



# Office of the Chief Human Capital Officer, Washington, DC

Management of Intergovernmental  
Personnel Act Agreements

**Office of Audit, Region 6  
Fort Worth, TX**

**Audit Report Number: 2016-FW-0001  
March 30, 2016**



**To:** Nani Coloretti, Deputy Secretary, SD  
**From:** Gerald R. Kirkland, Regional Inspector General for Audit, 6AGA  
**Subject:** HUD Did Not Effectively Negotiate, Execute, or Manage Its Agreements Under the Intergovernmental Personnel Act  
  
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Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of HUD's administration of its assignment agreements under the Intergovernmental Personnel Act.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 817-978-9309.



Audit Report Number: 2016-FW-0001

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## HUD Did Not Effectively Negotiate, Execute, or Manage Its Agreements Under the Intergovernmental Personnel Act

# Highlights

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## What We Audited and Why

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Due to deficiencies found in prior reviews of two Intergovernmental Personnel Act (IPA or Act) assignments, we audited the U.S. Department of Housing and Urban Development's (HUD) implementation and oversight of the IPA mobility program. The audit objectives were to determine whether (1) HUD's use of IPA agreements met the purpose and intent of the IPA mobility program, (2) HUD's policies and procedures related to IPA agreements were adequate to ensure that its agreements met requirements and established proper oversight and monitoring of the personnel and activities involved, and (3) HUD used IPA agreements to circumvent other requirements.

## What We Found

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HUD failed to ensure that its IPA agreements met the purpose of the Act because it did not have sufficient policies and procedures for negotiating, reviewing, and executing agreements, and its staff ignored requirements, altered standard documents, and did not disclose information to decision makers. Based upon the evidence, HUD abused the IPA mobility program to circumvent other hiring authorities and had no assurance that the agreements were in its best interest, negotiated at a reasonable cost, or free from conflicts of interest. Also, HUD did not properly manage the assignees. This occurred because HUD did not have a central means of tracking assignees or promptly out-processing them, leaving HUD vulnerable to security threats.

## What We Recommend

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We recommend that HUD establish an independent, central point of review for IPA agreements to ensure they are reasonable, meet requirements, and avoid potential conflicts of interest. Further, the Office of General Counsel should review all IPA agreements before their effective dates. In addition, HUD should ensure that all IPA assignees receive required training and that it promptly out-processes them when they leave. HUD should also follow procedures to address the payment of \$224,906 in ineligible costs for two invalid IPA agreements and have organizations support or repay \$49,989 in unsupported payments to employers.

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# Background and Objectives

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## Purpose and Requirements of the Intergovernmental Personnel Act

The purpose of the Intergovernmental Personnel Act<sup>1</sup> (IPA or Act) was to provide for the temporary assignment of personnel between the Federal Government and State and local governments, institutions of higher education, and other organizations, including some types of nonprofit organizations. One of the requirements of the Act was that the parties enter into a written agreement recording the obligations and responsibilities of the parties. The Office of Personnel Management (OPM), which was responsible for overseeing the program, issued guidance stating that each assignment should be made for purposes which the Federal agency head or his or her designee determined were of mutual concern and benefit to the Federal agency and to the non-Federal organization. Assignments arranged to meet the personal interests of employees, to circumvent personnel ceilings, or to avoid unpleasant personnel decisions were contrary to the spirit and intent of the mobility assignment program.<sup>2</sup> Supervision of an assignee was to be governed by the written agreement between the Federal agency and the non-Federal employer. OPM's Optional Form (OF) 69, Assignment Agreement, contained sections that identified specific terms of the agreement that generally met the requirements of the Act.

By using assignments under the Act, the U.S. Department of Housing and Urban Development (HUD) was not required to competitively select assignees and could negotiate the terms of each agreement, including length, cost, duties, supervision, and other provisions. In many ways, HUD's IPA agreements resembled sole-source contracts, in which HUD selected the contractor without the benefit of open competition. While assignees had certain Federal employee rights and obligations, the use of assignments under the Act was distinct from established Federal hiring methods, including that

- Assignees were not in HUD's payroll system. They remained employees of their organizations, which submitted periodic invoices to HUD for payment (unless there was no cost to HUD under the agreement).
- Assignees were expected to return to their employer at the end of the assignment.
- HUD could exceed salary restrictions that applied to other hiring authorities, or it could pay nothing.
- Assignees were not required to sign the ethics pledge<sup>3</sup> required of political appointees.
- IPA assignments required no approval from the Presidential Personnel Office or OPM.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. (United States Code) 3371-3376 and 5 CFR (Code of Federal Regulations) Part 334

<sup>2</sup> OPM Web site: <http://www.opm.gov/policy-data-oversight/hiring-authorities/intergovernmental-personnel-act>

<sup>3</sup> Executive Order 13490, Ethics Commitments by Executive Branch Personnel, issued January 21, 2009, required executive agency appointees to sign a pledge that, among other things, restricted gifts from lobbyists and established a "revolving door ban" on lobbying activity.

<sup>4</sup> IPA assignments to classified positions in the Senior Executive Service required approval by OPM, but this did not occur during the audit scope.

## **HUD Staff's Roles and Responsibilities for IPA Agreements**

HUD's Chief Human Capital Officer was delegated authority to execute IPA agreements for HUD. Within the Office of the Chief Human Capital Officer (OCHCO), Linda Hawkins, the director of the Office of Policy, Programs, and Advisory Staff (OCHCO policy director) administered the IPA mobility program. Administering the program included devising and carrying out policies, record keeping, coordinating among the parties to the agreements and other HUD offices, and certifying organizations for participation in the program if needed. In addition to the OF 69, the program office was required to submit a written justification memorandum to OCHCO, signed by the appropriate Assistant Secretary, clearly indicating that the assignment was for a sound public purpose and furthered the goals and objectives of the participating organizations. HUD executed 21 IPA agreements during the review period. In comparison, HUD employed more than 8,000 staff members. Five of the assignments were in the Office of Sustainable Housing and Communities (OSHC), which Congress established in 2010 appropriations and renamed the Office of Economic Resilience (OER) in 2014. Five of the 21 assignment agreements were with colleges or universities, and 16 were with nonprofit organizations. HUD paid \$3.39 million to non-Federal organizations for 14 IPA assignment agreements from May 2010 to September 2015.<sup>5</sup>

### **Reason for Audit**

Due to complaints, we previously reviewed two IPA assignments. In one instance, we concluded that HUD may have violated the Antideficiency Act when it used more than \$620,000 in funds from the Office of Public and Indian Housing and the Office of Housing to pay for a senior advisor to the HUD Secretary.<sup>6</sup> In the other instance, we concluded that HUD had inappropriately used the Act to appoint a housing industry advocacy group executive as HUD's Deputy Assistant Secretary for Public and Indian Housing's Office of Policy, Program and Legislative Initiatives.<sup>7</sup> Due to the deficiencies found in the prior reviews, the management level of individuals making IPA selections, and congressional interest, we reviewed all 21 IPA assignments identified by HUD between 2009 and 2015.

### **Audit Objectives**

Our objectives were to determine whether (1) HUD's use of IPA agreements met the purpose and intent of the IPA mobility program, (2) HUD's policies and procedures related to IPA agreements were adequate to ensure that its agreements met requirements and established proper oversight and monitoring of the personnel and activities involved, and (3) HUD used IPA agreements to circumvent other requirements.

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<sup>5</sup> HUD did not pay salary costs for six IPA agreements, and it agreed to pay an employer \$178,912 for a 1-year assignment that began in July 2015.

<sup>6</sup> Audit Memorandum 2014-FW-0801, Potential Antideficiency Act Violations Intergovernmental Personnel Act Agreements, dated May 30, 2014

<sup>7</sup> Audit Memorandum 2015-FW-0801, Intergovernmental Personnel Act Appointment Created an Inherent Conflict of Interest in the Office of Public and Indian Housing, dated January 20, 2015. HUD Inspector General David A. Montoya discussed this IPA assignment in his testimony before the U.S. House of Representatives Committee on Financial Services' Subcommittee on Oversight and Investigations on February 4, 2015.

# Results of Audit

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## Finding 1: HUD Did Not Establish Controls To Effectively Negotiate and Execute Its IPA Agreements

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HUD failed to ensure that its IPA agreements met the purpose of the Act and were complete and properly reviewed and executed. This occurred because HUD did not have sufficient policies and procedures for negotiating, reviewing, and executing agreements and because HUD staff ignored existing requirements, altered standard documents, and did not disclose information to decision makers. Additionally, HUD's procedures were fragmented among different areas with no central point of review or responsibility to ensure the assignments were reasonable and protected HUD's interests. Based upon the evidence, HUD abused the IPA mobility program to circumvent other hiring authorities and had no assurance that its agreements were in its best interest, negotiated at a reasonable cost, or free from conflicts of interest. OCHCO drafted a new handbook containing IPA policies in 2014 after OIG began evaluating complaints about specific IPA agreements. OCHCO made revisions to the draft handbook in 2014 and 2015 during the course of OIG's reviews, but it had not issued the final handbook. OCHCO and the Office of General Counsel (OGC) also conducted IPA training for HUD managers in 2015, but neither of these measures prevented problems from continuing to occur.

### **HUD Appeared To Use the IPA Mobility Program To Circumvent Other Hiring Authorities**

HUD entered into IPA agreements that did not meet the purpose of the Act. Employers participating in the IPA mobility program understood that HUD used the program to circumvent other hiring authorities. For example, in an internal email dated April 27, 2015, one employer wrote, "...she took a job with HUD, but basically to circumvent civil service (legally)...." In another example, an employer wrote on January 9, 2012, that OSCH director Shelley Poticha "wants to bring [the assignee] on as an IPA and then move her into a political slot at HUD when they can get all the approvals in place." Both of these interpretations were contrary to the intent of the IPA mobility program.

In at least four instances, IPA assignees did not intend to return to their employing organization at the end of their assignments.

HUD modified two of the four contracts to

avoid making the required certification that they would do so.<sup>8</sup> In doing so, HUD circumvented requirements for competitive and noncompetitive hiring by improperly using IPA assignments when it knew they did not meet the mutual benefit goals of the Act.

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**HUD used altered forms to avoid making required certifications.**

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<sup>8</sup> Both OPM and the General Services Administration maintained fillable forms OF 69 on their Web sites that generally met requirements and did not allow the user to alter them.

### **Example 1 (Appendix C, Item 1)**

In 2010, while arranging for the extension of an IPA assignment agreement in OSHC, OCHCO policy director Hawkins reportedly instructed the nonprofit employer to cross out wording in the IPA assignment agreement certifying that the employee would return to his position with the employer at the end of the agreement, as shown in figure 1.

