedures. United States Code, title 5, section 5532, authorizes the Office of Personnel Management to waive dual compensation restrictions on a case-by-case basis.

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## **Audit Objectives**

The overall audit objective was to determine whether use of IPA employees by the ATSD(NCB) complies with applicable statutes and regulations. The specific audit objectives were to determine the merits of the allegation made to the Defense Hotline and to evaluate the management control program as it applied to the overall audit objective. See Appendix A for a discussion of the audit scope and methodology and details on the management control program.

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## **Intergovernmental Personnel Act Assignments**

The ATSD(NCB) inappropriately used IPA assignments as a means to circumvent personnel pay and hiring limitations. The Office of the ATSD(NCB) had 18 personnel on IPA agreements from FYs 1992 through 1996. DoD reimbursed none or only part of the salaries and expenses for 15 of the 18 personnel, with the contractors that employed them paying the balance. Three of the 15 personnel served in senior supervisory positions that were personally responsible for the direction and oversight of DSWA interagency cost reimbursement orders to DoE national laboratories, thus resulting in potential conflict-of-interest situations. Another senior official, who was on an IPA assignment from the Institute for Defense Analyses (IDA) was paid \$70,680 per year in military retirement in addition to a yearly compensation package of \$165,600, comprised of salary and employee benefits. Although Federal employee salary limitations do not apply when IPA assignees are detailed to Government employee positions, three of the four senior officials were compensated at amounts that exceeded statutory Government employee compensation limits. By utilizing the IPA procedures, the ATSD(NCB) bypassed the reemployment time constraints and employee compensation limitations that would apply to normal Federal employees. The ATSD(NCB) subsequently attempted to address the post-assignment conflict-of-interest situations with waivers secured in accordance with 18 U.S.C. 208.

### **IPA Assignments to ATSD(NCB) Positions**

The Office of ATSD(NCB) inappropriately used IPA assignments to circumvent pay limitations and personnel ceilings. The Office of the ATSD(NCB) used IPA agreements to assign 3 DoE national laboratory and 1 IDA employee to Deputy ATSD(NCB) positions, and 14 other national laboratory employees as support personnel to augment those Deputy positions. Appendix C shows the assignment of those employees in the ATSD(NCB) organization. Contractors operating the DoE national laboratories and IDA paid compensation totaling \$3.5 million to the 18 IPA assignees, of which DoD reimbursed \$1.7 million of the compensation costs. The ATSD(NCB) used from 6 to 10 IPA assignees per year to supplement a total authorized staff of from 21 to 24 DoD civilian and military personnel. Reimbursement for all or part of IPA compensation costs and the duties to be performed by the IPA assignees were matters of agreement between the DoD, the IPA assignee, and the employing contractor. The IPA assignees, which represented 30 to 48 percent of the ATSD(NCB) regular staff, were not counted against authorized staffing levels unless DoD reimbursed their regular employers for compensation costs from operating funds for the Office of the ATSD(NCB). Table 1 shows the yearly number of IPA assignees and DoD authorized staffing at ATSD(NCB), compensation received by IPA assignees, and amount of DoD reimbursement.

## Intergovernmental Personnel Act Assignments

**Table 1. Summary of IPA Assignees and Costs**

<u>Fiscal Year</u>	<u>IPA Assignees</u>	<u>Authorized Military and Civilian Employees</u>	<u>Compensation of IPA Assignees</u>	<u>Amount of DoD Reimbursement</u>
1992	10	N/A <sup>1</sup>	\$805,264	\$441,045
1993	9	21	740,830	509,930
1994	8	21	628,018	234,500
1995	6	23	600,162	253,757
1996	8	24	660,350	254,481

DoD either did not reimburse or only partially reimbursed employing organizations for:

- 8 of 10 IPAs for FY 1992.
- 6 of 9 IPAs for FY 1993.
- 4 of 8 IPAs for FY 1994.
- 4 of 6 IPAs for FY 1995.
- 6 of 8 IPAs for FY 1996.

<sup>1</sup>FY 1992 ATSD(NCB) positions were not separately accounted for within the Office of the Secretary of Defense staffing.

**Benefits of IPA Assignments.** The IPA agreements for the 17 national laboratory employees and 1 IDA employee stated that the benefits from the assignments were the unique technical expertise those employees would bring to DoD. The agreements also stated the assignments would benefit the national laboratories and IDA through the experience and knowledge gained of DoD operations that the employees could use when they returned to the national laboratories and IDA. However, the ATSD(NCB) IPA assignments primarily augmented authorized staffing levels and many of the duties would not benefit the national laboratories through the experience and knowledge gained while on an IPA assignment to DoD. As a result, the IPA assignments did not meet the spirit and intent of the IPA program.

### Details of IPA Assignments

**Deputy ATSD(NCB).** Four IPA assignees served in Deputy ATSD(NCB) positions responsible for the direction and oversight of DSWA programs that issued interagency cost reimbursement orders to DoE national laboratories. Three of the four Deputy ATSD(NCB)s were paid by contractors operating DoE national laboratories, and the other Deputy ATSD(NCB) was paid by a contractor operating a DoD-sponsored FFRDC. All four of the Deputy ATSD(NCB)s performed inherently Governmental functions including determination of program strategy, priorities and budget policy, and the direction and control of Federal employees. Two of the four Deputy ATSD(NCB)s requested and received waivers to potential conflicts of interest from the Standards of Conduct Office, Office of General Counsel, DoD, as shown in Table 2.

## Intergovernmental Personnel Act Assignments

**Table 2. IPA Assignees to Deputy ATSD(NCB) Positions**

IPA Assignees	Annual Employee Compensation	DoD Reimbursed Contractor	Employed by		Waiver to Conflict of Interest
			Non-Profit Contractor	For-Profit Contractor	
Manager A	\$151,000	X	X		No
Manager B	146,760	X	X		Yes
Manager C	103,000			X	Yes
Manager D	165,600	X	X		No

Compensation amounts are according to the IPA assignment agreements.

DoD reimbursed the sponsoring DoE national laboratory \$122,379 per year for Manager A's compensation for FYs 1992 and 1993. The DoE national laboratory compensated Manager A in FY 1994 without DoD reimbursement.

DoD reimbursed the sponsoring DoE national laboratory Manager B's compensation for FY 1993. The DoE national laboratory compensated Manager B for FY 1994 through 1996 without DoD reimbursement.

Three of the assignees that served as Deputy ATSD(NCB) (Managers A, B and D) were compensated at amounts that exceeded Federal employee compensation statutory limits. Table 3 shows the premium paid by DoD for compensation for the three managers and the corresponding statutory limit. Although the statutory compensation limits did not apply to the three IPA assignees because they served under details, we believe that the ATSD(NCB) paid unnecessary premiums and did not adequately explore acquiring managers through normal hiring or military assignment procedures. As a result, a premium of at least \$37,730 was paid for Manager D's services for 2 years as Deputy ATSD(NCB). Employee position descriptions showed that the duties of the three Deputy ATSD(NCB) positions did not require unique technical expertise not already available within DoD through normal hiring or assignment actions. However, there was no evidence that the ATSD(NCB) attempted to fill the positions through normal recruitment or military assignment actions. The positions occupied by IPAs involved duties that presented the appearance of conflicts of interest and increased the risk that actual conflicts of interest could occur.

**Table 3. Yearly Premium Paid for Deputy ATSD(NCB) Compensation**

<u>Deputy ATSD(NCB)</u>	<u>Annual Employee Compensation</u> <sup>1</sup>	<u>Statutory Limit</u> <sup>2</sup>	<u>Yearly Premium</u> <sup>3</sup>
Manager B	\$148,656	\$146,735	\$ 1,921 <sup>4</sup>
Manager D	165,600	146,735	18,865 <sup>5</sup>

<sup>1</sup>Compensation amounts are according to IPA assignment agreements.

<sup>2</sup>Public Law 101-509, "1990 Federal Employees Pay Comparability Act," limits Senior Executive Service employee salaries to Executive Schedule Level III (\$123,100) Federal employee benefits of 19.2 percent (\$23,635) were added for this comparison.

<sup>3</sup>Premium represents amounts that are greater than statutory limit adjusted for employee benefits. IPA assignees who are detailed to the Government are not subject to those limits

<sup>4</sup>Yearly premium paid for FY 1993.

<sup>5</sup>Yearly premium paid for FY 1995 and 1996.

**Manager A.** The ATSD(NCB) assigned Manager A, a career employee of the contractor operating the Los Alamos National Laboratory detailed to DoD under the IPA, as Deputy ATSD(NCB) for Military Applications in October 1991. Manager A served as Acting ATSD(NCB) from May 1992 to June 1993 and as Deputy ATSD(NCB) for Cooperative Threat Reduction (CTR) Programs from July 1993 through August 1994. Manager A's 1991 assignment was requested by the ATSD(NCB) and approved by the Assistant Director, Employee Career Development and Training, Washington Headquarters Services. Manager A returned to the Los Alamos National Laboratory in September 1994 and retired from the laboratory in November 1995. Manager A continued to perform no-fee consultant work for ATSD(NCB) from October 1994 to June 1996 and received DoD reimbursement for per diem and travel costs from CTR program support funds.

**Compensation During IPA Assignment.** Manager A received \$151,000 in annual compensation from the contractor operating the Los Alamos National Laboratory during the IPA assignment to ATSD(NCB) positions from October 1991 through September 1994. Manager A's yearly compensation exceeded the statutory limit plus benefits for a Federal employee by \$4,265. We did not determine from which accounts the laboratory contractor paid Manager A's compensation, but as a DoE sponsored FFRDC, operating revenues for the laboratory come mainly from Government contracts. DoD reimbursed the laboratory contractor \$122,379 per year for Manager A's salary for FY 1992 and 1993, but did not do so for FY 1994 because of lack of funds. The ATSD(NCB) did not attempt to fill the Deputy positions occupied by Manager A through less costly alternatives, such as normal hiring or military assignment procedures.

