

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

REPORT ON  
INSPECTION OF THE ESTABLISHMENT AND FILLING OF  
THE DEPARTMENT'S OMBUDSMAN POSITION

Report No: DOE/IG0393

Office of Inspections  
Washington, D.C. 20585

Date Issued: August 1, 1996

INFORMATION: Report on "Inspection of the Establishment and Filling of the Department's Ombudsman Position"

The Secretary

BACKGROUND:

The subject final report is provided to inform you of our findings and recommendations concerning our review of possible personnel irregularities regarding the establishment and filling of the position of Department of Energy Departmental Conflict Resolution Ombudsman (Departmental Ombudsman) and possible irregularities regarding the payment of per diem to the individual selected to fill the position (the Ombudsman). By memorandum dated December 9, 1995, you requested that the Inspector General examine the establishment and filling of the position of Departmental Ombudsman. In your memorandum, you said that the examination should include the Department's determination of the incumbent's professional qualifications, compensation level, and eligibility for per diem payments.

The individual selected as the Departmental Ombudsman was appointed to the position effective October 4, 1993, under an Intergovernmental Personnel Act (IPA) Assignment Agreement. Her duty station was designated as Washington, D.C., and her initial appointment was effective October 4, 1993, not to exceed September 30, 1994. Her appointment was at the grade of GM-15 at a salary of \$86,589. In accordance with the provisions in her IPA Assignment Agreement, she received per diem payments of \$35 per day while in Washington, D.C. At the time of her appointment, the Ombudsman owned a home in Orange, New Jersey, and was employed by the Newark Board of Education, Newark, New

Jersey, as a school social worker at a salary of \$62,424, which included longevity payments.

#### DISCUSSION:

Regarding the establishment and filling of the Departmental Ombudsman position, we concluded that the establishment of the Departmental Ombudsman position at the GM-15 level was consistent with grade levels of ombudsman positions in other Federal entities and that the classification action was performed in accordance with applicable personnel guidelines. Also, we found that the establishment of a Departmental Ombudsman position in the Department was not unique within the Federal government. We concluded that the excepted appointment of the individual selected for the Departmental Ombudsman position as a temporary Federal employee under an IPA Assignment Agreement was in accordance with applicable personnel regulations. Further, we concluded that there were deficiencies in the processing of the initial IPA Assignment Agreement extension. Specifically, we found evidence that the Office of Personnel did not have an IPA Assignment Agreement signed by all necessary parties at the time it processed the Standard Form 50, Notification of Personnel Action (SF-50), that extended the Ombudsman's excepted appointment from October 1, 1994, through June 30, 1995.

Regarding payment of per diem to the Ombudsman, we concluded that although payment of per diem to the Ombudsman beyond one year was contrary to Federal and Departmental guidelines, the payment of per diem beyond one year under the provisions in her IPA Assignment Agreements was not legally prohibited. Further, in our view, the Ombudsman's sale of her home in New Jersey did not affect her entitlement to receive per diem in accordance with the provisions of the IPA Assignment Agreements under which she was assigned. These Agreements did not make her receipt of per diem contingent upon her residence and we did not find that these provisions were contrary to law. Thus, we believe that the Ombudsman was entitled to the per diem specified in her IPA Assignment Agreements.

We found that the Chief Financial Officer, who is the official authorized to determine the existence and amount of employee debt, did not make a formal decision with respect to the existence of a debt owed by the Ombudsman. We also found that the Chief Financial Officer's authority had not been delegated to the officials who caused the recoupment of the per diem payments. We interviewed these officials and, although their actions resulted in the recoupment of the per diem payments, none of these officials said that they made the determination that a debt existed.

We found that when the Office of General Counsel concurred in the issuance of the demand letter for recoupment of per diem payments that had been made to the Ombudsman, the Office of General Counsel was concurring only in the adequacy of the form of the demand letter and not in the determination that the Ombudsman was not entitled to per diem following the sale of her home. During our discussions with officials in the Office of the Assistant

General Counsel for General Law, we raised questions regarding the legal basis for the determination that a debt existed and the issuance of a demand letter to recoup the per diem payments from the Ombudsman. We understand that the Office of General Counsel has initiated a legal review of issues regarding the payment of per diem to the Ombudsman under her IPA Assignment Agreements. We were told that by August 22, 1996, the Office of General Counsel will provide its legal opinion to the Chief Financial Officer.

We also found that procedures were not in place to ensure that a determination was made whether per diem received by the Ombudsman was subject to Federal tax withholding. Therefore, per diem payments received by the Ombudsman under her IPA Assignment Agreements may not have been subjected by the Department to proper tax withholding.