**Figure 1: Crossed out certification**

<b>PART 15 - CERTIFICATION OF APPROVING OFFICIALS</b>
In signing this agreement, we certify that:
<ul style="list-style-type: none"><li>- the description of duties and responsibilities is current and fully and accurately describes those of the assigned employee;</li><li>- this assignment is being entered into to serve a sound, mutual public purpose and not solely for the employee's benefit;</li><li>- at the completion of the assignment, the participating employee will be returned to the position he or she occupied at the time this agreement was entered into or a position of like seniority, status and pay... <i>N/A</i></li></ul>

The individual began his assignment in November 2009 with an initial 6-month term at no cost to HUD. The extension agreement in question provided that HUD would pay the cost beginning May 4, 2010. According to an email from the assignee to his employer, Secretary Shaun Donovan and Deputy Secretary Ron Sims asked that he stay at HUD in a permanent, full-time capacity under the IPA for the remainder of the administration's current term. According to the assignee, the offer was for a senior position to bring leadership to priority areas of the administration's agenda. HUD agreed to reimburse the nonprofit organization for the assignee's \$180,000 annual salary plus benefits under the agreement, which exceeded amounts it could have paid him as a HUD employee.

Records showed that the employer required the assignee to resign his position effective May 14, 2010, and it agreed to continue to pay his normal salary and benefits but only if HUD reimbursed it on a timely basis. The employer provided email messages that indicated the employer had discussed the situation with OCHCO policy director Hawkins. The extension agreement was effective May 4, 2010. According to the regulations governing IPA assignments,<sup>9</sup> an assignment terminated automatically when the employer-employee relationship ceased to exist. While a relationship existed between the individual and the nonprofit organization, it was not an employer-employee relationship. Therefore, the agreement was invalid after the first 10 days because the individual was no longer an employee of the organization, and HUD's payments of \$195,883<sup>10</sup> to the employer and travel costs totaling \$1,498 were ineligible. Additionally, the nonprofit organization's records showed that the individual left his assignment with HUD before its end date to take an IPA assignment in April 2011 with another Federal agency, with the same nonprofit organization posing as his employer.

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<sup>9</sup> 5 CFR 334.107(c)

<sup>10</sup> The employer billed HUD for the entire month of May 2010. Questioned costs include the entire amount HUD paid under the agreement rather than adjusting for the 10 days the assignee technically remained an employee.

**Example 2 (Appendix C, Item 4)**

In 2012, OSHC director Poticha offered Trisha Miller an IPA assignment, and Ms. Miller understood that the purpose of the arrangement was for her to come to work at HUD. OCHCO policy director Hawkins provided program office staff with a link to a form maintained on a third-party Web site that was altered so the parties could avoid making the required certification that the employee would return to her position with the employer. As shown in figure 2, the form had been altered to allow the parties to choose which certifications they would make. For comparison, figure 1 shows the official form and its bulleted certifications, while figure 2 contains the same language with the bullets converted to options for selection. In figure 2, the third certification was not selected. HUD used this altered version of the form for other agreements or extensions; however, the parties selected all of the certifications in those agreements.

**Figure 2: Altered requirements**

<b>EMPLOYEE CERTIFICATION OF APPROVING OFFICIALS</b>	
In signing this agreement, we certify that:	
<input type="button" value="Clear/Reset"/>	
<input checked="" type="checkbox"/> the description of duties and responsibilities is current and fully and accurately describes those of the assigned employee;	
<input checked="" type="checkbox"/> this assignment is being entered into to serve a sound, mutual public purpose and not solely for the employee's benefit;	
<input type="checkbox"/> at the completion of the assignment, the participating employee will be returned to the position he or she occupied at the time this agreement was entered into or a position of like seniority, status and pay.	

Ms. Miller explained that the intention was always for her to come to work at HUD and the IPA agreement was the only mechanism HUD offered her, although there had been some discussion about the possibility of a political appointment. She stated that she interviewed with Secretary Donovan for the position under the IPA. HUD's White House Liaison at the time also stated that there was discussion about using a political appointment to bring the assignee into OSHC. He stated that the Presidential Personnel Office was interested in providing a list of candidates for the position, but the process was taking too long for OSHC director Poticha. There was also a HUD employee being considered for the position. OSHC director Poticha was impatient and wanted the assignee for the position, so she decided to use the IPA. Ms. Miller stated that it was difficult for her to convince her employer to participate in the agreement. She had to tell her managers that she was leaving but ask them to do this for her. Both the employee and the employer had no expectation that she would return to her position, and the employer planned to fill her position. As stated previously, the employer believed that OSHC director Poticha intended to convert this assignee to a political appointee.

Even though the IPA agreement stated that the need for the position was temporary and no further assignments were envisioned, HUD carried out its intent to convert Ms. Miller to a political appointee at the conclusion of the assignment. Specifically, HUD awarded her a superior qualifications political appointment in OSHC as a GS (General Schedule)-15, justified by her experience while serving under the IPA. In summary, in her impatience to bring the individual of her choice to HUD, OSHC director Poticha inappropriately used the IPA agreement to circumvent the political appointment process at the time.

***Example 3 (Appendix C, Item 5)***

In 2014, HUD actively participated in selecting an individual whom a nonprofit organization would hire to serve as an IPA assignee in the Office of Economic Resilience (OER, formerly OSHC) at no cost to HUD. Harriet Tregoning, then director of OER (currently Principal Deputy Assistant Secretary in the Office of Community Planning and Development), asked a third-party foundation to provide funding for this purpose, and a HUD employee<sup>11</sup> facilitated the foundation inviting the nonprofit organization to apply for a grant to fund the position. After securing a \$350,000 grant from the foundation, the nonprofit organization went through an extensive<sup>12</sup> search process to hire an individual for the IPA assignment. OER director Tregoning interviewed the four finalists for the position.<sup>13</sup> The nonprofit organization's job offer letter to the eventual assignee explained that the individual would work at the nonprofit organization for 90 days, as required under the Act, and then report to HUD. The individual stated that she had no expectation of working for the nonprofit organization when the assignment ended. The entire HUD-initiated endeavor appeared to violate the spirit of the IPA mobility program.

OGC was responsible for performing an ethics review of the agreement before it became effective. However, OER director Tregoning did not disclose information about the funding and hiring for this assignment and her involvement in it to OGC. When we informed the OGC attorney who reviewed the agreement of the situation, he said it was "bizarre" that the cost would be funded by an organization other than the employer and seemed concerned about it. He also implied that if he had known that a third-party foundation provided the funding, it may have influenced his decision.

***Example 4 (Appendix C, Item 15)***

In 2014, HUD entered into an IPA agreement so that Katherine O'Regan, the President's nominee for Assistant Secretary in the Office of Policy Development and Research could begin working at HUD while awaiting the completion of the Senate confirmation process. The IPA agreement avoided language indicating that the individual would perform the duties of the Senate-confirmed position. The justification memorandum for this agreement indicated that HUD's White House Liaison; General Deputy Assistant Secretary for Congressional and Intergovernmental Relations; and Associate General Counsel for Ethics, Appeals and Personnel Law were involved in deciding to use the IPA in this situation. Other records showed that HUD officials discussed the agreement widely within HUD and with at least one member of Congress and the White House, giving the appearance of legitimacy to its actions.

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<sup>11</sup> The HUD employee previously worked for the nonprofit organization and had been assigned to OSHC in HUD under the IPA in 2010 at no cost to HUD. The nonprofit organization funded his salary costs using foundation grants as well. See appendix C, item 2

<sup>12</sup> The nonprofit organization received responses from 115 potential candidates and informed the OER director that it had interviewed 9 candidates.

<sup>13</sup> In a different IPA agreement that started in 2015, a foundation asked to place a new assignee at HUD under the IPA because its previous assignee had served the maximum number of years allowed under the Act. The foundation advertised the position as an IPA assignment and recruited both internally and externally. HUD staff were involved in interviewing the applicants and making the final selection. The individual selected was already an employee of the foundation. See appendix C, item 11

While HUD had limited appointment authorities for appointees in waiting and OPM allowed agencies broad authority under the Act, this assignment appeared to be outside the scope and purpose of the Act. It was possible that Ms. O'Regan would not be confirmed and would return to her employer consistent with the intent of the IPA mobility program. However, HUD's justification memorandum clearly stated that the purpose of the agreement was to allow her to begin formally working with HUD staff before her Senate confirmation, and the IPA agreement did not describe a benefit to the employer. Ms. O'Regan was confirmed by the Senate 3 months after the start of the agreement. HUD chose to rely on the uncertainty of the situation to justify the use of the IPA. Yet, it was not likely that the assignment would have taken place without the nomination. This instance differed from HUD's actions in the previous examples in which it crossed out language or modified forms in an attempt to avoid the requirement that the assignees return to their employers.

All four agreements were contrary to the purpose of the Act, specifically the mutual concern provision, representing an abuse of the IPA mobility program. In the first three examples, at the start of the agreement, the assignees did not intend to return to their employers at the end of the assignments. Without a planned return to the assignee's employer, there could be no expectation or opportunity for all parties to benefit from the arrangement. OCHCO policy director Hawkins encouraged and accepted the alteration of documents to avoid certifying that the individuals would return to their employers at the end of their IPA assignments. She argued that HUD could not enforce the provisions of the agreement against non-Federal employers. Contrary to her assertion, HUD has a duty to ensure that its IPA assignments comply with requirements, and it, therefore, can and should enforce the requirements by refusing to execute agreements that it knows do not comply with the Act. Rather than ignoring requirements and allowing inappropriate revisions to the contract, HUD should use other means to hire individuals, such as using existing competitive and noncompetitive hiring authorities, when IPA agreements do not meet the purpose of the Act.

#### ***Discrepancies Existed in Another IPA Agreement (Appendix C, Item 10)***

In another agreement, the assignee was not an employee of the outside organization but, rather, a contracted consultant and was, therefore, not eligible to participate in the IPA mobility program. Under the IPA agreement, the assignee worked 4 days per week for HUD as part of the Hurricane Sandy Rebuilding Task Force and 1 day with the nonprofit organization, and HUD paid 80 percent of his salary. During the negotiation of the IPA agreement, the assignee informed an OGC attorney assigned to the task force that he was working for the nonprofit organization as a contracted consultant and asked if he had the option of a specific kind of appointment instead of the IPA. The OGC attorney replied that they could see if the other appointment type would save some time if the assignee no longer wanted to work 1 day per week for the nonprofit. HUD paid \$27,525 in salary and travel expenses for this ineligible 3-month IPA agreement due to the assignee not being an employee of the nonprofit organization.