## Intergovernmental Personnel Act Assignments

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**Potential Conflict of Interest.** In 1992, Manager A served as co-Chair and DoD representative of the interagency Safe Secure Dismantlement working group. The working group controlled initial CTR program delegation of duties between Federal agencies including DoD and DoE. In January 1993, Manager A, as acting ATSD(NCB), delegated CTR contracting authority to DSWA. During that period, Manager A personally participated in major CTR contract placement decisions, including decisions to acquire contract support from Los Alamos National Laboratory and other DoE national laboratories. Manager A did not request or receive a waiver of potential conflicts of interest on interactions with DoE national laboratories, although he maintained a financial interest in the Los Alamos National Laboratory through compensation he received from the laboratory contractor and the prospect of continued employment with the laboratory contractor when the IPA assignment ended. Based on the DoD treatment of subsequent IPAs in similar situations (discussed below), we believe that had Manager A requested a waiver of the potential conflicts under 18 U.S.C. 208(b)(1) in this general situation, DoD would have granted the waiver.

**Manager B.** Manager B, a career employee of the contractor operating the Lawrence Livermore National Laboratory detailed to DoD under the IPA, served in Deputy ATSD(NCB) positions from February 1993 to February 1996. Manager B's 1993 assignment was requested by the acting ATSD(NCB) (Manager A), and approved by the Assistant Director, Employee Career Development and Training, Washington Headquarters Services. The ATSD(NCB) terminated Manager B's IPA assignment as Deputy ATSD(NCB) for Counterproliferation Programs on February 27, 1996, and ended the IPA assignment on May 31, 1996. Manager B was replaced by a military officer with an acquisition background.

**Compensation During IPA Assignment.** DoD reimbursed the contractor operating the Lawrence Livermore National Laboratory for Manager B's FY 1993 compensation of \$148,656. By agreement with the contractor operating the Lawrence Livermore National Laboratory, Manager B's services were provided by the laboratory at no cost to DoD in subsequent years. The ATSD(NCB) did not attempt to use normal hiring or military assignment procedures to fill the position that Manager B occupied even though the skills required for that position were readily available within DoD.

**Potential Conflict of Interest.** Manager B performed functions that were a potential conflict of interest. The manager interacted regularly with DoE national laboratory personnel, including employees of the contractor operating the Lawrence Livermore National Laboratory and directed FY 1995 and 1996 procurements, totaling \$40.8 million, to specific contractors, including about \$11 million to the Lawrence Livermore National Laboratory. Manager B also assigned Employee A, an employee, who was on an IPA assignment to the Office of ATSD(NCB) from the contractor operating the Sandia National Laboratory, as budget approval officer for Counterproliferation projects.

**Conflict-of-Interest Challenge.** In March 1995, the DoD General Counsel's Standards of Conduct Office challenged the assignments of Manager B and two other DoE national laboratory contractor employees to IPA



positions. That office noted that Standard Forms 450, "Executive Branch Confidential Financial Disclosure Report," filed by the IPA assignees requires the disclosure of financial interests that could cause conflicts of interest requiring disqualification or waiver under ethics provisions.

**Conflict-of-Interest Waivers.** On April 5, 1995, the Principal Deputy ATSD(NCB) requested that the Standards of Conduct Office grant conflict-of-interest waivers under 18 U.S.C. 208 to Manager B, Employee A, and three other DoE national laboratory contractor employees on IPA assignments for future potential conflicts of interest on interactions with organizations in which they had a financial interest. On April 7, 1995, the Standards of Conduct Office recommended that the Director, Administration and Management, Office of the Secretary of Defense, grant the waivers. In a memorandum for record, dated April 7, 1995, the Director, Administration and Management, stated that the national laboratory interests of the five IPA assignees were not deemed likely to affect the integrity of their services to the Government. The Director of the DoD Standards of Conduct Office, in his capacity as the Deputy Designated Agency Ethics Official, concurred and notified the Principal Deputy ATSD(NCB) of the action taken.

Standards of Conduct Office managers were not aware that the contractors operating the DoE national laboratories paid salaries and benefits to the IPA assignees without DoD reimbursement when the managers provided the waivers. The Standards of Conduct managers stated that conflict-of-interest waivers are generally approved when IPA assignments begin, rather than afterward. However, the conflict-of-interest waivers were granted to the national laboratory contractor employees from 13 to 26 months after the employees received IPA assignments to the ATSD(NCB). Granting of conflict-of-interest waivers after-the-fact for IPA assignees from contractors operating the DoE national laboratories was an attempt to rectify potential conflict-of-interest situations. However, standards of conduct provisions do not permit waivers of conflicts of interest after they occur. Conflict-of-interest waivers should be issued in advance of an IPA assignee's participation in matters where there may be a conflict, and the particular interests should be too remote or too inconsequential to affect the integrity of the employee. Also, assignees should make full disclosure of the nature and extent of the potentially disqualifying financial interests to standards of conduct officials.

**Manager C.** Manager C, an employee of the contractor operating the Sandia National Laboratory detailed to DoD under the IPA, served as Deputy ATSD(NCB) for Chemical/Biological Matters from September 1993 until January 1994 and as Deputy ATSD(NCB) for Nuclear Matters from January 1994 to February 1996. Manager C's 1993 assignment and 1995 extension were requested by the ATSD(NCB) and approved by the Assistant Director, Employee Career Development and Training, Washington Headquarters Services. By agreement with the ATSD(NCB), the contractor operating the Sandia National Laboratory paid Manager C's annual salary, totaling \$103,000, without DoD reimbursement. The ATSD(NCB) terminated Manager C's assignment as Deputy ATSD(NCB) on February 27, 1996, and his IPA assignment on May 31, 1996, and replaced Manager C with a Senior Executive Service employee from DSWA. As with Managers A and B, the ATSD(NCB)

## Intergovernmental Personnel Act Assignments

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did not attempt to use normal hiring or military assignment procedures for Manager C even though the skills and knowledge required for the Deputy position were available within DoD, as evidenced by Manager C's replacement by the employee from DSWA.

**Potential Conflicts of Interest.** Manager C and three other IPA assignees who served on Manager C's Deputy ATSD(NCB) Nuclear Matters staff and whose salaries were paid by contractors operating DoE national laboratories, had potential conflicts of interest. The assignees interacted regularly with DoE national laboratory personnel including Sandia National Laboratory. As Deputy ATSD(NCB), Manager C interacted with Sandia National Laboratory on procurement and oversight issues, such as the transfer of nuclear safety testing of Air Force delivery systems to DSWA. On April 7, 1995, Manager C obtained a conflict-of-interest waiver that covered future potential conflicts of interest on interactions with organizations in which he had a financial interest. The waiver was approved by the Director, Administration and Management, because Manager C's financial interests with the contractor operating the Sandia National Laboratory were determined to not likely affect the integrity of his services to the Government. The Deputy Designated Agency Ethics Official concurred with the determination.

**Manager D.** Manager D was hired by IDA at the request of the ATSD(NCB) specifically for IPA assignment qualification. IDA is a non-profit organization that contracts with DoD to operate an FFRDC that performs studies and analyses for the Office of the Secretary of Defense, Joint Staff, Unified Commands, and Defense Agencies. The ATSD(NCB) introduced Manager D to IDA officials shortly before he retired from active duty as an Army Major General on May 31, 1994, and while he was serving as Director of the On-Site Inspection Agency. Manager D became an IDA employee on June 1, 1994. The ATSD(NCB), in an undated memorandum, requested that the Director, Administration and Management, approve Manager D's IPA assignment. The ATSD(NCB) memorandum was concurred with on July 15, 1994, by the Director, Administration, Office of the Under Secretary of Defense for Acquisition and Technology; and on July 19, 1994, by the Under Secretary of Defense for Acquisition and Technology. Manager D was detailed as Deputy ATSD(NCB) for CTR Programs on September 1, 1994, 90 days after becoming an IDA employee. Manager D met the criteria of 90 days as a career employee of a participating non-Federal institution prior to the IPA assignment. As Manager D's IPA assignment was a detail to DoD, he remained an employee of IDA. A requirement of 5 U.S.C. 3326 that would normally preclude a retired officer from Government employment absent Secretarial approval within 180 days of retirement was therefore inapplicable. Although Manager D fully functioned as a DoD manager, under the IPA, he did not become a DoD employee for most purposes during the period of detail. Accordingly, normal employment time and compensation restraints applicable to Federal employees did not apply.

**Compensation During IPA Assignment.** IDA hired Manager D at \$165,600 in annual compensation, comprised of \$115,000 of basic salary and \$50,600 of fringe benefits. The fringe benefits included holiday, sick, and annual leave, retirement, and state unemployment compensation. The

ATSD(NCB) directed that DSWA transfer CTR Program funds to Defense Supply Service-Washington to reimburse IDA for Manager D's compensation, which totaled \$521,000 from September 1, 1994, through September 8, 1997. Manager D's compensation was reimbursed from CTR program funds directed to Office of the Secretary of Defense operating accounts. Manager D also received \$70,680 per year in military retired pay, which totaled \$232,178 during the period of IDA employment and IPA assignment. Public Law 95-454 (Civil Service Reform Act of 1978) would have limited Manager D's compensation if the ATSD(NCB) hired Manager D through normal civil service procedures at a Senior Executive Service level paying more than \$108,200 per year. Public Law 101-509, "1990 Federal Employees Pay Comparability Act," established Executive Schedule Level III limits for Senior Executive Service employee salaries at \$123,100. Manager D received a compensation premium of at least \$18,865 each year of the IPA detail while continuing to receive \$70,680 per year in military retired pay. The dual compensation limit does not apply to IPA detailees.

