

OUTGOING IPA'S



Intergovernmental Personnel Act

5 U.S.C. §§ 3371-3375

- Permits assignment of agency employees to “host organizations”
- Assignees may be appointed or detailed
 - Appointees remain employees of their agency
 - Thus, conflict-of-interest statutes, Standards of Conduct, and agency supplemental regulations apply, as well as any rules of the host organization

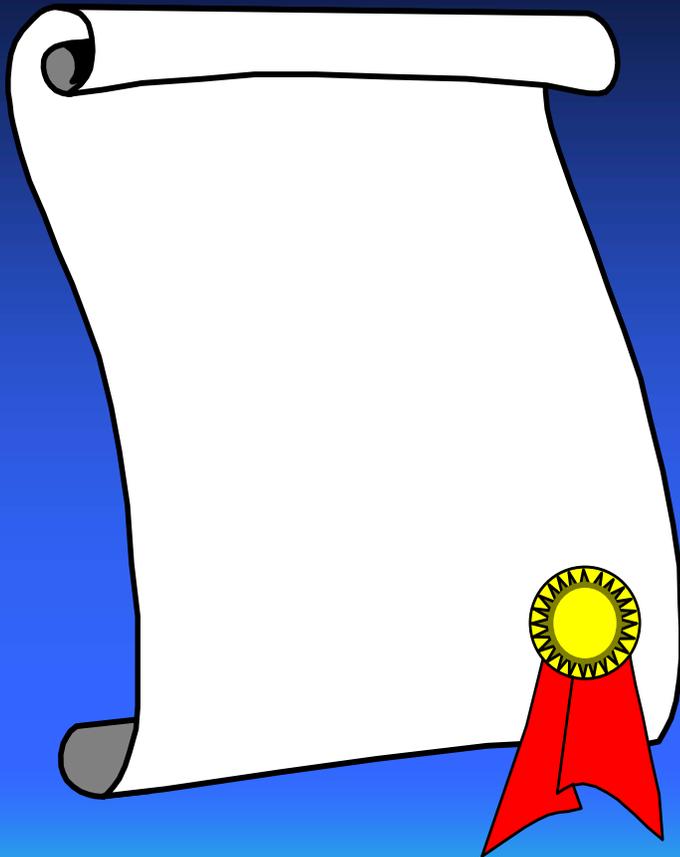
Content of Outgoing IPA Assignment - § 3372

- Must be for “work of mutual concern” to assignee’s agency and the host organization
- Federal agency must determine that the work to be performed “will be beneficial to both” the agency and the host organization

Return Service Requirement

- Assignee must agree “to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment”
- Failure to satisfy the return service requirement makes employee liable to USG for payment of all expenses of the assignment (except salary, benefits)
- Per 5 CFR 334.105, agency may waive reimbursement for “good and sufficient reason”

Written Agreement Required



- 3 Parties
- Executed prior to assignment
- Per 5 CFR 334.106, must record “the obligations and responsibilities of the parties as specified in 5 USC 3373-3375” - **what’s that mean??**

Contents of Agreement

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



Potential Outgoing IPA Ethics Issues

- Representing host organization on particular matter involving Federal agency
- Participating personally and substantially on matter involving assignee's agency
- Negotiating for employment with host or third-party organization during IPA
- Post-employment issues
- 807 issues

SCENARIOS

- Agency does/does not want employee involved in particular matter
- “Out of the blue” offers of employment
- “Wink and nudge” IPA’s

If the agency wants the assignee involved in particular matters as part of the IPA, *specify that in the IPA agreement*

- OLC Opinion of January 11, 1999
- OGE Advisory Opinion 99 X 17, September 21, 1999

OLC Opinion of January 11, 1999

- Conclusion - No 203 or 205 problem if head of Federal agency “determines that work of ‘mutual concern’ . . . includes representational contacts with the federal government by the [assignee] . . ., and the IPA assignment affirmatively authorizes such contacts.”