## **HUD Hired 6 of 17 Former IPA Assignees**

Using either political appointments or competitive hiring authorities, HUD hired 6 of 17 IPA assignees (35 percent) without the assignees first returning to their employers.<sup>14</sup> HUD hired two IPA assignees during the terms of their IPA agreements under competitive hiring authorities to positions that were basically the same as their duties under the IPA agreements. For one of the two assignees, there was evidence that HUD created the position for the individual; however, the position was in the newly created OSHC, which HUD initially staffed at least partially with IPA assignees. Two other IPA assignees from OSHC received political appointments in the same office during or at the end of their IPA assignments. A fifth assignee, Benjamin Metcalf, received a political appointment in the Senior Executive Service (SES) as the Deputy Assistant Secretary for Multifamily Housing Programs near the end of a series of IPA assignments in the Office of Housing. The sixth was Assistant Secretary O'Regan. Table 1 shows when and under what authority HUD hired the six assignees.

**Table 1: IPA assignees HUD hired**

Assignee	Start date on IPA agreement	HUD hire date	Hire type
Special assistant, OSHC	01/19/2010	11/08/2010	Competitive GS-15 during IPA assignment
Senior advisor, OSHC	02/15/2010	01/05/2011	Political GS-15 during IPA assignment
Senior advisor, Office of Housing	01/16/2010	08/09/2013	Political SES as Deputy Assistant Secretary during IPA assignment
Senior advisor, OSHC	02/20/2012	02/20/2014	Political GS-15 with superior qualifications appointment at step 3 at end of IPA assignment
Advisor, Office of Policy Development and Research	01/26/2014	04/29/2014	Presidential appointment, Senate confirmed during IPA assignment
Special assistant, Office of Special Needs Assistance Programs	06/16/2014	12/28/2014	Competitive GS-15 during IPA assignment

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<sup>14</sup> In addition to the 17 former assignees, as of September 2015, HUD had 4 active IPA agreements in 4 different offices.

Evidence showed that HUD engaged in questionable practices, such as entering into agreements that did not meet the purpose of the Act, and hiring assignees more often when they came from a nonprofit organization. However, HUD used the IPA mobility program appropriately in some instances. For example, assignees from universities tended to serve in research or advisory roles at HUD and then return to their universities. Also, two assignees worked on the Hurricane Sandy task force because they had relevant experience and expertise, and the agreements were short-term in nature. Excluding the university and task force assignments, HUD hired 45 percent of former assignees from nonprofit organizations.

### **IPA Agreements Were Incomplete and Not Properly Reviewed**

HUD's records contained compliance or completeness deficiencies for all 21 agreements reviewed. OCHCO was responsible for ensuring that IPA agreements met the requirements of the Act and were complete, accurate, and fully executed. It was also responsible for ensuring that organizations were certified to participate in the IPA mobility program and that the program office provided a justification memorandum to indicate that the assignment was for a sound public purpose and furthered the goals and objectives of the participating organizations. As summarized in table 2, there was a variety of discrepancies in the agreements that could impact their enforceability and clarity, and a number of agreements did not meet legal and management review requirements. These discrepancies occurred across the entire review period, despite the draft revisions of policies and procedures HUD initiated in 2014 that were designed to add integrity to the process.

**Table 2: IPA agreement discrepancies**

Discrepancy	Total
Documents not signed or signed after effective date	8
Missing IPA agreement or extension	3
Missing Deputy Secretary review (if applicable)	6
Missing legal review before execution (if applicable)	3
Cost to HUD unclear	5
Indication of possible conflict of interest	4
Lapses between agreements (discussed in finding 2)	3
Missing certification of entity (if applicable)	4
Missing justification memorandum	6
Did not describe benefit to other organization	3
Discrepancies in beginning or ending dates	4

### Assignments Were Not Reviewed by the Deputy Secretary

In January 2014, in response to previous OIG reviews of specific IPA agreements, Deputy Secretary Maurice Jones issued two memorandums requiring review of IPA agreements by OGC and the Deputy Secretary's office. OCHCO revised its IPA policy in a draft handbook in July 2014 and included the OGC review requirement but not the Deputy Secretary's review requirement. Since issuance of the directives, HUD had entered into six new IPA agreements or extensions that should have been subjected to OGC and Deputy Secretary review, yet there was no evidence that the Deputy Secretary's office reviewed and approved any IPA agreement after

the date of the directive.<sup>15</sup> When asked about not implementing this requirement, OCHCO policy director Hawkins first stated that she was unaware of the memorandum, although there was an email showing she received the memorandum when it was issued. She later explained that she did not follow the requirement because the Deputy Secretary left and it was unclear whether the new Deputy Secretary would require it.

#### OGC Reviewed Some Assignments but With Limited Information

After Deputy Secretary Jones' January 2014 memorandums, to the extent that OGC was aware of individuals assigned to HUD under IPA agreements, it conducted ethics reviews and determined whether individuals were required to file financial disclosure reports. However, OGC did not always receive complete information needed to make its ethics decisions, and OCHCO did not always inform OGC in time to review agreements or extensions before their effective dates. For example, one IPA agreement began in June 2014, but OCHCO did not forward the information to OGC for review until October 2014. Since many of the assignees were from nonprofit organizations that had a vested interest in HUD policy, lobbied HUD, or even received HUD funding directly or indirectly, it is essential that OGC reviews the contracts before the assignee starts to work at HUD to protect HUD, the assignee, and the outside organization.

In four instances, the duties specified in the IPA agreement indicated the potential for conflicts of interest. Three of the four agreements predated Deputy Secretary Jones' requests that OGC review the agreements. In the fourth case, OGC reviewed the extension of an agreement and identified conflict-of-interest issues. As a result, HUD elected not to extend the agreement, demonstrating the importance of this internal control. As another example of the value of OGC receiving and reviewing all relevant information, in 2013, a nonprofit organization disclosed to HUD that a potential assignee was not an employee, but a contractor. The nonprofit's counsel was concerned that the individual was referred to as an employee in the agreement. OGC provided guidance that the individual must be an employee of the other organization and that it would be difficult for HUD to assert that he was. In this case, OGC was provided information that it needed to give appropriate guidance on the matter, and HUD did not execute an IPA agreement for this individual.

In contrast, in at least two instances, an IPA agreement was at no cost to HUD, and HUD program staff were aware that the nonprofit employer funded the agreement with grants from third-party foundations, one of which was previously discussed in IPA example 3. While this practice was not specifically prohibited by the Act, OER director Tregoning should have provided OGC with this relevant information for consideration in its ethics review before approving the agreement. Further, there was no evidence that OER director Tregoning made OCHCO policy director Hawkins aware of the situation. The Acting Chief Human Capital Officer relied

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OER director did not disclose relevant information to OGC.

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<sup>15</sup> The HUD Chief of Staff signed the justification memorandum for an IPA agreement in 2015.

upon the process and the staff involved to ensure the integrity of the agreement and executed the agreement without knowing that the foundation provided the funding.

OGC did not have written procedures to guide its review of IPA agreements. The unwritten procedures that ethics attorneys described included preparing ethics guidance for the individual but not for program office staff or the employer. The procedures they described did not include performing additional research about the organization or the individual, such as determining whether the organization received HUD funds or any of the parties had been registered lobbyists for activities related to HUD programs. Due to the potential for conflicts of interest, OGC should expand its review procedures and incorporate them into a written document, which should include asking questions during its ethics review about the sources of funds for IPA agreements for which HUD does not bear the entire cost. OGC should also determine and consider whether the employer received or administered any HUD funds or lobbied HUD on topics relevant to the IPA assignment. Further, OCHCO and program staff need to provide OGC with complete information to allow it to make an informed decision.

#### Costs to HUD Were Ambiguous

Five agreements did not clearly define HUD's financial responsibility. For instance, in three agreements, HUD agreed to pay salary plus benefits, but the agreement did not disclose the nature and cost of the benefits, leaving it open for interpretation. In contrast, in other agreements, HUD appropriately detailed the specific amounts it would pay for specific benefits.

For three agreements, HUD paid more than \$27,000 for IPA assignees to cash out accumulated vacation when they left their employers, two of whom received political appointments at HUD.

The third assignee also received a bonus when she resigned from her employer more than 4 months before the agreement was due to expire. The bonus was nearly double the amount of holiday bonuses she had previously received and seemed unreasonable given that she resigned before she completed the IPA assignment. HUD did not have a system to track IPA assignees' time and attendance, and most of the employers' invoices did not include this information. Therefore, HUD had no information for reconciling accrued and used vacation amounts and may have paid for assignees' vacation time accrued before their work at HUD or wrongly paid for vacation time the assignee had already used.

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HUD paid for assignees to cash out unused vacation.

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In contrast, two other IPA assignment agreements that began in 2011 included an addendum that said HUD would not reimburse the employer for any unused leave balance at the end of the IPA assignment at HUD. This was a more reasonable policy since the purpose of the assignments was for the assignees to return to their positions with their employers. The agreements need to clearly describe the expenses and costs that HUD will reimburse. Table 3 shows the vacation and bonuses HUD paid when it hired the individuals or they resigned.

**Table 3: Vacation and bonus payments at termination**

Assignment start date	Termination date	Vacation pay at termination	Bonus pay at termination	Employee status at end of assignment
02/01/2010	08/08/2013	\$14,928		HUD political SES appointment as Deputy Assistant Secretary in Housing
02/15/2010	01/16/2011	5,790		HUD political GS appointment
03/29/2010	11/07/2012	6,362	\$1,594	Left HUD and employer
<b>Totals</b>		<b>\$27,080</b>	<b>\$1,594</b>	

For another assignment, HUD agreed to pay 80 percent of the individual's salary, identified in the agreement as \$91,912. However, the employer billed and HUD paid 80 percent of an annual salary of \$115,896. Documents obtained from the employer indicated that an OGC attorney directed the employer to enter \$91,912 as the base salary and that this amount represented 80 percent of the assignee's actual higher salary. OCHCO's records did not include this relevant information, and HUD's review of the invoices did not identify the discrepancy.

One nonprofit organization had two different IPA assignments at HUD for which the contract contained language stating that the employee was eligible for bonuses and salary increases annually or from time to time as determined by the employer.<sup>16</sup> In other cases, HUD agreed to pay the amounts the individual or employer requested, regardless of whether the amounts were defined in the agreement. Further, in one example, former Federal Housing Commissioner Carol Galante agreed to a 43 percent pay increase from \$108,633 to \$155,000 in an IPA extension for Mr. Metcalf, an employee of the organization she led before her HUD appointment.