The ATSD(NCB) use of IDA to qualify Manager D for an IPA assignment violates the spirit and intent of the IPA statute. Under this process, the ATSD(NCB) recruited Manager D, arranged for IDA to act as the non-Federal employer, and then established an IPA agreement assigning Manager D to a Deputy ATSD(NCB) on the 90th day after the manager was hired by IDA. Manager D spent the 90-day transition period researching and studying the CTR program and preparing a paper and briefing on the program for the ATSD(NCB). Furthermore, Manager D had no prospect of returning to IDA upon leaving his IPA assignment. The ATSD(NCB) use of an IPA assignment to detail individuals legally avoids normal Government employee compensation limitations, but may result in DoD paying unjustified premiums for services if reimbursements exceed those limitations. Although DoD paid a premium to obtain Manager D's services as Deputy ATSD(NCB), the skills required for that position were not unique. The ATSD(NCB) did not provide evidence to show that regular or less costly hiring or military assignment procedures were attempted. If those procedures were used, the ATSD(NCB) could have filled the Deputy position with a less costly alternative. Accordingly, we believe that the ATSD(NCB) should initiate action to terminate Manager D's IPA agreement, which was extended through August 1998.

**Employees of DoD-Sponsored Federally Funded Research and Development Centers.** Other examples of non-profit organizations that contract with DoD to operate FFRDCs being used as a conduit for IPA assignments were identified in Report No. 95-048, "Contracting Practices for the Use and Operations of DoD-Sponsored Federally Funded Research and Development Centers," December 2, 1994. The report identified four instances where FFRDC contractors appeared to hire employees only to qualify the employees for IPA assignments requested by DoD. The report recommended that DoD exclude FFRDC contractor personnel from IPA assignments to DoD positions that involve oversight or management responsibilities over an FFRDC. The Advanced Research Projects Agency and the Navy concurred with the report recommendations and agreed that conflict-of-interest controls needed improvement. The Army and the Air Force agreed with the intent of the report recommendations, but believed

## Intergovernmental Personnel Act Assignments

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that FFRDC IPA assignments can be done if an advisory group or Senior Executive Service official approves program decisions made by IPAs to avoid potential conflict-of-interest issues.

**Need for Clarifying Guidance.** The intent of the IPA was to establish a mobility assignment program for the temporary assignment of personnel between Federal agencies and State and local governments, institutions of higher learning, and certain non-profit organizations whose principal functions are to offer professional advisory research, development or related services to governments or universities concerned with public management. The program was not intended to be a loophole to fill senior-level Federal positions and to render inapplicable statutory provisions related to reemployment time constraints and compensation limitations for regular Federal employees. The IPA does not address which, if any, inherently Governmental functions of the Federal agencies may be performed by IPA assignees or place any constraints on functions performed by IPA assignees employed by contractors operating FFRDCs. In addition, the IPA does not place any limitation on compensation for IPA assignees. An undated Office of Personnel Management fact sheet on the IPA Mobility Assignment Program states that "an assignee may exercise supervision over Federal employees," but does not address whether they may be placed in decision-making roles. In regard to compensation, the fact sheet states, "Detailed assignees continue to be paid at their regular salary rate. However, the assignee is entitled to supplemental pay from the Federal agency to the extent that the pay received from the non-Federal organization is less than the appropriate rate of pay which the duties would warrant under applicable pay provisions."

We believe that the Under Secretary of Defense (Personnel and Readiness) should issue clarifying guidance to the DoD components regarding the use of IPA assignees. The guidance should define which, if any, inherently Governmental functions may be performed by IPA assignees and under what circumstances they may be performed. Also, employing organizations of IPA assignees should not be reimbursed for amounts that exceed Federal employee compensation limitations. The guidance should also state that DoD managers will not request contractors operating FFRDCs, which must maintain the highest standards of independence and objectivity in the performance of taskings from their sponsoring organizations, to hire specific individuals to qualify them for IPA assignments. In addition, the guidance will reiterate the need for IPA assignees to comply fully and promptly with standards of conduct provisions relating to conflicting financial interests and impartiality in performing official duties.

## Summary

**Allegation.** Sandia National Laboratory officials assigned to the ATSD(NCB) directed DSWA to procure work on interagency cost reimbursement orders from DoE national laboratories.

**Audit Results.** We partially substantiated the allegation. Several ATSD(NCB) employees on IPA assignments to ATSD(NCB) from DoE national laboratories participated in program decisions that resulted in DSWA issuing interagency cost reimbursement orders performed by the contractors operating the DoE national laboratories.

## Management Comments on the Finding and Audit Response

**ATSD(NCB) Comments.** The ATSD(NCB) disagreed with the finding, stating that IPA personnel were hired because they possessed unique skills and were proven experts in fields not normally found within DoD, namely nuclear expertise. In addition, the assignments were of a temporary nature and, therefore, well suited to the time limits associated with the IPA program. The ATSD(NCB) agreed that conflict-of-interest waivers should have been obtained but did not consider the waiver issue to be substantive based on determination that IPA involvement did not affect the integrity of their services.

**Audit Response.** The finding does not take issue with the skills or expertise of IPA personnel. The finding addresses the inappropriate use of IPA assignments. DoD managers filled senior-level policy and decision-making positions with IPA assignees without attempting to recruit civilian or military personnel for the positions. The IPA program permitted the positions to be filled expeditiously and at higher salary than through the normal personnel recruitment process. We believe the actions constituted improper hiring practices leading to increased cost and potential conflicts of interest and were contrary to the objectives, spirit, and intent of the IPA mobility assignment program.

**ATSD(NCB) Comments on Manager B.** The ATSD(NCB) stated that Manager B allocated Counterproliferation funds to DoD executive agents under established DoD procedures, but did not direct procurements. The ATSD(NCB) also stated that Manager B directed Employee A to provide continuing status reports of the overall Counterproliferation budget, but that Employee A was not the budget approval officer and was not directed to approve the budgets.

**Audit Response.** Manager B maintained operational control over the disbursement of Counterproliferation funds and personally and substantially participated in decisions to fund work at DoE National Laboratories. Although Employee A was not the budget approval official of record, the employee allocated funding at Manager B's direction to Counterproliferation projects performed by DoE national laboratories.

**ATSD(NCB) Comments on Manager C.** The ATSD(NCB) stated that Manager C neither interacted with Sandia National Laboratory nor had responsibility for procurement.

## Intergovernmental Personnel Act Assignments

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**Audit Response.** Although Manager C did not have authority to contract for Nuclear Matters Program procurements, he participated personally and substantially in the decisions to expand DSWA procurements of nuclear safety testing work at Sandia National Laboratory and to reduce equivalent Air Force procurements in the response to Sandia National Laboratory requests.

**ATSD(NCB) Comments on Manager D.** The ATSD(NCB) stated that Manager D's salary should be computed based on the IDA base salary of \$115,000, rather than the yearly \$175,000 obligation. He also stated that potential dual compensation of Manager D was not an issue due to his employment by IDA. He believed Manager D would have warranted a dual compensation waiver determination under applicable statutory criteria. The ATSD(NCB) stated that Manager D's compensation was consistent with compensation and benefits of a senior executive-level employee.

**Audit Response.** Based on management comments, we adjusted the figure used to show the Federal employee Executive Level III limit by 19.2 percent for employee benefits. After including employee benefits in the comparison, Manager D's compensation still exceeded the annual statutory limit for Federal employees by \$18,865.

**General Counsel, DoD Comments.** OSD/JS: (b) (5)



**Audit Response.** OSD/JS: (b) (5)



**Director, Administration and Management Comments.** The Director, Administration and Management stated that the finding distorted certain IPA issues, provided incomplete information, and that no illegalities occurred in the hiring of the ATSD(NCB) IPAs. The Director stated that skills required for Deputy ATSD(NCB) positions were not readily available within DoD and that he approved all IPA assignments before the Assistant Director for Employee Career Development and Training signed the IPA agreements as the authorizing official. In addition, the Director stated that the objective of the IPA Program is to provide temporary expertise and disagreed that permanent hires should have been considered before temporary assignments.

The Director, Administration and Management also disagreed with the audit methodology used to determine premium amounts paid for Managers B and D, stating that an average Federal employee benefits package of 19.2 percent should be added to the statutory salary limitation for comparison to IPA salaries. The Director offered an alternative computation including the average

Federal employee benefits package and using actual reimbursement compensation amounts. The alternative computation showed a reduced premium for Manager D's services and no premium paid for Manager B's services. The Director also disagreed with the use of obligation amounts for Manager D rather than amounts in the IPA agreement to compute Manager D's salary, stating that obligation amounts were only estimates.

**Audit Response.** As evidenced by the replacement for Managers B and C, the skills required for the Deputy ATSD(NCB) positions were available within DoD. As stated in the finding, the audit determined that the ATSD(NCB) did not attempt to fill the positions through regular recruitment or military assignment procedures before using IPA assignments. The Deputy ATSD(NCB) positions were permanent positions with oversight responsibility over the CTR, Counterproliferation, and Nuclear Matters programs. As a result of the Director's comments, we revised our salary computation for Manager D to reflect the amounts in the IPA agreement rather than the amounts obligated. We also revised the computations for yearly premiums for Managers B and D services by including Federal employee benefits.

## Recommendations, Management Comments, and Audit Response

**Redirected and Renumbered Recommendations:** Based on management comments, we redirected draft report Recommendations 1.b. and 1.c. to the General Counsel, DoD, and renumbered the recommendations as final report Recommendations 2.a. and 2.b. We renumbered draft report Recommendations 1.d. and 1.e. as final report Recommendations 1.b. and 1.c. and draft report Recommendation 2. as final report Recommendation 3.