OLC's Rationale

- Neither 203 or 205 prohibit contact with Federal agencies as part of official duties
- IPA authorizes agency head to determine that representational contacts will be “mutually beneficial” to agency and host organization
- When agency head makes that determination and writes it in the IPA agreement, the contacts become part of assignee's official duties



BE CAREFUL!



- Can the agency properly find that making representational contacts part of assignee's duties involves "work of mutual concern?"
- Would the assignee's representational contacts be "beneficial to both organizations?"

OGE Advisory Opinion

99 X 17

- Reaches same conclusion as OLC opinion, but with respect to 18 USC § 208: if the IPA agreement directs the assignee to perform duties that would otherwise cause the employee an actual or potential conflict of interest, there is no conflict

OGE's Reasoning in 99 X 17

- The IPA “constitutes sufficient statutory authority” to resolve the problem of conflicting loyalties that an assignee may otherwise face
- OGE analogized to the OLC opinions permitting official service on outside boards where agency possessed “specific authority” to assign employee such duty

PRACTICE TIPS

- The letter of the OLC and OGE opinions needs to be followed when drafting or amending IPA agreements, because you can't insulate behavior after the fact
- If problem arises, try to read the facts outside the coverage of 203/205/208
- Authorizing some representational contacts or participation in particular matters does not authorize all such activity by assignee

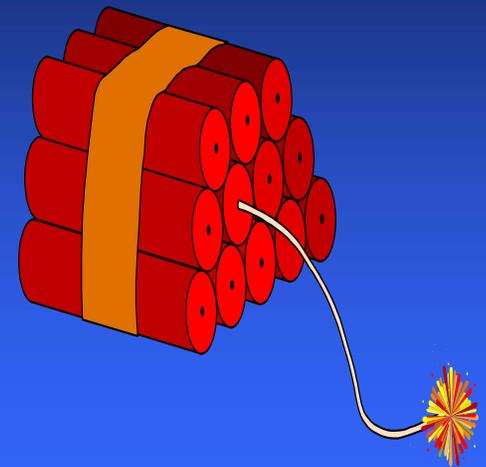
NEGOTIATING FOR EMPLOYMENT



- “Out of the blue” offers from host or third party organization
- Offers from host organization in case of “wink and nudge” IPA’s
- Availability of waivers under 18 USC § 208(b)(1)

POSSIBLE ISSUES

- How can assignee perform any IPA duties while negotiating
- Why would agency grant waiver for “out of the blue” offers
- Why wouldn’t agency grant waiver in case of “wink and nudge” IPA’s
- How can you grant waiver if duties have been performed after start of negotiations
- Requirements of 5 CFR 2640.301(b)
- What else can agency do?



What duties can be performed once negotiations have begun?

Per 5 CFR 2640.301(a), a 208(b)(1) waiver must be issued prior to employee taking any action on particular matters affecting agency

5 C.F.R. § 2640.301(b) - Factors to consider before granting waiver

- Type of financial interest involved
- Identity of the person whose financial interest is involved and relationship of that person to employee
- Dollar value of financial interest
- Nature and importance of employee's role in the matter
- Sensitivity of matter and need for employee's services

Wink and Nudge IPA's



- For waiver, consider (a) nature and importance of employee's role in the matter and (b) sensitivity of matter and need for employee's services
- What consideration should be given to the reimbursement of expenses requirement in IPA in granting the waiver?

MAGIC WORDS

- **IMPORTANT:** The ultimate finding to be made is that the assignee's financial interest "is not so substantial as to question the integrity of his/her service to the Government



Post-employment

- Post-employment restrictions apply fully
- After assignment ends, assignee may not represent new employer to USG:
 - forever: on matters within scope of IPA?
 - does this override the the two year ban on matters the assignee didn't actually work on, but was responsible for
 - how about the one year ban on any matter, if the assignee was paid at SES-5 or higher