HUD did not establish controls to review and consent to the employer's or the HUD official's unilateral decisions to grant bonuses and salary increases given that these were HUD funds. OCHCO policy director Hawkins reportedly advised an employer that the amounts in the agreement were not a budgeted or fixed amount and could be adjusted as costs changed. In contrast, other IPA agreements identified exact amounts HUD would pay for salary, payroll taxes, bonuses, and specific benefits. This lack of substantive negotiation, the noncompetitive nature of IPA assignments, and the fact that the HUD employees who selected particular assignees usually arranged the terms of the agreement created concerns about the overall integrity of the IPA mobility program. Further, without knowing the actual costs HUD agrees to pay, including salary, payroll taxes, and benefits, it cannot properly budget funds, control costs, and evaluate their reasonableness before executing the agreement. If HUD required an independent, central point of responsibility to review and approve the agreements, some of these deficiencies could be avoided.

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<sup>16</sup> During the same period, Federal employees were subject to a pay freeze.

## **HUD Paid or Agreed To Pay Questionable Relocation Costs for 3 of 11 Assignees Who Relocated**

Although IPA assignments were intended to be temporary, OPM allowed agencies to pay for limited relocation costs associated with IPA assignments. HUD agreed to pay relocation costs for three individuals under IPA agreements between 2010 and 2015, although eight other individuals lived outside the local commuting area at the start of their assignments, and HUD did not pay their relocation costs. In two cases, HUD political appointees arranged for HUD to make relocation payments for the colleagues they recruited under the IPA, when HUD had not previously paid for relocation for any other assignees in the review period. Further, no one at HUD independently reviewed and evaluated these agreements.

In the first case, Carol Galante was the president at BRIDGE Housing Corporation in San Francisco, CA, when she received a HUD political appointment as a Deputy Assistant Secretary in Housing. In 2010, soon after her political appointment, she brought Benjamin Metcalf, who worked for her at BRIDGE, to HUD under the IPA at his existing salary. Under the agreement, HUD paid \$26,183 in relocation costs for Mr. Metcalf to move to Washington, DC. No prior IPA assignment reviewed included a relocation benefit. After Ms. Galante was appointed as Assistant Secretary-Federal Housing Commissioner, she extended Mr. Metcalf's IPA assignment and provided him a raise of more than \$50,000 with no written justification. After successive extensions of his IPA assignment, which included provisions that HUD would pay for return transportation to BRIDGE, in August 2013, Mr. Metcalf received a political appointment as a Deputy Assistant Secretary in Housing.

In the second case, while still under an IPA agreement, Mr. Metcalf was communicating with a colleague from another nonprofit organization in San Francisco to facilitate her IPA assignment in Housing. She began her assignment in September 2013. The agreement provided that HUD would pay for relocation to Washington, DC, and back to San Francisco for a 1-year assignment. This individual was the second assignee to receive a relocation benefit. The assignee said that she would not have taken the assignment if HUD had not agreed to pay relocation costs. Further, Mr. Metcalf said he received little guidance for negotiating IPA agreements and relied upon his own experience as an IPA assignee with HUD. HUD later extended the agreement for a second year and paid for the assignee to move back to San Francisco and work in the local HUD office for the last 5 months of her assignment. In total, HUD paid or agreed to pay \$43,676 in relocation costs for what became a 2-year assignment. The level of the HUD officials involved in the decisions and their relationships with the assignees, coupled with the departure from the normal practice in which HUD did not pay relocation costs for other IPA assignees, gave the appearance of favoritism.

In an unrelated assignment agreement with a university, effective July 1, 2015, HUD agreed to pay an estimated \$14,500 in relocation costs for a 1-year agreement for an assignee who would work on a part-time basis in the Office of Policy Development and Research. The relocation authorization approved expenses up to \$17,770 for the individual to move from Los Angeles, CA, to Washington, DC, 23 percent more than the amount in the IPA agreement. This is another example of HUD's agreements not adequately defining the costs it would pay. HUD needs a system to independently and objectively evaluate the cost and reasonableness of paying relocation costs and document the justification when it does.

## **OCHCO Drafted a New Policy and, Together With OGC, Provided IPA Training for HUD Managers**

OCHCO drafted a new handbook, entitled “Details, Interagency Agreement Assignments, and Intergovernmental Personnel Act Assignments Policy,” and circulated it for departmental clearance in July 2014. During the audit, HUD had not formally adopted the policy in the draft handbook because it was negotiating with employee labor unions. HUD did adopt and implement some of the revised policies, which remained in draft form, including OGC’s review of IPA agreements. After completing the departmental clearance process for the draft handbook, OCHCO policy director Hawkins made other changes to include prohibiting IPA assignees from supervising government employees, which OPM allows, and requiring a justification if HUD agrees to pay more than 50 percent of the cost of the assignment agreement.

OCHCO and OGC held a webinar in January 2015 to train HUD personnel on IPA requirements. While the materials that HUD presented during the webinar were accurate, the training alone was insufficient to correct all issues as evidence showed that HUD continued to fail to follow the requirements. HUD indicated that it will continue to provide training to IPA assignees and HUD personnel.

### **Conclusion**

For all 21 IPA agreements reviewed, HUD failed to ensure that it met requirements, such as meeting the purpose of the Act and ensuring the agreements were complete and properly reviewed and approved. The agreements contained vague terms and were not properly reviewed and executed. This occurred because HUD’s procedures for negotiating, executing, and documenting IPA agreements did not exist or were fragmented among OCHCO, program offices, and OGC. Further, HUD had no central point of review to objectively evaluate agreements before executing them to ensure that they were reasonable, appropriate, and met requirements. As a result, the costs and benefits to HUD were uncertain, and HUD unnecessarily increased its exposure to ethical violations, including conflicts of interest. These conditions were more prevalent in HUD’s agreements with nonprofit organizations, which could participate in the IPA mobility program only if they were certified as an “other organization” under the Act. To correct the weaknesses in its fragmented system, HUD should revise its policies and implement additional procedures to address the deficiencies identified in this report. For example, HUD’s IPA policy should establish an independent, central point of review for IPA agreements before HUD executes them, and OGC should determine, before the effective date of the assignment, whether the assignee should file financial disclosure reports.

## **Recommendations**

We recommend that the Deputy Secretary require the Chief Human Capital Officer to

- 1A. Revise the draft IPA policy to incorporate a requirement for an independent, central point of review for IPA agreements. This central point of review would be responsible for reviewing and approving IPA assignment agreements before the assignment begins to ensure that they are reasonable, meet the purpose of the Act, do not circumvent established hiring procedures, and that there are no indications of a conflict of interest. This should include reviewing the full cost of the agreement, including salary, benefits, bonuses, and relocation expenses.
- 1B. Use only OPM's form OF 69, Assignment Agreement, to document and execute IPA assignment agreements and ensure that the certifying officials and assignees make the required certifications.
- 1C. Establish and implement procedures to guide staff in reviewing IPA documents for completeness and accuracy, including ensuring that the agreements clearly describe the costs that HUD will reimburse, provisions that HUD must review and approve any bonuses and salary increases, verifying employment status, and ensuring that all parties sign the agreement before the effective date.
- 1D. Develop and implement procedures to ensure that OCHCO retains, in accordance with HUD's record retention policy, all relevant information to document the transaction and any extensions or modifications. This documentation should include but not be limited to relevant correspondence, certification of the organization to participate in the IPA mobility program (if required), justification memorandums, OGC review and financial disclosure determination, central point of review and approval documentation, and fully executed documents.
- 1E. Develop and implement procedures and protocols to ensure that program staff provide OGC with all relevant information to make informed ethics decisions before executing the agreement and incorporate this requirement into the IPA policy.
- 1F. Resubmit the draft handbook containing the IPA policy for departmental clearance after making the recommended revisions and adopt it as official policy.<sup>17</sup>

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<sup>17</sup> Finding 2 includes additional recommendations for revising the draft IPA policy.

We recommend that the Deputy Secretary require the Associate General Counsel for Ethics, Appeals and Personnel Law to

- 1G. Establish written review procedures for IPA assignment agreements, which should include a review of the sources of funds when HUD does not pay the entire cost of the agreement, and a determination and evaluation of the impact if the employer participated in HUD programs, received HUD funding, or lobbied HUD topics relevant to the IPA assignment.

We recommend that the Deputy Secretary require the Chief Human Capital Officer and the Associate General Counsel for Ethics, Appeals and Personnel Law to

- 1H. Continue to provide training to HUD managers about the IPA policy and procedures, including reinforcing that they must use other means to hire employees when proposed IPA agreements do not meet the purpose of the Act.

We recommend that the Deputy Secretary require the Chief Financial Officer to

- 1I. Follow established procedures to address the \$224,906<sup>18</sup> in ineligible costs for invoices and travel associated with two invalid IPA agreements.

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<sup>18</sup> \$195,883 + \$1,498 + \$27,525 = \$224,906

## **Finding 2: HUD Did Not Properly Manage or Out-process IPA Assignees**

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HUD did not properly manage IPA assignees once they began working at HUD or properly out-process them when they departed. HUD allowed three IPA agreements to lapse, did not properly document two IPA extensions, and did not ensure assignees took required information technology security awareness and ethics training. Further, HUD did not always ensure that assignees filed financial disclosure reports, if required, or provide ethics guidance to the assignee and the employer at the start of the assignment. HUD also did not adequately review and process invoices for IPA assignments. In addition, HUD did not consistently conduct evaluations for IPA assignees or ensure that they received adequate guidance to avoid conflict-of-interest situations. These conditions occurred because there was no central authority to manage IPA agreements. As a result, HUD paid \$49,989 in invoice overpayments and for IPA agreements that had lapsed. Further, HUD increased its exposure to security breaches and ethics violations.

### **HUD Paid for Services Under Three Lapsed IPA Agreements**

In three instances, HUD paid costs totaling \$30,857, including travel, when it did not have IPA agreements in place. This problem occurred when existing agreements expired and the extension or modification agreements were executed at a later date, ranging from 2 to 4 weeks. The costs were unsupported because there were no underlying obligating agreements supporting the expenditures. If HUD had properly managed its IPA agreements, it would have known that the agreements were expiring and could have executed modifications or extensions in a timely manner to prevent the lapses.

### **HUD Did Not Document Two Extension Agreements, and OCHCO Could Not Provide Copies of Two Agreements**

HUD did not maintain documentation showing that it extended two IPA agreements. One agreement<sup>19</sup> contained language stating that it would end on August 31, 2014, unless there was agreement among all parties to continue for an additional period not to extend past December 31, 2014. OCHCO had no records to document whether the parties extended the agreement; however, HUD paid for the assignee to travel in September 2014 and did not revoke his identification card and system access until November 13, 2014. The Deputy Assistant Secretary in the program area recalled speaking with the employer about extending the agreement but did not believe that there was an official memorandum or written document. He did not recall the exact date on which the assignee left, but records obtained from the employer indicated an employment termination date of November 1, 2014. HUD had no financial obligation other than official travel under this agreement.