**1. We recommend that the Under Secretary of Defense (Personnel and Readiness) issue a policy memorandum on Intergovernmental Personnel Act assignments that:**

**a. Defines which, if any, inherently Governmental functions defined by Office of Federal Procurement Policy Letter 92-1 may be performed by Intergovernmental Personnel Act assignees and under what circumstances they may be performed.**

**b. Limits reimbursement of compensation of Intergovernmental Personnel Act assignees to amounts prescribed in Public Law 95-454 (Civil Service Reform Act of 1978) and Public Law 101-509 (1990 Federal Employees Pay Comparability Act) for Federal employees.**

**c. Ends the hiring of individuals by federally funded research and development centers at DoD request specifically for Intergovernmental Personnel Act assignment qualification.**

## Intergovernmental Personnel Act Assignments

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**Principal Deputy Assistant Secretary of Defense (Force Management Policy) Comments.** The Principal Deputy Assistant Secretary agreed to issue guidance that states IPA assignments will conform to 5 U.S.C. 33, Subchapter I, and Code of Federal Regulations, title 5, section 334, and that IPA compensation should normally not exceed Executive Level I plus benefits. In response to Recommendation 1.a., the Principal Deputy Assistant Secretary stated that the cited Policy Letter was intended to provide guidance on services that may be performed by contractor employees and was not intended to be used as a guide for IPA implementation. The Principal Deputy Assistant Secretary also stated that any issuer of additional guidance should be the Office of Personnel Management. In response to Recommendation 1.c., the Principal Deputy Assistant Secretary stated that his office does not have authority to restrict federally funded research and development center hiring practices based on the law and regulations. The Principal Deputy Assistant Secretary did not believe that Defense policy should be written based on one situation where no statutory or regulatory violations were found, but stated that an annual reporting requirement on IPAs would be imposed that includes further review of the practices of outside organizations when warranted.

**Audit Response.** The Principal Deputy Assistant Secretary's comments are partially responsive to the intent of the recommendations. The establishment of an annual reporting requirement is a positive step towards improving oversight of the IPA Program within DoD. However, the comments with regard to the policy guidance do not demonstrate determination to reduce the potential for abuse in the program. We believe that the Under Secretary of Defense (Personnel and Readiness) should coordinate with the Office of Federal Procurement Policy and the Office of Personnel Management, as appropriate, on Recommendation 1.a. to establish policy on whether IPA assignees should be placed in key decision-making roles and to what extent they may perform other inherently Governmental functions. We also believe that DoD should not reimburse compensation for IPA assignments to the extent that it exceeds Executive Level III as adjusted for employee benefits, which for calendar year 1997 totals \$146,735. The Executive Level I limit, totaling \$148,400 for calendar year 1997, which the Principal Deputy Assistant Secretary proposed, equals the salary of the Secretary of Defense and exceeds the salaries of other senior DoD officials and members of Congress. We further believe that the guidance should establish approval levels, particularly for IPA assignments where compensation exceeds Executive Level III. The hiring of Manager D for IPA qualification is not the only situation where an FFRDC has agreed to technically become the employer to qualify a person for an IPA assignment. After issuance of the draft report we learned of other similar situations involving DoD and non-DoD-sponsored FFRDCs. We request that the Under Secretary of Defense (Personnel and Readiness) provide additional comments in response to the final report.

**General Counsel, DoD Comments.** OSD/JS: (b) (5)





OSD/JS: (b) (5)



**Audit Response.** OSD/JS: (b) (5)



**Director, Administration and Management Comments.** Although not requested to comment, the Director, Administration and Management disagreed with the recommendations, stating that Defense Components must have flexibility to allow IPA pay to exceed Public Law and Federal employee limitations on rare occasions. The Director also stated that IPA functions should be based upon the IPA laws not upon a list of general policy statements, that the existing IPA law tacitly permits present IPA hiring practices, and that a policy memorandum was not likely to end what may appear to be an inappropriate but not illegal practice.

**Audit Response.** We agree that DoD should rarely reimburse the compensation of an IPA assignee in excess of the stated limitation, and only in situations that are approved at a high level within DoD. Based on the results of the audit and recent evaluations of the implementation of the IPA program at the Department of Veterans Affairs and the National Science Foundation, we believe that the IPA program is vulnerable to abuse, largely because implementing guidance is insufficient.

**2. We recommend that the General Counsel of the Department of Defense issue a policy memorandum on Intergovernmental Personnel Act assignments that:**

**a. Prohibits granting after-the-fact conflict-of-interest waivers for future Intergovernmental Personnel Act assignments to DoD management and oversight positions.**

**b. Requires Intergovernmental Personnel Act assignees to promptly make full advance disclosure of all conflicting financial interests for standards of conduct reviews.**

## Intergovernmental Personnel Act Assignments

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**General Counsel, DoD Comments.** OSD/JS: (b) (5)

**Director, Administration and Management Comments.** Although not requested to comment, the Director, Administration and Management agreed that IPAs should disclose financial interests promptly and that conflict of interest waivers should be approved in advance.

**3. We recommend that the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) terminate the Intergovernmental Personnel Act assignment for Manager D.**

**ATSD(NCB) Comments.** The ATSD(NCB) disagreed, stating that summary dismissal of Manager D would seriously jeopardize the CTR program and would achieve the opposite of the recommendation's intent.

**Audit Response.** We continue to believe that the agreement should be terminated because it does not meet the objectives and intent of the IPA mobility program. Although IDA is technically his employer for the IPA agreement, Manager D was not a career employee of the FFRDC and has no prospect of returning to the FFRDC upon leaving his IPA assignment. We request that the ATSD(NCB) reconsider his position and provide additional comments on the final report.

**Director, Administration and Management Comments.** Although not requested to comment, the Director Administration and Management disagreed with the recommendation, stating that the recommendation usurps management's authority to make informed decisions within its purview.

**Audit Response.** We believe the recommendation is appropriate because Manager D's IPA assignment gives the appearance of a former officer making unfair use of his prior position and receiving preferential treatment, which is detrimental to public confidence in the Government.

## **Part II - Additional Information**

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## Appendix A. Audit Process

### Audit Scope

**Universe and Sample Information.** We obtained audit universe information on IPA assignments at ATSD(NCB) from records maintained by the Director, Employee Career Development and Training, Washington Headquarters Services and the Office of the ATSD(NCB). There were 18 IPA assignments for ATSD(NCB) positions from FY 1992 through FY 1996. We selected all 18 ATSD(NCB) IPA assignments for review. The distribution of the IPA assignments in the ATSD(NCB) organization is summarized in Appendix C.

### Audit Methodology

**Review of Documentation.** We reviewed 1992 through 1996 documentation maintained by the Director, Employee Career Development and Training, Washington Headquarters Services, the Office of the ATSD(NCB), and other components of the Office of the Secretary of Defense; and DSWA to support the 18 IPA assignments to Office of the ATSD(NCB). The documentation reviewed included:

- o IPA agreements,
- o IPA approvals,
- o IPA missions and functions,
- o conflict-of-interest requests and waivers,
- o FFRDC contractual documents, and
- o program management correspondence.

**Contacts During the Audit.** We visited or contacted individuals and organizations within the DoD, DoE, DoE national laboratories, and the General Accounting Office. Further details are available on request.

**Audit Period, Standards, and Locations.** This economy and efficiency audit was made from October 1995 through February 1997 in accordance with auditing standards issued by the Comptroller General of the United States as

implemented by the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary. The audit did not rely on computer-processed data or statistical sampling procedures.

## Management Control Program

DoD Directive 5010.38, "Management Control Program," August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

**Scope of Review of Management Control Program.** We reviewed ATSD(NCB) management controls over IPA assignments, including ATSD(NCB) self-evaluations. We also reviewed the adequacy of existing Under Secretary of Defense (Personnel and Readiness) guidance related to IPA assignments.

**Adequacy of Management Controls.** We identified a material weakness in ATSD(NCB) management controls, as defined by DoD Directive 5010.38. The ATSD(NCB) used IPA assignees in managerial positions that resulted in potential conflicts of interest. The ATSD(NCB) had not implemented effective management controls to comply with Federal personnel hiring practices to fill Deputy ATSD(NCB) vacancies. In addition, the ATSD(NCB) had not implemented effective management controls to expediently request conflict-of-interest waivers. We attributed those problems, in part, to insufficient DoD guidance on using IPA personnel. Implementation of the recommendations in this report will correct the material management control weakness at ATSD(NCB) and improve overall DoD management controls over IPA assignments. A copy of the report will be provided to the senior officials responsible for management controls at ATSD(NCB) and the Under Secretary of Defense (Personnel and Readiness).

**Adequacy of Self Evaluation.** Under Secretary of Defense (Personnel and Readiness) and ATSD(NCB) officials did not identify management controls over IPA use as an assessable unit. Therefore, the officials did not identify the material management control weakness identified by the audit.

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## Appendix B. Summary of Prior Audits and Other Reviews

### General Accounting Office

**Report No. NSIAD-96-10, "Interagency Contracting, Controls Over Economy Act Orders Being Strengthened," October 20, 1995.** The report concluded that the DoD is still adjusting to the Economy Act changes introduced by the Secretary of Defense. The report states that DoD has not implemented a statutorily mandated monitoring system for its interagency purchases. The General Accounting Office made no specific recommendations. The DoD concurred with the General Accounting Office report.

**Report No. NSIAD-95-165, "Weapons of Mass Destruction, Reducing the Threat From the Former Soviet Union: An Update," June 6, 1995.** The report concluded that overall material impact of the CTR program has been limited, and that the program must overcome numerous challenges and problems to realize long term CTR objectives. The report states that DoD has made progress in planning, obligating, and expending CTR program funds. The General Accounting Office recommended that Congress reduce FY 1996 CTR funding by \$34 million because of uncertainties regarding Russian chemical weapons destruction efforts. DoD non-concurred with the report, stating that tangible reductions in the threat to the U.S. had been achieved through the CTR program. DoD also non-concurred with the recommended funding reduction.

**Report No. NSIAD-95-7, "Weapons of Mass Destruction, Reducing the Threat From the Former Soviet Union," October 6, 1994.** The report concluded that the DoD had not established a process to ensure that annual CTR budget requests were driven by long range task assessments. The report states that DoD had not estimated the total requirements for achieving program objectives, that the prognosis for achieving program objectives varied widely, and that DoD had yet to audit former Soviet use of CTR aid. The General Accounting Office recommended that DoD institute a long-term planning process to help budget CTR funds among competing demands. DoD concurred on the planning recommendation, stating that two long-term planning offices in Policy and Acquisition would be established for future CTR budget submissions. However, DoD non-concurred that Congress withhold large scale funding for future CTR projects until results of initial CTR projects were fully assessed. DoD stated that it was premature to make statements on effectiveness

let alone cut funding. Congress subsequently required DoD to estimate expenditures to meet CTR objectives, prepare a multiyear CTR program plan, and report how CTR would be used for its intended purposes.