Another agreement was scheduled to end on July 31, 2013. Subpoenaed records from the employer showed that the parties agreed via email messages to extend the agreement through

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<sup>19</sup> On October 9, 2013, Secretary Donovan wrote in an email that the assignee's employer informed him that the employer would allow the individual to work at HUD for 9-12 months under an IPA agreement. The Secretary wanted a contact person to walk the assignee through the process. The following week, HUD initiated the IPA process and the assignee began his HUD assignment on January 6, 2014.

August 9, 2013, so the assignee could travel to attend a meeting related to his work under the agreement on August 8-9, 2013. The parties did not execute a formal extension agreement, and this information was not in OCHCO's records. Further, OCHCO could not provide copies of two IPA agreements for assignments in OSHC that started in November 2009 and January 2010. The administrative officer in OSHC provided copies of the agreements and related records. Regulations<sup>20</sup> required that agreements and modifications be in writing and that the agency maintain copies of them. In these situations, HUD failed to properly maintain records supporting its agreements and extensions.

### **Assignees Did Not Complete Required Security Awareness Training**

The Federal Information Security Management Act and HUD's implementing policy required all users of HUD information system resources to participate in initial and annual information security awareness training. The training records HUD provided indicated that only one of the assignees attended the required security awareness training, and that assignee attended only once during the 3 years that the agreement was in effect. The prevalence of noncompliance with the security awareness training requirement among IPA assignees suggested that HUD did not uniformly apply the requirement among its users. HUD cannot protect the confidentiality, integrity, and availability of its information systems and the information they contain without the knowledge and active participation of its users in implementing sound security principles.

### **Assignees Generally Did Not Complete Financial Disclosure Reports or Receive Ethics Training**

HUD determined that eight IPA assignees were required to file financial disclosure reports. The Office of Government Ethics (OGE) and HUD's procedures required that they file new entrant financial disclosure reports within 30 days of starting their assignments and then annually.<sup>21</sup> None of the eight assignees filed the OGE new entrant financial disclosure reports within 30 days. Four of the eight were required to file annual financial disclosure reports due to the length of their assignments. Of those four, one did not file annual reports. As a result, HUD did not know whether this individual had conflicting issues that would affect his work with HUD. Table 4 summarizes the initial and annual financial disclosure reports not filed.

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<sup>20</sup> 5 CFR 334.106

<sup>21</sup> 5 CFR Part 2634

**Table 4: Financial disclosure report filing deficiencies**

Assignee	Days initial disclosure was late	Annual financial disclosure reports not filed
Deputy Assistant Secretary, Office of Public and Indian Housing	861	N/A <sup>22</sup>
Deputy press secretary, Office of Public Affairs	Not filed	N/A
Senior advisor, Office of Housing	182	2011 and 2012
Senior advisor, OSHC	184	N/A
Communications specialist, OSHC	32	N/A
Special assistant, OSHC	107	N/A
Senior advisor, OSHC	89	N/A
Special assistant, Office of Special Needs Assistance Programs	Not filed	N/A

Further, three IPA assignees who filed financial disclosure reports failed to disclose their outside employers as required. As a result, HUD legal staff reviewing the reports did not have complete information for evaluating the reports.

The eight assignees who were required to file financial disclosure reports were also required to attend annual ethics training. Two individuals attended all of the required training, three attended one of three required trainings, and three attended no ethics training.

OGC stated that it had used an electronic system maintained by another agency in the last 3 to 4 years to track financial disclosure reports and in 2015 began using it to track ethics training as well. OGC could more effectively use this tool to manage IPA assignees' compliance with these requirements if it determined during its initial ethics review of the assignment agreement whether the assignee would be subject to the requirements. Further, if financial disclosure reports were required, HUD could condition the agreement on the assignee's filing the required report.

### **Assignees Engaged in Questionable Behavior**

Two IPA assignees engaged in questionable communications with their employers. For instance, subpoenaed records showed that between March and May 2010, an IPA assignee in OSHC engaged in inappropriate communications with his employer concerning a notice of funding availability. This communication included soliciting comments from his employer after the deadline for comments had passed and disclosing information about an expected release date for the notice. He also provided his employer with information about HUD's policy positions on topics that were relevant to his employer's mission. In the other example, an assignee in the

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<sup>22</sup> Because OGC changed its opinion as to which financial disclosure report this assignee needed to file, the assignee may have needed to file an annual report in 2014 and did not do so.

Office of Special Needs Assistance Programs had questionable communications with his employer regarding internal HUD matters and performed a substantial amount of work for his employer using HUD resources during work hours reimbursed by HUD.

Two additional assignees were involved in apparent conflict-of-interest situations. As previously reported, Debra Gross, an IPA assignee in the Office of Public and Indian Housing, had an apparent conflict of interest involving her employer, and this topic was discussed at a congressional hearing.<sup>23</sup> In another instance, OGC reviewed an IPA extension agreement in 2014 and determined that a conflict existed, and the individual had to recuse himself from involvement in the program that was the subject of his IPA assignment. HUD terminated the agreement rather than extend it. The original agreement predated the OGC review requirement. Further, OGC referred a third assignee to OIG for a possible conflict of interest.

Without procedures to protect it, HUD increased its risk from potential conflicts of interest or abuse in IPA assignments. OGC provided some assignees with ethics advice via email after OIG began reviewing specific IPA agreements. OGC began conducting face-to-face ethics briefings after it began reviewing IPA agreements pursuant to the former Deputy Secretary's 2014 memorandum. OGC should provide ethics briefings jointly with employers and employees and should include explanations of the standards of conduct and restrictions on communications, including the improper disclosure of HUD information.

### **HUD Did Not Properly Review and Pay Invoices for IPA Assignments**

For three agreements,<sup>24</sup> HUD made overpayments of \$49,989, including travel, because program offices did not adequately review invoices and compare them to the terms of the agreements before approving them for payment. It overpaid \$17,358 because employers billed for amounts that exceeded what HUD agreed to pay in the contract. As previously discussed, it paid \$30,857 for agreements that had lapsed, including travel. Further, for eight invoices, one employer failed to deduct credit amounts for employee benefit copayments from the invoice total, thereby overstating the amount billed, or HUD failed to deduct credit amounts when paying the invoices. A simple mathematical check of the invoices should have detected the errors and prevented the overpayment of \$543. Subpoenaed records showed that in 2014, the same employer determined that it had overbilled HUD \$1,231 on its July and August 2013 invoices and made internal inquiries about how to repay HUD; however, HUD had no record of receiving the funds from the employer. Table 5 shows the overpayments.

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<sup>23</sup> Audit Memorandum 2015-FW-0801, Intergovernmental Personnel Act Appointment Created an Inherent Conflict of Interest in the Office of Public and Indian Housing, dated January 20, 2015, discussed at a congressional hearing on February 4, 2015

<sup>24</sup> HUD agreed to reimburse or partially reimburse the employer in 15 of 21 agreements.

**Table 5: IPA agreement overpayments**

Assignee	Exceeded contract amount	Lapse between agreements	Errors	Overbilling identified by employer	Total
Senior advisor, Office of Housing	\$11,947	\$ 7,514	\$543	\$1,231	\$21,235
Senior policy advisor, Office of Housing	2,258	6,785			9,043
Senior advisor to Secretary Donovan	3,153 <sup>25</sup>	16,558 <sup>26</sup>			19,711
<b>Total</b>	<b>\$17,358</b>	<b>\$30,857</b>	<b>\$543</b>	<b>\$1,231</b>	<b>\$49,989</b>

### **HUD Did Not Consistently Provide Assignees With Performance Appraisals**

HUD did not consistently perform evaluations of the assignees' performance annually as part of a normal performance appraisal process or before awarding extensions, bonuses, or salary increases. The draft handbook that went through departmental clearance contained a provision that required HUD to provide performance appraisals for assignees. After departmental clearance, OCHCO added a provision that HUD supervisors should provide performance feedback to the employer upon request. There was no consistency among program staff concerning providing performance feedback for IPA assignees. One manager stated that she provided an assignee with a 360-degree performance appraisal, but she did not document it in the IPA file. The manager said that IPA assignees should have an appraisal and it was important for them to have feedback on their performance. HUD needs to evaluate and document each assignee's performance to ensure that the objectives of the agreement are achieved and its costs are supported by the completion of those objectives.

### **HUD Did Not Properly Out-process Assignees**

Because it did not keep track of its IPA assignments, HUD did not ensure that it properly out-processed assignees at the end of their assignments. This deficiency included not promptly revoking identification cards and access to HUD systems and facilities. By not properly out-processing assignees, HUD exposed itself to an unnecessary risk of information being inappropriately accessed, misused, released, or lost.

#### Identification Cards Were Not Revoked

HUD issued identification cards to assignees to grant access to its information systems, buildings, and offices. However, HUD did not promptly revoke assignees identification cards at the end of their assignments, creating a physical security risk of unauthorized access to its

<sup>25</sup> We questioned \$2,365 of these costs in Audit Memorandum 2014-FW-0801, Potential Antideficiency Act Violations; Intergovernmental Personnel Act Agreements, dated May 30, 2014. Therefore, we included only \$788 of this amount in the schedule of questioned costs in appendix A.

<sup>26</sup> We questioned these costs in Audit Memorandum 2014-FW-0801. Therefore, we did not include amounts for this overpayment in the schedule of questioned costs in appendix A.

buildings and offices. HUD did not provide complete information showing when it issued and revoked identification cards for five assignees, and based on the information provided, as of August 2015, it had not revoked an identification card for an assignee who departed 16 months earlier in April 2014. Additionally, HUD did not revoke the cards for two individuals for 9 to 12 days.

#### Computer System Access Was Not Revoked

In 10 instances, HUD did not promptly terminate user access to its information systems when IPA assignments ended. The delays ranged from 2.5 to 12 months. One assignee working in the Deputy Secretary's office left in December 2014, but his system access remained active, and his email account was accessed in July 2015. After we notified them of the situation, HUD staff in the Secretary's office and the Acting Chief Human Capital Officer took prompt action to request that the account be disabled.

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An IPA assignee's email account was accessed more than 6 months after his assignment ended.

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#### HUD Did Not Establish a Clearing Process for IPA Assignees

While individuals under IPA agreements were not permanent HUD employees, they did have access to HUD physical space, computer equipment, and computer systems. HUD employees were required to use Form HUD-58-A, Clearance for Separation of Employee, which was designed to ensure that departing employees in headquarters turned in all of their equipment and received any necessary post-employment advice and that HUD restricted access to computer systems and physical space. It was HUD's policy to withhold employees' final salary payments until they completed the clearance process. HUD's Pay, Benefits, and Retirement Division kept records of the forms for separating employees. Because IPA assignees were not in the payroll system, there was no mechanism to ensure that the assignees completed the clearance process, and the Pay, Benefits, and Retirement Division did not have the records for IPA assignees, even though some assignees completed the form. Some HUD personnel stated that they had no guidance about whether IPA assignees should complete a clearance form but that it made sense for them to do so.

There was evidence that three assignees completed the clearance forms, yet HUD did not promptly revoke all access, leaving it vulnerable to physical and information technology security threats. Most troubling was that each of the assignees worked in the Secretary's or Deputy Secretary's office or on a secretarial initiative and had access to sensitive areas and information.

- Subpoenaed documents from the employer of a senior advisor to former Secretary Donovan showed that the assignee had completed a clearance form. HUD signed off on the computer access and building pass sections in late April 2014. However, HUD could not document when it revoked the building pass, and it did not revoke computer access until July 2014, approximately 3 months later. HUD could not provide a copy of the form.

- Subpoenaed documents from the employer of a public engagement advisor on the Hurricane Sandy Task Force showed that the assignee had completed the clearance form. HUD signed off on the computer access and building pass sections on August 12, 2013. HUD revoked the building pass on that date but did not revoke computer access until January 20, 2014, more than 5 months later. HUD could not provide a copy of the form.
- As previously mentioned, a special assistant to the Acting Deputy Secretary departed in December 2014, but his account remained active and was accessed more than 6 months after his departure. The assignee had completed the clearance process using Form HUD-58-A. HUD's payroll office did not have the document, but an employee in the Secretary's office was able to provide two of the three pages of the form. The page showing that HUD had revoked the individual's computer access was missing. HUD revoked his building pass on January 9, 2015, the same date indicated on the form.

HUD's records did not explain how the assignees completed the clearance process and obtained the required signatures from clearance officials verifying that they revoked system and building access, and HUD failed to terminate the access as indicated. Further, HUD could not produce clearance forms for two assignees who completed them; however, the employers had copies of the forms. HUD needs to ensure that IPA assignees complete the same clearance process as HUD employees and that responsible clearance officials sign the clearance forms only when they have completed action to revoke the relevant access, and HUD needs to maintain copies of the clearance forms for IPA assignees in its files.<sup>27</sup>

### **Conclusion**

HUD did not manage IPA assignees once their assignments began and did not properly out-process them when they departed. This occurred because HUD did not have a central means to track assignees or have policies and procedures for managing and terminating IPA agreements. HUD's IPA policy addressed only the process of entering into an agreement and not managing and terminating the agreements. As a result, HUD paid questionable costs and unnecessarily increased its exposure to security and ethical breaches. OCHCO should revise its IPA policy to establish a means to track IPA assignments to ensure that assignees receive required training, complete financial disclosure reports, if necessary, and receive performance appraisals, while also ensuring that either it extends expiring IPA assignments or assignees are promptly and completely out-processed.

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<sup>27</sup> As out-processing of employees is a typical process-driven action, it was unknown whether the failure to correctly out-process assignees was because they were assignees or whether it was an organizational control weakness.

## **Recommendations**

We recommend that the Deputy Secretary

- 2A. Establish points of responsibility to ensure proper oversight and monitoring of the personnel and activities involved in IPA agreements.

We recommend that the Deputy Secretary require the Chief Human Capital Officer to

- 2B. Develop and implement a system to track IPA assignments to ensure that HUD does not spend funds without a valid agreement and that HUD either extends expiring agreements, if appropriate, or promptly out-processes the assignees.
- 2C. Revise the draft IPA policy to include the requirement that HUD supervisors of IPA assignees conduct and document performance appraisals.
- 2D. Revise the draft IPA policy to include the requirement that IPA assignees complete the same clearing process as separating employees and develop and implement procedures to carry out the policy.

We recommend that the Deputy Secretary require the Chief Information Officer to

- 2E. Establish effective procedures to ensure that IPA assignees receive the required information technology security awareness training in accordance with the Federal Information Security Management Act.

We recommend that the Deputy Secretary require the Chief Financial Officer to

- 2F. Support or require employers to repay \$49,989 in overpayments on IPA agreements.<sup>28</sup>

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<sup>28</sup> HUD paid a total of \$49,989 in overpayments or when the agreement had lapsed. However, as discussed in footnotes 25 and 26, we questioned \$18,923 of these costs in a prior audit memorandum. To avoid reporting these costs twice in HUD's audit follow-up system, we included only \$31,066 as questioned costs for recommendation 2F in appendix A.

# Scope and Methodology

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Our audit covered IPA agreements and related policies and procedures in effect from November 2009 through October 2015. We performed fieldwork from February to October 2015 at HUD headquarters located at 451 7<sup>th</sup> Street SW, Washington, DC; HUD's Accounting Center located at 801 Cherry Street, Fort Worth, TX; and our offices located in Fort Worth, TX, and Oklahoma City, OK.

To accomplish our objectives, we

- Reviewed relevant Federal laws, regulations, and HUD policies regarding IPA assignments.
- Reviewed OCHCO's IPA policies, including draft revisions.
- Reviewed Federal regulations on contracting, travel, and relocation.
- Gained an understanding of OGC procedures for review of IPA assignments and financial disclosure report filings.
- Reviewed 21 IPA agreements and HUD records.
- Interviewed HUD staff, including OCHCO staff and management, budget and administrative staff in various departments, OGC attorneys, and current and former IPA assignees and their HUD supervisors.
- Subpoenaed employee and salary documentation, including emails, pertaining to IPA agreements and the process for the 20 assignees<sup>29</sup> from 17 organizations. Reviewed responsive materials ranging from 31 to 5,300 pages of documents per employer.
- Reviewed invoices submitted to HUD and HUD's approval of invoices for IPA assignments.
- Reviewed relocation and travel documentation maintained by HUD and the U.S. Department of the Treasury for IPA assignees.
- Reviewed HUD training records for required government training provided to the assignees.
- Reviewed lobbying disclosure reports from the Web site of the U.S. House of Representatives.

During the audit, HUD identified 21 IPA agreements from 2009 to 2015. Other evidence indicated that HUD might have additional agreements, creating doubt that HUD identified the complete universe of IPA assignment agreements for review. Despite this limitation, there was sufficient, appropriate evidence upon which to base audit conclusions and recommendations. We did not review IPA assignments of HUD employees assigned to other organizations.

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<sup>29</sup> We did not subpoena one assignee's employer because the assignee started in July 2015, which was after we issued the other subpoenas.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Internal Controls

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Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

## **Relevant Internal Controls**

We determined that the following internal controls were relevant to our audit objectives:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

## **Significant Deficiencies**

Based on our review, we believe that the following items are significant deficiencies:

- HUD did not have the controls necessary to ensure that it obtained and maintained sufficient documentation detailing IPA transactions (finding 1).
- HUD did not implement adequate policies and procedures to ensure that it complied with requirements (findings 1 and 2).

- HUD did not implement adequate policies and procedures to ensure that it managed IPA assignments and assignees to meet the program objectives (finding 2).

# Appendices

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## Appendix A

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**Schedule of Questioned Costs**

Recommendation number	Ineligible 1/	Unsupported 2/
1I	\$224,906	
2F		\$31,066
<b>Totals</b>	<b>\$224,906</b>	<b>\$31,066</b>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

## Appendix B

### Auditee Comments and OIG's Evaluation

#### Ref to OIG Evaluation

#### Auditee Comments

Comment 1



#### U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-0001

OFFICE OF THE DEPUTY SECRETARY

March 21, 2016

MEMORANDUM FOR: Gerald R. Kirkland, Regional Inspector General for Audit,  
Fort Worth Region, 6AGA

FROM: Nani A. Coloretti, Deputy Secretary /s/

SUBJECT: HUD Comments on the Office of Inspector General Draft Audit  
Report Entitled "HUD Did Not Effectively Negotiate, Execute or  
Manage Its Agreements under the Intergovernmental Personnel Act"

Thank you for the opportunity to comment on the draft findings and recommendations contained in the above-referenced audit report of the Office of Inspector General (OIG). The U.S. Department of Housing and Urban Development (HUD or Department) is committed to ensuring full compliance with all statutory and regulatory requirements, and we welcome the partnership with OIG to ensure effective management of Intergovernmental Personnel Act (IPA or Act) assignment agreements. HUD's Office of the Chief Human Capital Officer (OCHCO), Office of the General Counsel (OGC), Office of the Chief Information Officer (OCIO) and Office of the Chief Financial Officer (OCFO) have reviewed the draft report and helpfully provided input that informs these comments. As you know, 18 of the 21 IPA agreements that OIG reviewed as part of this audit were executed before my tenure at HUD commenced in December 2014. The OIG's work on this matter has helped inform HUD's IPA process and we will continue to improve upon it based on the recommendations in this report.

The Intergovernmental Personnel Act (IPA or Act) permits employees of state and local governments, Indian tribal governments, institutions of higher education and other eligible organizations to work in federal agencies for limited time periods, and similarly allows Federal civilian employees to serve with eligible non-Federal organizations.<sup>1</sup> According to the U.S. Office of Personnel Management (OPM), which oversees the federal government's use of the IPA program, IPA assignments, by definition, are "intended to facilitate cooperation between the Federal

<sup>1</sup> 5 U.S.C. § 3372.

## Ref to OIG Evaluation

### Comment 2

Government and the non-Federal entity through the temporary assignment of skilled personnel.<sup>12</sup> Assignments should be “of mutual concern and benefit to the Federal Agency and to the non-Federal organization” and “for sound public purposes.”<sup>13</sup> When deployed and managed appropriately, IPA assignments may be used to achieve a broad range of laudable objectives, including, for example, strengthening the management capabilities of federal agencies, enabling the transfer of innovative approaches to problem-solving, and facilitating state and local involvement in federal policy-making. Use of IPA agreements, under these circumstances, should be promoted. Indeed, OPM has encouraged federal agencies to use the program more aggressively, observing that “[a]gencies do not take full advantage of the IPA program which, if used strategically, can help agencies meet their needs for ‘hard-to-fill’ positions ....”<sup>14</sup> HUD is endeavoring to make full use of this important tool, while putting in place appropriate internal controls to ensure proper use.

Given the potential benefits of IPA assignments, the Department remains committed to sponsoring and managing these agreements in ways that benefit both HUD and the participating, non-federal entities, and ways that are fully compliant with all relevant rules and regulations. Toward that end, the Department has appreciated OIG’s review of the program, and in particular its evaluation of the Department’s management of IPA assignments. While the Department concurs with most of the recommendations outlined in the draft report (and, in fact, began a process several months ago to improve internal management of IPA agreements), we highlight some of our concerns included in the report below.<sup>15</sup>

#### General Concerns

As an initial matter, the Department has two general concerns that frame its response to OIG’s audit report.