### Inspector General, DoD

**Report No. 96-004, "Evaluation of the Defense Nuclear Agency's Cooperative Threat Reduction Office," October 12, 1995.** The evaluation report concluded that the situation required the DSWA and the ATSD(NCB) CTR offices to agree and consistently implement a more detailed description of their roles and responsibilities under the parameters set forth by the current general guidance. The evaluation suggests that a charter of CTR roles, mission and responsibility be drafted between DSWA and ATSD(NCB). The evaluation assessed two alternative approaches to assigning roles and responsibilities between the two offices but did not recommend a particular alternative. The report did not include formal recommendations and DSWA did not respond.

**Report No. 95-048, "Contracting Practices for the Use and Operations of DoD-Sponsored Federally Funded Research and Development Centers," December 2, 1994.** The report states that in four instances FFRDCs appeared to hire employees only to qualify the employees for IPA assignments requested by DoD. In addition, one FFRDC employee on IPA assignment was responsible for directing the activities of another FFRDC. Overall, the report found that contracting officers needed better procedures to ensure that potential conflicts of interest were avoided or identified. An addendum to the report recommended that DoD exclude FFRDC personnel from IPA assignments to DoD positions that involve oversight or management responsibilities over an FFRDC. The Advanced Research Projects Agency and the Navy concurred with the addendum report recommendations and agreed that conflict-of-interest control improvements were needed. The Army and the Air Force agreed with the intent of the addendum report recommendations but believed that FFRDC IPA assignments can be done if an advisory group or Senior Executive Service official approves program decisions made by IPAs to avoid potential conflict-of-interest issues.

**Report No. 93-059, "Army Acquisition of Services Through the Jet Propulsion Laboratory," February 25, 1993.** The report states that Army program officials circumvented established policy and exceeded their authority by not obtaining required contracting officer approvals in placing \$10.5 million on interagency acquisitions through the Jet Propulsion Laboratory. As a result, the Army paid \$1.5 million for add-on costs for services chiefly performed by the Jet Propulsion Laboratory subcontractors. The report recommended that the Army commands prohibit the placement of supplemental work under the interagency agreements unless approved by a DoD contracting officer, initiate disciplinary actions against those officials who knowingly exceeded their

## Appendix B. Summary of Prior Audits and Other Reviews

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authority by placing work with the Jet Propulsion Laboratory, and establish procedures for the use of interagency acquisitions. Management concurred with the recommendations.

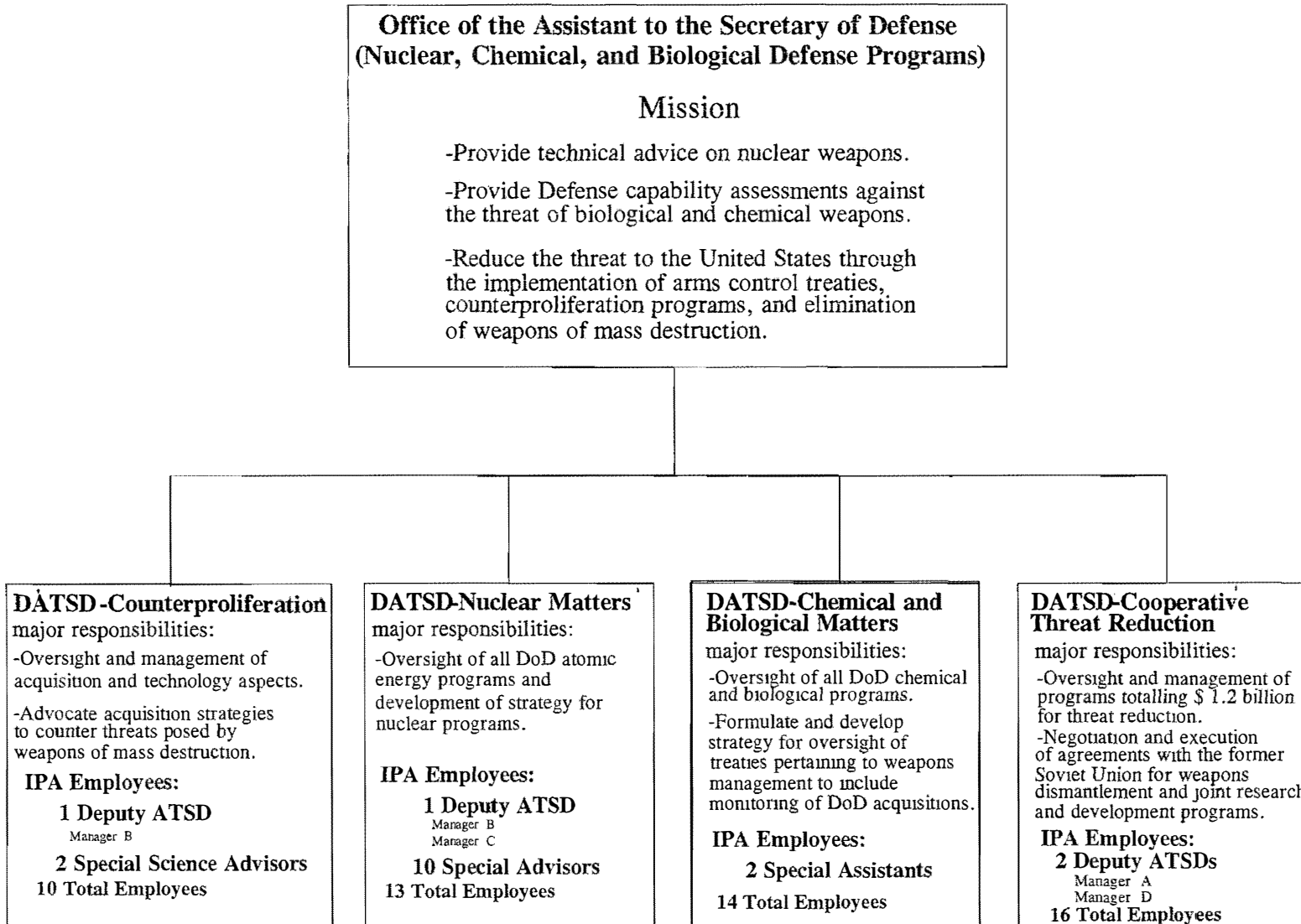
**Report No. 93-042, "Allegations of Improprieties Involving DoD Acquisition of Services Through the Department of Energy," January 21, 1993.** The report states that the Military Departments did not adequately strengthen controls over the use of interagency agreements in response to Inspector General, DoD, Report No. 90-085, "DoD Hotline Allegation of Irregularities in DoD Contractual Arrangements With the Department of Energy," June 19, 1990. Report No. 90-085 states that program officials circumvented established policy and exceeded their authority by not obtaining required approvals from DoD procurement officials or designated senior DoD officials when placing orders for interagency acquisitions. Report No. 93-042 states that DoD organizations did not obtain prior approval from a DoD contracting official before placing Economy Act orders with the DoE, Oak Ridge Field Office. For the sample of 196 Economy Act orders reviewed, DoD paid about \$11.6 million in additional costs. Internal controls had not been established for interagency agreements and orders to validate that deliverables met requirements, that vouchers totaling \$78.4 million were accurate, and that the best interests of DoD were protected. The report also states that DoD management information systems could not identify the number, value, issuing organization, or recipient of Economy Act orders. The report recommended that DoD establish criteria and specify details to include in interagency agreements, discipline DoD officials who knowingly exceeded their authority by placing Economy Act orders with DoE, establish internal controls to ensure adequate administration of DoD Economy Act orders, and establish a system for tracking DoD procurements that use Economy Act orders. The report also recommended the establishment of a central point within DoD to oversee policy and administration of interagency acquisitions. The Director, Defense Procurement, nonconcurred with the need for an information system to track interagency acquisitions, but planned to address the need for a contracting officer approval of orders through the Defense Acquisition Regulations Council.



# Appendix C. Intergovernmental Personnel Act Employees in the Office of the Assistant to the Secretary of Defense (Nuclear, Chemical, and Biological Defense Programs)

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## **Appendix D. Report Distribution**

### **Office of the Secretary of Defense**

Under Secretary of Defense for Acquisition and Technology  
Deputy Under Secretary of Defense (Industrial Affairs and Installations)  
Director, Defense Logistics Studies Information Exchange  
Under Secretary of Defense (Comptroller)  
Deputy Chief Financial Officer  
Under Secretary of Defense (Personnel and Readiness)  
General Counsel of the Department of Defense  
Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs)  
Director, Administration and Management

### **Other Defense Organization**

Director, Defense Special Weapons Agency

### **Non-Defense Federal Organizations and Individuals**

Office of Management and Budget  
Technical Information Center, National Security and International Affairs Division,  
General Accounting Office

Chairman and ranking minority member of each of the following congressional committees and subcommittees

Senate Committee on Appropriations  
Senate Subcommittee on Defense, Committee on Appropriations  
Senate Committee on Armed Services  
Senate Committee on Governmental Affairs  
House Committee on Appropriations  
House Subcommittee on National Security, Committee on Appropriations  
House Committee on Government Reform and Oversight  
House Subcommittee on Government Management, Information, and Technology,  
Committee on Government Reform and Oversight  
House Subcommittee on National Security, International Affairs, and Criminal  
Justice, Committee on Government Reform and Oversight  
House Committee on National Security

# **Part III - Management Comments**

# General Counsel of the Department of Defense Comments



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

21 JUL 1997

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT Draft of Proposed Audit Report on the Intergovernmental Personnel Act  
Employees in the Office of the Assistant to the Secretary of Defense (Nuclear and  
Chemical and Biological Defense Programs) (Project No. 6CH-8003 01)

I have reviewed it and provide the following comments regarding the Recommendations  
for Corrective Action.