First, OIG declined to share with the Department the documentation that it cites in the report or that otherwise buttresses its findings. For example, HUD requested that OIG provide copies of documentation that it maintains establishes that HUD used the IPA program to circumvent federal hiring authorities. OIG declined the request on the ground that the documents were obtained through subpoena and therefore OIG would not release them. OIG’s refusal puts the Department in the difficult position of trying to discern the need for corrective action, based on documents that it has not reviewed. The Department is aware of no authority preventing OIG’s disclosure of non-confidential information to HUD in order to inform the Department’s management response, and the Department’s review of the report and development of this response would have benefited

<sup>12</sup> Website of U.S. Office of Personnel Management, “Hiring Authorities: Intergovernmental Personnel Act Provisions,” <https://www.opm.gov/policy-data-oversight/hiring-authorities/intergovernment-personnel-act/#url=Provisions>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at <https://www.opm.gov/policy-data-oversight/hiring-authorities/intergovernment-personnel-act/>.

<sup>15</sup> For ease of reference, the Department sets out below the relevant pages and titles of the corresponding sections that contain the draft report language that the Department disputes. By referencing the section titles as crafted by OIG, the Department does not intend to suggest agreement with the stated conclusion. In addition, the comments offered here are not intended as an exhaustive list of concerns, and silence on a particular topic should not be viewed as agreement with findings, conclusions or other statements in the report.

## Ref to OIG Evaluation

### Comment 3

immensely from that additional information.

Second, while OIG acknowledges that the Department has developed a new policy that addresses IPA assignments, it does not make clear when activities that OIG is citing as problematic pre-date, or are otherwise addressed by, the new policy.<sup>1</sup> This omission or lack of clarity is concerning, in part, because the policy, once implemented, is designed to ensure that the Department effectively manages IPA agreements and also would put in place safeguards that exceed minimal legal requirements. Importantly, OIG reviewed the draft policy during Departmental clearance, provided helpful feedback, and ultimately “concurred” with its adoption. The audit report now appears to conflate activities that may have occurred before, and are now addressed by, the new policy. The audit report, as well as the Department’s consideration of the appropriate corrective actions, would profit from a clearer delineation of activities occurring before, and those occurring after, HUD’s development of the new policy. As mentioned above, 18 of the 21 IPA agreements that OIG reviewed as part of its audit were executed before I commenced my duties at HUD in December 2014.

#### **Page 5: “HUD Appeared to Use the IPA Mobility Program to Circumvent Other Hiring Authorities”**

In its report, OIG states that HUD appeared to use the IPA assignments to circumvent other Federal hiring authorities. To support this contention, the draft report cites three reasons: (1) two emails from employers expressing an opinion that employees took or HUD provided IPA assignments to circumvent hiring authorities; (2) the intention of assignees not to return to their home organizations; and (3) modifications to the certification in OPM Form OF-69 requiring that participating employees return to the position occupied at the time the agreement was executed. Neither the referenced emails containing statements of individuals not employed at HUD nor the intentions of non-Federal assignees constitute evidence that HUD utilized any of the IPA assignments at issue with the purpose to circumvent hiring authorities. Furthermore, HUD agrees that modification of OPM optional and standard forms is not advisable, but it notes that the IPA regulation at 5 C.F.R. § 334.106 does not mandate either the use of Form OF-69 or the inclusion of service requirements for non-Federal employees on assignment. While the use of a Form OF-69 is not required, HUD recognizes that, whether this form or a similar HUD-created form is utilized, the document should be used consistently by the Department. Importantly, however, there is no indication that any Federal hiring requirements were violated, and indeed OIG does not present evidence of an actual violation.

#### **Page 7: “IPA Agreement 2”**

Here, OIG concludes that HUD used IPA Agreement 2 to circumvent the political appointment process. OIG bases its assertion on a suggestion that “there was a discussion about”

<sup>1</sup> While the new IPA policy currently is under negotiation with the American Federation of Government Employees (AFGE) pursuant to the Department’s Collective Bargaining Agreement (CBA) with AFGE, most, if not all, of the provisions designed to address practices discussed in OIG’s audit report are not subject to the CBA and have been implemented by HUD’s management. The IPA policy is part of a broader policy entitled “Details, Interagency Agreement Assignments, and Intergovernmental Personnel Act Assignments Policy.”

## Ref to OIG Evaluation

Comment 6

the possibility of the individual joining the Department as a political appointee. The Department is aware of no authority precluding an individual's service as an IPA assignee based merely on the possibility that she might be a candidate for political appointment.

### Page 8: "IPA Agreement 4"

The draft report indicates that IPA Agreement 4 was outside the scope of the Act because it provided for the assignment of the President's nominee for Assistant Secretary in the Office of Policy Development and Research, pending confirmation. As OPM has opined, the objective of the Act is to facilitate a temporary assignment of skilled personnel to or from the Federal government, where the assignment mutually benefits the Federal agency and non-Federal organization and is for a sound public purpose. The mere fact that the assignee *might* become a Presidential-appointed, Senate-confirmed official does not preclude an IPA assignment; and, in this particular case, the assignee had not been (re)ominated at the time that her IPA assignment commenced.

Comment 5

In the second paragraph, OIG states, "[t]he IPA agreement avoided language indicating that the individual would perform the duties of the Senate-confirmed position." The draft report intimates that the omission of such language was inappropriate, when in fact it is absolutely prudent that the agreement not include language stating that the assignee would perform duties of the Senate-confirmed position, since in fact she was precluded from performing such functions. OIG further implies that the IPA assignee would not return to her employer and therefore "there could be no expectation for all parties to benefit from the arrangement." To the contrary, the assignee in question was a tenured professor at New York University (NYU) and had every intention to return to her post at NYU, whether ultimately confirmed by the Senate or not. Indeed, the assignee, who now serves in an appointed political position, has confirmed her continued plan to return to NYU at the end of her HUD tenure.

Comment 7

OIG's suggestion that IPA Agreement 4 is problematic is troubling, because of the care and attention that that agreement received at the time of its negotiation and execution. It was precisely because the assignee was under consideration for a political appointment that the Department established specific guidance on the scope of the assignee's work and ensured that the relevant HUD employees were aware of these parameters. Moreover, the Department communicated with key members of Congress and their staff to alert them to the anticipated arrangement and give them an opportunity to object. The execution of IPA Agreement 4 is an example of the sort of effective management of IPA assignments that the Department understands OIG is seeking, and not the contrary as the report suggests.

### Page 10: "HUD Hired 6 of 17 Former IPA Assignees"

On page 10, OIG maintains that HUD hired several former IPA assignees without the assignees first returning to their original employers. The IPA and implementing regulations at 5 C.F.R. part 334 do not prohibit a federal agency from employing assignees either during or after their IPA assignment, irrespective of whether they return to their home organization; nor do these authorities require a waiting period after which those persons can seek employment with the Federal agency to which they were assigned.

## Ref to OIG Evaluation

Comment 8

### Page 11: “Assignments Were Not Reviewed by the Deputy Secretary”

Here, OIG suggests that the Deputy Secretary was required to review and approve six IPA agreements that were entered into subsequent to development of the draft IPA policy. Although it is accurate that former Deputy Secretary Maurice Jones issued a memorandum calling for *review* of IPA agreements by the Deputy Secretary, this memorandum did not, in fact, require *approval* by the Deputy Secretary. Moreover, there is no statutory or regulatory mandate requiring Deputy Secretary review or approval. That said, Deputy Secretary Coloretti has reviewed all of the IPA agreements that were executed since she assumed her position and plans to continue review of other IPA agreements executed during her tenure.

### Pages 12-13: “OGC Reviewed Some Assignments but With Limited Information”

On page 12, OIG explains that an IPA agreement was funded by the non-profit employer using grants from third-party foundations, and that the program office had not provided that information to OGC. While it is true that the information at issue was not a part of OGC’s review of the IPA agreement in question, it also should be noted that, depending on how the funding is structured, there may be no conflict of interest under 18 U.S.C. § 208. In most instances, a third-party donor’s financial interest is not imputed to the employee under 18 U.S.C. § 208. Any conflict of interest recusal would be based on an “ability and willingness” standard (*i.e.*, the employee only would have to recuse himself from matters that will affect the ability and willingness of the entity to pay its monetary obligations), and very likely would not result in disapproval of an IPA agreement. However, there may be an instance where, based on state law, the third party and the non-profit organization have established a relationship in which the IPA assignee’s position with the non-profit is such that the assignee is actually an employee of the third-party donor. In such a case, the third-party donor’s financial interest would be imputed to the employee and an 18 U.S.C. § 208 conflict of interest analysis would be required.

### Pages 20-21: “Assignees Generally Did Not Complete Financial Disclosure Reports or Receive Ethics Training”

On page 21, OIG states that “if financial disclosure reports were required, HUD could condition the agreement on the assignee’s filing the required report.” Note that the current Assignment Agreement already requires the assignee to acknowledge that “[a]pplicable Federal, State or local conflict-of-interest laws have been reviewed with the employee to assure that conflict-of-interest situations do not inadvertently arise during this assignment,” and also to certify that “[t]he rules and policies governing the internal operation and management of the agency to which my assignment is made under this agreement will be observed by me.” Assignees already must confirm in writing that they will abide by all relevant rules, which includes any financial disclosure requirements.

Thank you again for the opportunity to comment on OIG’s draft report. I look forward to our continued engagement on these important issues.

## **OIG Evaluation of Auditee Comments**

- Comment 1     HUD wrote that it was committed to ensuring full compliance with all statutory and regulatory requirements and it will continue to improve upon its management of IPA agreements based on the recommendations in the report. We appreciate HUD's willingness to improve its use of the IPA mobility program and to strengthen its controls over it. Implementation of the recommendations in this report should enhance HUD's ability to ensure compliance with requirements.
- Comment 2     OIG's Office of Legal Counsel informed HUD that it would be inappropriate for us to provide subpoenaed documents outside of one of the routine uses of records obtained by subpoena. As we advised the Deputy Secretary, in keeping with our practice, records may be disclosed following the issuance of the audit report when HUD is faced with making decisions regarding the management recommendations and the disclosure is relevant and reasonably necessary to make a decision related to the recommendations.
- Comment 3     Appendix C of the report contains information regarding the 21 assignments reviewed, including the effective dates of the assignments. We noted in the report that certain discrepancies took place either before or after the draft requirements were in place, such as OGC's review of IPA agreements. We must reiterate that HUD has no official IPA policy. Other discrepancies identified in the report, such as those in table 2, were not addressed in HUD's draft policy, and we made recommendations to correct those deficiencies.  
  
As HUD stated in its comments, we reviewed HUD's draft handbook, entitled "Details, Interagency Agreement Assignments, and Intergovernmental Personnel Act Assignments Policy," in August 2014 during departmental clearance. We concurred with comments; however, HUD did not address all of our comments, such as documenting performance appraisals. After making comments on the draft handbook, we conducted this audit, which provided us a more detailed understanding of how HUD used IPA agreements and the internal controls needed to prevent deficiencies. Thus, this report recommends corrective actions to further improve HUD's implementation and oversight of its IPA agreements.
- Comment 4     We provided four examples in which the IPA agreement or extension was inappropriate because it did not meet the purpose of the Act at inception. These examples demonstrate HUD's pattern of misusing IPA assignments to achieve its goals and avoid other hiring methods. In two examples, employers expressed their understanding that it was HUD's intention to circumvent civil service rules or to convert an assignee to a political appointee at a later date.
- Comment 5     HUD's comments included statements in several places that it did not violate certain provisions of law or regulation or that there were no rules governing its actions. The report presents the facts and conclusions reached based on the audit evidence and discloses HUD's relevant actions with respect to IPA assignment

agreements, such as using the IPA to circumvent other hiring requirements, hiring assignees, not disclosing relevant information to OGC, not providing required training and ensuring assignees filed financial disclosure reports, and not promptly and properly out-processing assignees.

- Comment 6 Based on the evidence described in the report, it is our conclusion that OSHC director Poticha used the IPA agreement to circumvent the political appointment process.
- Comment 7 We maintain our position that HUD inappropriately used the IPA to bring Ms. O'Regan to work at HUD while waiting for her to be confirmed by the Senate. We maintain our conclusion that this agreement did not meet the purpose of the Act.
- Comment 8 We maintain that the purpose of a central point of review, such as by the Deputy Secretary, is to conclude whether each proposed IPA agreement is in the best interest of HUD. We encourage the Deputy Secretary to practice this sound control over IPA assignment agreements before they are executed.
- Comment 9 As stated in the report, OER director Tregoning (now Principal Deputy Assistant Secretary) did not disclose her extensive involvement in arranging and funding this agreement to OGC, and OGC should have been provided this relevant information when reviewing the agreement. The OER director should have consulted OGC in advance about the appropriateness of her acting in her capacity as a HUD official to secure foundation grant funding for a nonprofit organization to hire an employee to work at HUD under the IPA.
- Comment 10 We disagree that self-certifications in the IPA agreement are an internal control to ensure that OGC notifies assignees of the need to file financial disclosure reports, if applicable, and ensures that they do so.

## Appendix C

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### IPA Agreements Reviewed and Other Pertinent Information

	Employer	Term of agreement	HUD position under IPA	Annual amounts paid by HUD or other IPA financial arrangement	Status at end of IPA agreement and additional information
<b>Office of Sustainable Housing and Communities / Office of Economic Resilience</b>					
1	Living Cities	11/02/2009 11/03/2012	Advisor for sustainable housing  Senior advisor for energy efficiency	Living Cities paid the first 6 months, then required the assignee to resign and charged HUD \$180,000 plus \$19,921 in benefits starting in 05/2010.	During the assignment, the person accepted an IPA assignment at a different Federal agency in 04/2011.  See example 1 on page 6.
2	PolicyLink	01/19/2010 01/18/2012	Special assistant	PolicyLink used third-party grants from The Rockefeller Foundation (up to \$225,000) and the Surdna Foundation (\$27,500) to cover the IPA agreement and lodging costs.	During the assignment, HUD competitively hired the person as a GS-15 senior advisor in OSHC on 11/08/2010.
3	Annie E. Casey Foundation	02/15/2010 12/31/2011	Senior advisor	HUD paid \$121,604 in salary plus benefits and HUD-related travel.	During the assignment, HUD hired the person as a GS-15 political appointee in OSHC on 01/05/2011. In 06/2014, the person was converted to Deputy Assistant Secretary (DAS) in the Office of Policy Development & Research.
4	Green Communities Enterprise Community Partners	02/20/2012 02/19/2014	Senior advisor	HUD paid \$154,850 in salary plus benefits and HUD-related travel.  The employer agreed to a pay increase only if HUD reimbursed it.	At the end of the assignment, HUD hired the person as a GS-15 political appointee senior advisor in OSHC, effective 02/20/2014.  See example 2 on page 7.
5	PolicyLink	02/09/2015 05/09/2016	Communications specialist	OER director Tregoning arranged for a \$350,000 Surdna Foundation grant to PolicyLink for the IPA. HUD agreed to pay HUD-related travel.	It did not appear that OGC was aware of the foundation's financial involvement when it reviewed the IPA agreement.  See example 3 on page 8.

	<b>Employer</b>	<b>Term of agreement</b>	<b>HUD position under IPA</b>	<b>Annual amounts paid by HUD or other IPA financial arrangement</b>	<b>Status at end of IPA agreement and additional information</b>
<b>Office of the Secretary</b>					
6	Casey Family Programs	01/23/2011 12/31/2014	Special assistant	Casey Family Programs provided all salary, compensation, benefits, and travel expenses.	Returned to employer.  Casey Family Programs manages IPAs across Federal agencies.  The assignee's HUD email account continued to be accessed more than 6 months after his assignment ended.
7	The Community Builders, Inc.	02/14/2011 03/15/2014	Transforming Rental Assistance project manager  Rental Assistance Demonstration project manager  Senior advisor	HUD paid \$155,000 salary and \$50,000 in benefits, plus official travel.  Employer paid additional salary costs.	Returned to employer.  Agreement lapsed.  See Audit Memorandum 2014-FW-0801.
8	Johns Hopkins University	10/01/2011 01/12/2013	Policy advisor on health	HUD paid 40 percent of \$104,562 plus benefits through 09/30/2012, then 40 percent of \$119,300 plus benefits.	Returned to employer.
9	Greater New Orleans, Inc.	04/08/2013 09/30/2013	Small business and economic revitalization specialist	HUD paid \$155,500 through 08/03/2013, then prorated to 1 day per week, plus HUD-related travel and other support costs.  Employer paid remaining salary and benefits.	Served on Hurricane Sandy Rebuilding Task Force.  Returned to employer.
10	Emerald Cities Collaborative	05/01/2013 07/31/2013	Public engagement advisor	HUD paid 80 percent of \$91,912 plus HUD-related and local travel.  Employer paid remaining salary.	Served on Hurricane Sandy Rebuilding Task Force.  IPA assignee was a contractor for Emerald Cities and returned to the organization.
11	Casey Family Programs	04/14/2015 04/15/2016	Special assistant	Casey Family Programs provided all salary, compensation, benefits, and travel expenses.	Assignment is ongoing.  HUD staff were involved in selecting the assignee. See footnote 13 on page 8.

	<b>Employer</b>	<b>Term of agreement</b>	<b>HUD position under IPA</b>	<b>Annual amounts paid by HUD or other IPA financial arrangement</b>	<b>Status at end of IPA agreement and additional information</b>
<b>Office of Policy Development and Research</b>					
12	University of California, Berkeley	08/06/2012 02/08/2013	Sabbatical-in-residence	HUD paid \$7,500	Returned to employer.
13	Yale Law School	08/29/2012 08/30/2013	Special assistant	HUD paid for HUD-related travel	Returned to employer.
14	Open Society Institute	01/06/2014 08/31/2014	Senior advisor	HUD paid for HUD-related travel	Left HUD and employer.
15	New York University	01/26/2014 01/26/2015	Advisor	HUD paid \$149,000 plus HUD-related travel.  Employer paid benefits.	During the assignment, the person was Senate-confirmed as Assistant Secretary for Policy Development and Research on 04/29/2014.  See example 4 on pages 8-9.
16	University of Southern California	07/01/2015 06/30/2016	Senior advisor, housing finance	HUD paid \$178,912 plus \$17,770 in relocation costs.  Employer paid additional salary and incidentals.	Assignment is ongoing.
<b>Office of Housing</b>					
17	BRIDGE Housing Corporation	01/16/2010 09/30/2013	Senior advisor	HUD paid:  2010 - \$104,750 and \$26,995 in benefits, 2011 - \$104,750 and \$30,090 in benefits, 2012 - \$155,000 and \$52,507 in benefits, 2013 - \$155,000 and \$60,969 in benefits.  Relocation costs of \$26,183.	During the assignment, HUD hired the person as a DAS in Housing under a noncareer SES political appointment, effective 08/09/2013.  Agreement lapsed.
18	Tenderloin Neighborhood Development Corporation	09/16/2013 09/30/2015	Senior policy advisor	HUD paid \$101,538 plus a 4 percent increase each January 1 and \$23,562 in benefits.  HUD paid relocation costs of \$43,676.	Agreement lapsed.

	<b>Employer</b>	<b>Term of agreement</b>	<b>HUD position under IPA</b>	<b>Annual amounts paid by HUD or other IPA financial arrangement</b>	<b>Status at end of IPA agreement and additional information</b>
<b>Office of Community Planning and Development</b>					
19	National Alliance to End Homelessness	06/16/2014 05/30/2016	Special assistant	HUD paid \$137,494 plus HUD-related travel.  Employer paid benefits.	During the assignment, HUD competitively hired the person as a GS-15 director on 12/28/2014.  The assignee appeared to conduct business for his employer during HUD duty hours, using HUD equipment.
<b>Office of Public Affairs</b>					
20	Annie E. Casey Foundation	03/29/2010 03/31/2013	Deputy press secretary	HUD paid \$80,000 plus benefits and HUD-related travel.  HUD reimbursed the employer \$1,594 for a bonus when the assignee resigned.	Resigned from employer and ended IPA assignment on 11/07/2012.
<b>Office of Public and Indian Housing</b>					
21	Council of Large Public Housing Authorities	02/28/2011 02/22/2014	DAS for the Office of Policy, Program and Legislative Initiatives	HUD paid:  2011 - \$165,360 and fringe benefits (not to exceed \$208,940), plus travel.  2012 - \$168,667, \$5,000 merit bonus, and fringe benefits (not to exceed \$210,721), plus travel.  2013 - \$172,040, \$5,000 merit bonus, and fringe benefits (not to exceed \$215,295), plus travel.	Returned to employer.  See Audit Memorandum 2015-FW-0801.  HUD Inspector General David A. Montoya discussed this IPA assignment in his testimony before the U.S. House of Representatives Committee on Financial Services' Subcommittee on Oversight and Investigations on February 4, 2015.