Recommendation 1 OSD/JS: (b) (5)

Item 1.a OSD/JS: (b) (5)

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OSD/JS: (b) (5)

[Redacted content]

Item 1.b OSD/JS: (b) (5)

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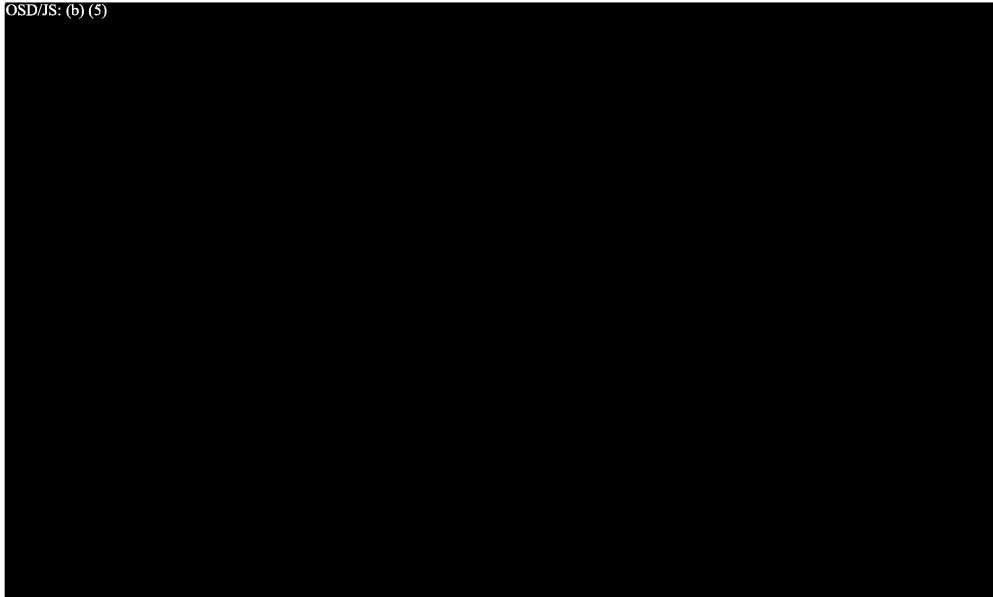


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General Counsel of the Department of Defense Comments

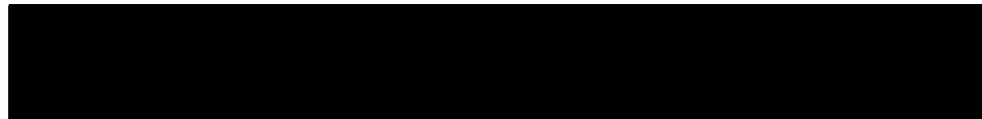
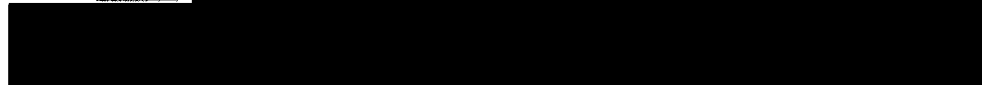
Final Report  
Reference

OSD/JS: (b) (5)



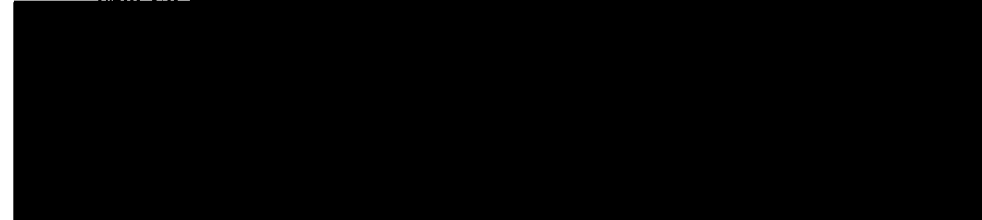
Item 1.c

OSD/JS: (b) (5)



Item 1.d

OSD/JS: (b) (5)



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and  
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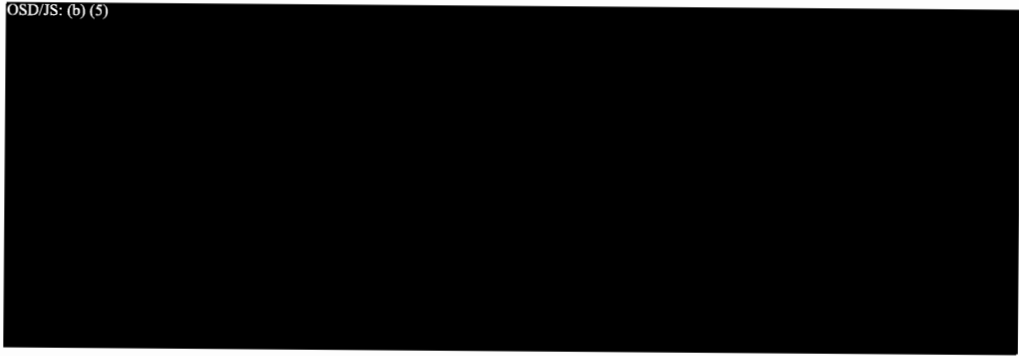
Renumbered

General Counsel of the Department of Defense Comments

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Reference

OSD/JS: (b) (5)



Renumbered

Item 1.e. OSD/JS: (b) (5)



Renumbered

Recommendation 2 OSD/JS: (b) (5)



  
Judith A. Miller

# Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) Comments



NUCLEAR AND CHEMICAL  
AND BIOLOGICAL DEFENSE  
PROGRAMS

ASSISTANT TO THE SECRETARY OF DEFENSE  
3050 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3050

AUG 4 1997

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Draft Audit Report on Intergovernmental Personnel Act (IPA) Employees in the Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs)  
(Project No. 6CH-8003.01)

This memorandum responds to the subject report, hereinafter "report", concerning Intergovernmental Personnel Act (IPA) employees. The report states that the Assistant to the Secretary of Defense (formerly Atomic Energy and presently Nuclear and Chemical and Biological Defense Programs), hereinafter "NCB", complied with all applicable statutes and regulations pertaining to the use of IPA employees. It further states, however, that there were appearances of such employees allegedly failing to act impartially in the performance of official duties and allegedly using the Act to circumvent restrictions regarding the hiring of federal employees. It is the opinion of NCB, with regard to IPA employees specifically addressed, that the allegations of the report are without merit.

Because the report admits that NCB was in full compliance with the departmental rules, regulations, and policy, and because the report cites specific examples of alleged improper "appearances" only from NCB, it is strongly recommended herewith that the report be separated into two distinct drafts: (1) the first addressing only those matters of policy which the report alleged were problems of appearance, and (2) the second addressing only alleged deficiencies by NCB in hiring, use, and/or compensation of IPA personnel. The first should be addressed to the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)). The second should be addressed to NCB and should focus only on specific hiring, use, and compensation. Clearly, overall IPA policy is an issue for the USD(P&R); NCB should not respond for the entire department on this broad issue.

The following comments address only the second aspect and have been coordinated with the Office of the General Counsel and the Director, Administration and Management.

## Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) Comments

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### ATSD (NCB) Comments on Assignments

The report alleges that by filling positions with IPA assignees, NCB did not attempt to use normal hiring or military assignment procedures, even though, according to the report, the skills for the deputy positions were readily available within DoD.

NCB disagrees with the premise that IPAs were hired only because it was expedient to do so rather than following normal hiring procedures for federal employees. The personnel who were hired possessed unique skills and were proven experts in fields not normally found within DoD; namely, nuclear weapon expertise. In addition, the assignments were of a temporary nature and; therefore, well suited to the time limits associated with the IPA program.

**Manager A** - Manager A had been detailed to DoD on October 1, 1991, from Los Alamos National Laboratory (LANL) under an IPA agreement as Deputy ATSD for Military Applications, a position that required extensive coordination with the Department of Energy and those national laboratories associated with design and production of nuclear weapons. Such an assignment, made during the previous administration, could in no way be considered unusual.

In the fall of 1991, the Cooperative Threat Reduction (CTR) program was initiated and immediately placed under the direction of Manager A who also continued to serve as the DATSD (Military Applications). The CTR program, created by Nunn-Lugar legislation, provided authorization without appropriations, thereby providing a political mandate to execute rapidly but without adequate staff to do so. Manager A was able to meet these demands by utilizing his knowledge of the capabilities of the national laboratories. Because the initial focus of the program was the elimination of nuclear warheads in Belarus, Ukraine, and Kazakstan and the safe transport of those warheads to Russia, his extensive understanding of nuclear weapons and managerial experience therewith were critical. When the incumbent ATSD (NCB) was confirmed in the summer of 1993, (then) Deputy Secretary of Defense Perry established the CTR program as one of the department's highest priorities, thereby further emphasizing the importance of having the unique knowledge and leadership of Manager A.

**Manager B** - Manager B was assigned to NCB in January 1992 as an IPA. He was routinely detailed, as had other highly qualified employees of the Lawrence Livermore National Laboratory (LLNL), to provide unique expertise to NCB. He initially worked on negotiations related to the Comprehensive Test Ban Treaty and also served as Principal



Assistant to the Secretary of Defense (Nuclear and Chemical and Biological  
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Deputy. From February 1993 to November 1993, he was assigned as the Deputy for Nuclear Matters.

DoD OIG: (b) (5)

Because Manager B possessed extensive understanding from his laboratory and departmental experience on how best to move forward rapidly in developing and acquiring new CP equipment, he was assigned in November 1993 as the new Deputy for Counterproliferation. He served with distinction, designing the program, promoting it, and obtaining approval of appropriate Commanders-in-Chief.

**Manager C** - Manager C first served as Deputy for Chemical and Biological Matters during the period required to recruit an experienced manager from private industry (August 1993-May 1994). In order to fill the vacancy created by the assignment of Manager B to the CP Support Program, Manager C also served from November 1994 as the Deputy for Nuclear Matters because of his detailed understanding of the engineering of nuclear weapons and his firm grasp of the DOE organization. In his dealings, his unique understanding was critical in establishing the Nuclear Weapons Stockpile Memorandum (NWSM) revision to accommodate both START I and START II options, and following the President's announcement in August 1995 of an end to nuclear testing, in coordinating efforts to establish a program for Science Based Stockpile Stewardship (SSBS). Due to the highly technical nature of his duties, his unique understanding of nuclear programs was essential to the success of the NCB office.

**Manager D** - Manager D was hired by the Institute for Defense Analysis (IDA) and was detailed to NCB on September 1, 1994, the same year the Secretary of Defense announced that the CTR program would receive high priority. With such strong support, the CTR staff had to be expanded rapidly and the obligation rate associated with the program dramatically improved. NCB became aware of the imminent availability of a retiring Army officer who had founded the On-Site Inspection Agency (OSIA) and as a Foreign Area Officer (FAO), served as attaché in Russia. It was decided that he should be hired immediately as the manager of the CTR program--a program designed to terminate in 2001. As a further illustration of urgency, the Deputy Secretary of Defense approved the hiring of 10 over-strength personnel for this high priority program. Without doubt, Manager D possessed unique qualifications: strong leadership, fluency in Russian, and extensive experience in dealing at the highest levels of government in the Former Soviet Union

## Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) Comments

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His experience in Russian matters was an absolute necessity and ensured the success of delicate negotiations for the many bilateral agreements required for CTR to move ahead.

### NCB Comments on Compensation

The report alleged that NCB filled positions with IPA assignees in order to avoid both the time constraints associated with reemployment of retired military officers as well as limits on employee compensation. The 180-day time constraint was only applicable for Manager D. His unique qualifications and the circumstances pertaining at the time would have supported a waiver determination by the Director, Administration and Management, under applicable statutory and regulatory criteria.

With regard to limits on employee compensation, NCB made no attempt to avoid such limits. Managers A, B, and C, IPA personnel from national laboratories, were detailed to NCB with compensation at the levels they had received at their previous positions. Hence, their compensation was in accordance with limits established by DOE which are, of course, comparable to those of DoD.

Manager D was compensated at a level consistent with what he would have received as a senior executive level employee with comparable benefits. Because Manager D was employed by IDA, dual compensation was not an issue. Hence, in the case of Manager D and, in fact, in all cases cited by the report, total compensation was certainly comparable. Consequently, over-compensation was not, is not, and should not be an issue.

### Specific Comments Concerning Manager D's Compensation:

Page i, para 3, line 14: "Another senior official. . . was paid \$70,680 per year in military retired pay by DoD in addition to an annual compensation package of \$175,000 by the Institute. . ."

Comment: For greater accuracy, this should read: "Another senior official. . . was paid \$70,680 per year in military retired pay and an annual base salary of \$115,000 by the Institute. This is less than the salary of an SES 6. When the standard IDA benefits are added to the base salary, actual reimbursements were \$151,957.37 for FY95 and \$155,981.29 for FY96, which are comparable to the total benefit package of an SES 6."

On page 7, Table 2, Column 2: For greater accuracy, the second column should be titled: Annual Salary/Benefits Costs.

Revised

Page 8

**Assistant to the Secretary of Defense (Nuclear and Chemical and Biological  
Defense Programs) Comments**

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References to "overhead" should be eliminated because DoD is prohibited from reimbursing organizations for overhead costs and, therefore, does not pay such costs

**NCB Comments on Conflict-Of-Interest Situations and Waivers**

Conflict of interest waivers were not obtained in advance for all IPA managers addressed in the draft report, and NCB agrees that such waivers should have been obtained in advance. However, the report stated that had a conflict of interest waiver been requested for Manager A, it would have been granted and that for Managers B, C, and D, waivers were granted based on determination that their involvement did not affect the integrity of their services. Hence, there is no substantive issue.

**Specific Comments Concerning Manager B's Participation With Laboratories:**

The report contends that "Manager B directed FY 1995 and 1996 procurement, totaling \$40.8 million, to specific contractors, including \$11 million to the Lawrence Livermore National Laboratory (LLNL)." This statement is incorrect. Manager B did not direct funds to contractors. Manager B allocated funds to DoD Executive Agents in accordance with established procedures and as approved by Dr. John Deutch, (then) Under Secretary of Defense for Acquisition.

These Executive Agents were responsible for managing and executing their assigned components of the Counterproliferation Support Program. They were all DoD agencies (not contractors) and included Defense Advanced Research Projects Agency, Defense Special Weapons Agency, and Edgewood Research and Development Engineering Center. They, in turn, selected DoD or DOE Laboratories or contractors to execute the program through their normal procurement vehicles. DOE participation was facilitated through a Memorandum of Understanding signed by the Under Secretary of Defense and the DOE Deputy Secretary. At no time did Manager B dictate or otherwise influence which contractors were selected by the Executive Agents. Therefore, there was no actual, apparent, or perceived conflict of interest on the part of Manager B.

The report further alleges that "Manager B also assigned Employee A, an employee who was on an IPA detail to DoD from Sandia National Laboratory to ATSD(NCB), as budget approval officer for Counterproliferation projects." This statement is also in error. Manager B directed Employee A to provide continuing status reports of the overall counterproliferation budget for the purpose of monitoring progress and to ensure that the DoD Executive Agents were properly funded in accordance with direction Manager B

## Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) Comments

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received through the POM review process. At no time was Employee A directed to approve budgets for the Counterproliferation Support Program. His function was simply to report budgetary information as provided to him by the Executive Agents.

### Specific Comments Concerning Manager C:

On page 11, in the section of the report titled, "Potential Conflicts of Interest," it is stated that "Manager C interacted with Sandia National Laboratory on procurement and oversight issues, such as the transfer of nuclear safety testing of Air Force delivery systems to DSWA." This statement is incorrect. Manager C did not have responsibility for procurement.

### Inspector General Recommendations for Corrective Action

1. Recommendation that OSD(P&R) issue a policy memorandum on IPAs.

This is an issue for the USD (P&R) and should not be addressed by NCB.

2. Recommendation that NCB terminate the Intergovernmental Personnel Act assignment of Manager D.

NCB disagrees with this recommendation and will continue to retain Manager D under the present IPA agreement. As previously stated, the hiring of Manager D took place because of his unique skills that were clearly needed to advance one of the highest priority programs of the Secretary of Defense. In addition, the compensation levels were in accordance with all existing requirements for IPA personnel. There is no reason whatsoever to terminate Manager D's services. In fact, the opposite is true: his unique talents were (and are) instrumental in achieving the remarkable successes of the program. His efforts resulted in his personal recognition by the Secretary of Defense and contributed to a special award for the entire NCB office.

Furthermore, to dismiss Manager D summarily would seriously jeopardize the CTR program, a program that has been repeatedly and publicly praised by the Secretary of Defense, William Cohen. Dismissal would also ensure that a replacement comparable to Manager D -- assuming one exists -- would be most reluctant to accept such a post, given the stigma that would ensue should the report's recommendation be enacted. The recommendation is not only without merit, it is truly counter-productive: it would achieve the opposite of what it intends.

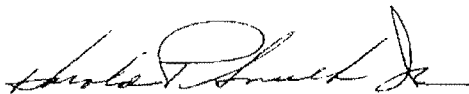
Page 12

Renumbered

Assistant to the Secretary of Defense (Nuclear and Chemical and Biological  
Defense Programs) Comments

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Finally, the final report, if published at all, should receive limited distribution due to its subjective nature and concern for the privacy of the four managers involved.



Harold P. Smith, Jr.

# Director, Administration and Management Comments

Final Report  
Reference



ADMINISTRATION &  
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE  
1950 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1950



12 JUN 1997

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, DOD  
INSPECTOR GENERAL

SUBJECT: Audit Report on IPA Employees in the Office to the  
Assistant Secretary of Defense (Nuclear and Chemical  
and Biological Defense Programs) (OASD(NCB)) (Project  
No. 6CH-8003.01)

We have carefully reviewed the subject report pertaining to individuals on IPA assignments in OASD(NCB) from 1992 through 1996. While we note that the report acknowledges no illegalities in the hiring of these IPA's, the report does, in fact, distort certain IPA issues or provide incomplete information. Specific comments follow.

The point is repeatedly made in the report that the compensation of IPA's that is reimbursed is either over the statutory pay limit or over the SecDef salary. The report readily admits that there is no statutory limit on IPA detailees to the Federal Government. Throughout the report comparisons are made of reimbursements (which combine salary and benefits) to straight salaries of Federal employees without regard to the accompanying benefits. The average benefits package for federal employees is 19.2% of salary and must be added to the salary figure to make a valid comparison. For EX Level III the salary and benefits total \$146,735.20; for EX Level I the salary and benefits total \$176,892.80.

In compiling figures for this report, the DoDIG used figures from obligations and Military Interdepartmental Purchase Requests (MIPR's) instead of using actual reimbursements. Obligations are estimates of the amount of funds needed to reimburse an organization for an IPA's services. The form used for IPA agreements (Optional Form 69) allows for routine salary adjustments during the course of the assignment. Because salaries and benefits change during the course of an assignment the exact amount of the change is not known in advance. When obligating funds for future reimbursements, we can only estimate the amount that might be needed. The tendency is to overestimate rather than incur the possibility of running short at the end of the year.

On pages 8 and 9, the report indicates that OSD paid a "premium" of \$23,660 for Manager B's services. DoDIG considers a premium to be an amount greater than Federal employee

Revised  
Pages 9 and 10

compensation limits. The 1993-94 actual reimbursement to the Lawrence Livermore National Laboratory for Manager B's compensation was \$145,092. This amount is \$1,643.20 under the salary and benefits total of an EX Level III Government employee.

In the case of Manager D the MIPR's were considerably higher than the actuals. Actual reimbursements for Manager D in FY 1995 were \$151,957.37 and in FY 1996 \$155,981.29. While these figures are over the amount paid to a Federal employee at the EX Level III of \$146,735.20, the so-called "premium" is far less than the \$51,900 attributed by the report on pages 8 and 12. It is also well under the Executive Schedule, Level I salary and benefits total of \$176,892.80.

The report repeatedly states that the IPA assignments were approved by the Assistant Director for Employee Career Development and Training (ECD&T). While it is true that the Assistant Director for ECD&T signs IPA agreements as the authorizing official, all assignments are first approved/disapproved by the Director of Administration and Management upon careful review of applicable laws and regulations and the need for the IPA.

There are several instances in which the report states that "skills required for that position were readily available within DoD." The report provides no evidence to support that statement and can only be considered conjecture on the part of the IG. Therefore, we recommend those statements be removed from the report.

Further, one of the objectives of the IPA program is to provide temporary expertise. It would not be considered responsible or cost effective for an organization to hire a full-time, permanent employee if only temporary expertise is needed. It is unclear how DoDIG determines that full-time permanent hires should always be considered before temporary assignments. We believe that the needs of an organization are best determined by an organization's own managers.

With respect to the report's recommendations:

1a. We do not agree with recommendation 1a and believe that the circumstances under which a function may be performed by an IPA should be based upon the law and the specific function, not a set of general statements.

1b & c. Each new IPA who is assigned to one of our serviced organizations is provided with a list of applicable standards of conduct provisions and conflict of interest laws. They are advised to visit the Standards of Conduct Office during their first week with the Department. We agree that full disclosure of their financial interests should be made promptly and any conflict of interest waivers should be approved in advance.

Revised

Pages 9, 12,  
and 13

Redirected  
and  
Renumbered

Director, Administration and Management Comments

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Reference

Renumbered

1d. Salaries and benefits of private sector employees are very often higher than those of federal employees. It is unrealistic to bring in a private sector expert and expect the home organization to accept a loss. While we continue to believe that reimbursement of IPA compensation should normally be limited to the EX Level I salary plus benefits, there may be very rare occasions and exceptional circumstances where the need arises to exceed that level. Components must have that flexibility.

Renumbered

1e. We do not concur with recommendation 1e. Through its language, the law governing IPA assignments tacitly permits such hiring. A policy statement is not likely to end what may appear to be an inappropriate but not illegal practice and enforcement of such a policy would be difficult at best.

Renumbered

2. We agree with the report that all applicable statutes and regulations pertaining to the use of the IPA were complied with. Therefore, we do not concur with the termination of Manager D. This recommendation, in our opinion, attempts to usurp management's authority to make informed decisions within its purview.

We very much appreciate the opportunity to comment and look forward to the final report.

  
D. O. Cooke  
Director



# Principal Deputy Assistant Secretary of Defense (Force Management Policy) Comments



FORCE MANAGEMENT  
POLICY

ASSISTANT SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000



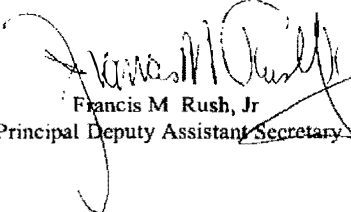
AUG 22 1997

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on Intergovernmental Personnel Act Employees in the Office  
of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological  
Defense Programs) (Project No 6CH-8003.01)

Our attached response to the subject report addresses its first recommendation and provides a copy of our proposed administrative guidance. Because the second recommendation pertains to the Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs), that organization has responded separately.

We appreciate the opportunity to comment and respond, as well as the assistance of your office in this matter. Should you have any questions, please contact (b) (6), who can be reached at (b) (6).

  
Francis M. Rush, Jr.  
Principal Deputy Assistant Secretary

Attachment:  
As stated



## Principal Deputy Assistant Secretary of Defense (Force Management Policy) Comments

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Reference

### Audit Report on Intergovernmental Personnel Act (IPA) Employees in the Office of the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs) (Project No. 6CH-8003.01)

#### Comments from ASD(FMP)

The report contains one recommendation with five subparts pertaining to Personnel and Readiness. The recommendation is that the USDP&R issue a policy memorandum on IPA assignments, the subparts outline specific guidance recommended for inclusion in that policy.

Comments on Recommendation. We concur with the recommendation that a policy memorandum be issued on IPA assignments. Comments on each subpart of the recommendation are listed below.

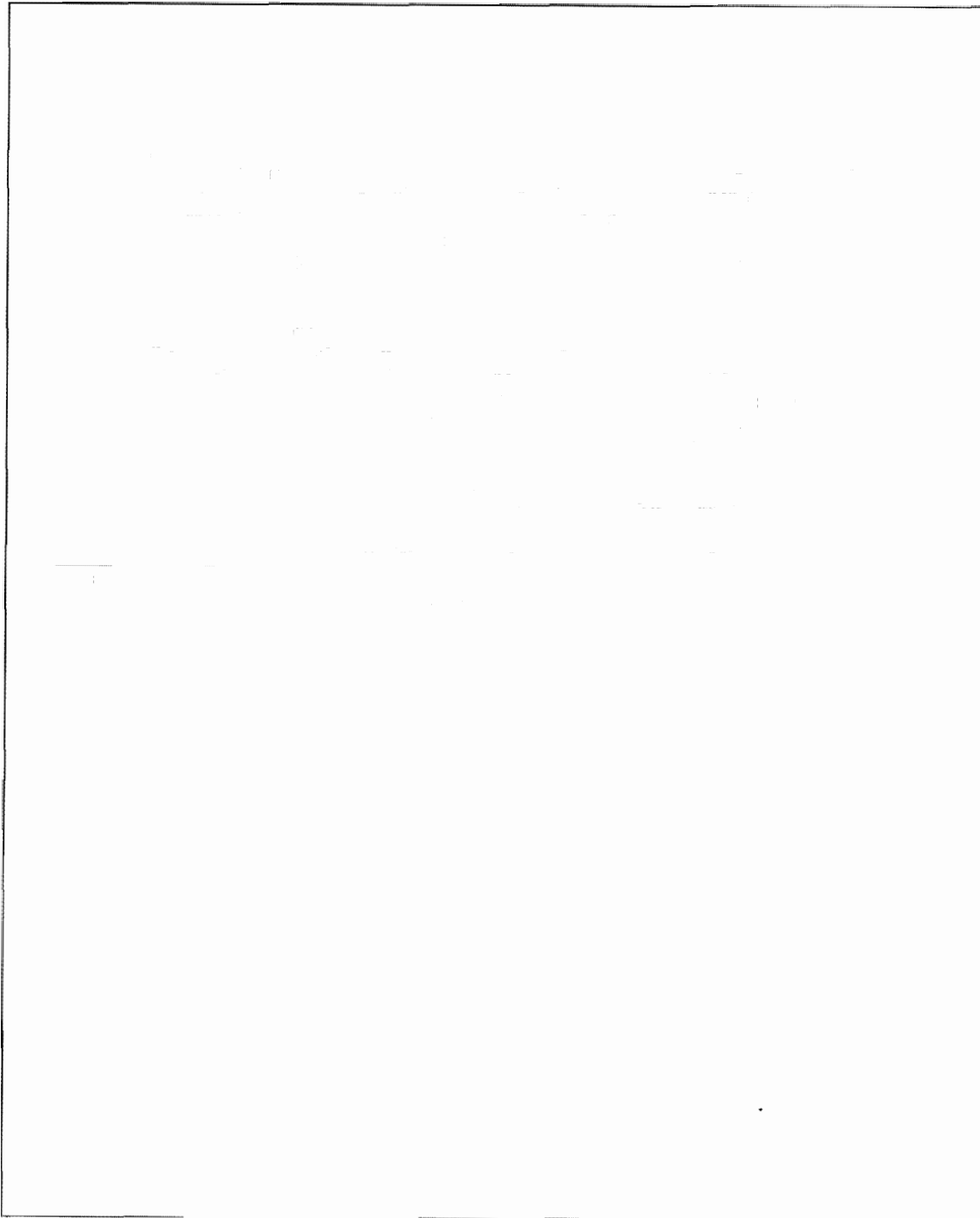
- **Subpart a. Policy should define which, if any, inherently Governmental functions defined by Office of Federal Procurement Policy Letter 92-1 may be performed by IPA assignees and under what circumstances they may be performed.** The cited Policy Letter is intended to provide guidance on services that may be performed by contractor employees; it is not meant to be used as a guide for IPA implementation. We agree with the Office of the General Counsel (OGC) and Washington Headquarters Service (WHS) that the circumstances under which a function may be performed by an IPA should be based upon the law and the specific function, and that any issuer of additional guidance should be the Office of Personnel Management (OPM). In its final regulations on IPAs issued April 29, 1997, OPM stressed its desire to provide the flexibility that agencies need to operate this program effectively.
- **Subpart b. Policy should prohibit granting after-the-fact conflict-of-interest waivers for future IPA assignments to DoD management and oversight positions** We agree with OGC and WHS that existing laws and regulations governing standards of conduct and conflict-of-interest are sufficient to govern IPA assignments. Our proposed guidance makes the appropriate reference.
- **Subpart c. Policy should require IPA assignees to make full advance disclosure of all conflicting financial interests for standards of conduct reviews** The authority to require financial disclosures in advance rests with OGC, which is responding separately to this recommendation.

Redirected  
and  
Renumbered

Redirected  
and  
Renumbered

**Principal Deputy Assistant Secretary of Defense (Force Management Policy)  
Comments**

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Final Report  
Reference

Renumbered

Renumbered  
Revised

## Principal Deputy Assistant Secretary of Defense (Force Management Policy) Comments

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### **Proposed Guidance on Intergovernmental Personnel Act (IPA) Assignments.**

**General.** IPA assignments shall conform to the requirements of 5 U.S.C. Chapter 33, Subchapter VI, and 5 C.F.R. Part 334, and shall be consistent with the laws and regulations governing standards of conduct and conflict-of-interest as administered by the Office of the General Counsel.

**Compensation.** IPA compensation should normally not exceed Executive Level I plus benefits. However, there may be exceptional circumstances where the need arises to exceed that level. Such exceptions must be justified in writing by the selecting official.

**Reporting.** In order to facilitate compliance with the 5 C.F.R. 334.108, the Defense Components shall provide annually such information as may be requested by the Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy). If warranted, DoD shall use this information for further review of the practices of outside organizations that provide employees for IPA assignments.

## **Audit Team Members**

The Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD, produced this report.

(b) (6)



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