Of the ten recommendations included in our report, four were made to the Assistant Secretary for Human Resources and Administration, two to the General Counsel, and four to the Chief Financial Officer. We recommended, among other things, that the Assistant Secretary for Human Resources and Administration, in coordination with the Office of the Chief Financial Officer, ensure that the review and approval of initial IPA Assignment Agreements that contain provisions for the payment of per diem, and extensions of those Agreements, include a determination of the appropriateness of providing per diem or continuing per diem; that the General Counsel determine whether payment of per diem to the Ombudsman pursuant to her IPA Assignment Agreements and subsequent to the sale of her residence in New Jersey, and the Department's debt collection action to recoup per diem paid to the Ombudsman after the sale of her residence, were consistent with law and regulation; and that the Chief Financial Officer, based on the legal opinion of the General Counsel regarding the entitlement of the Ombudsman to receive per diem under the provisions of her IPA Assignment Agreements, determine what additional actions are appropriate. Management concurred with all our recommendations.

John C. Layton  
Inspector General

Attachment

cc: Deputy Secretary  
Under Secretary  
General Counsel  
Chief Financial Officer  
Assistant Secretary for Human Resources and Administration  
Director, Office of Economic Impact and Diversity

REPORT ON

INSPECTION OF THE ESTABLISHMENT AND FILLING OF  
THE DEPARTMENT'S OMBUDSMAN POSITION

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WASHINGTON, D.C. 20585

REPORT ON  
INSPECTION OF THE ESTABLISHMENT AND FILLING OF  
THE DEPARTMENT'S OMBUDSMAN POSITION

This is an Office of Inspector General (OIG) Report of Inspection regarding our review of possible personnel irregularities regarding the establishment and filling of the position of Departmental Conflict Resolution Ombudsman (Departmental Ombudsman) and possible irregularities regarding the payment of per diem to the individual selected to fill the position (the Ombudsman).

This inspection was conducted in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

I. INTRODUCTION AND PURPOSE

By memorandum dated December 9, 1995, to the Inspector General, Subject: Independent Examination of Secretarial Foreign Travel, and the Establishment and Filling of the Position of Departmental Ombudsman, the Secretary, Department of Energy (DOE), requested that the Inspector General examine the establishment and filling of the position of Departmental Ombudsman. The Secretary said that the examination should include the Department's determination of the incumbent's professional qualifications, compensation level, and eligibility for per diem payments.

We identified the following issues for review:

1. Were there personnel irregularities relating to the Department's establishment of a GM-15 position of Departmental Ombudsman and the selection and appointment under an Intergovernmental Personnel Act (IPA) Assignment Agreement of the individual selected to fill the position?

2. Was payment to the Ombudsman of per diem for a period of almost two years in accordance with applicable policies and procedures?

II. SCOPE AND METHODOLOGY

In conducting our inspection, we interviewed the Secretary, DOE Headquarters officials in the Office of the Secretary, the Office of the Chief Financial Officer, and the Office of General Counsel, and current and former DOE Headquarters officials in the Office of Economic Impact and Diversity and the Office of Human

Resources and Administration. We also interviewed an individual who worked with the Secretary on the early staffing and organization phases of her administration of the Department. We reviewed applicable Federal and DOE personnel and travel regulations; documents regarding the appointment of the Ombudsman under an IPA Assignment Agreement; documents relating to the payment of per diem expenses to the Ombudsman under the IPA Assignment Agreement; and documents regarding the recoupment of per diem payments from the Ombudsman.

### III. BACKGROUND

The individual selected as the Departmental Ombudsman was appointed to the position effective October 4, 1993, under an IPA Assignment Agreement authorized by 5 U.S.C. 3374, Assignments of employees from State or local governments. Her duty station was designated as Washington, D.C., and her initial appointment was effective October 4, 1993, not to exceed September 30, 1994. Her appointment was at the grade of GM-15 at a salary of \$86,589. At the time of her appointment, the Ombudsman owned a home in Orange, New Jersey, and was employed by the Newark Board of Education, Newark, New Jersey, as a school social worker at a salary of \$62,424, which included longevity payments.

### IV. SUMMARY OF RESULTS

The Secretary told us that she had been concerned with the racial strife and low morale in the Department and felt that something needed to be done. She said that she had known the individual subsequently selected as the Ombudsman for about 35 years. The Ombudsman said that she had offered her services to the Secretary at the Secretary's swearing-in ceremony. According to the individual who had served as liaison to the Transition Team and who had worked with the Secretary on organizing and staffing the Department, the Secretary advised him that the individual subsequently selected as the Ombudsman was willing to come to Washington and the Secretary asked him to see what he could do. By letter dated February 9, 1993, the Ombudsman submitted her resume to the Transition Team liaison. The Transition Team liaison said that he probably came up with the idea of an ombudsman-type position. He said that he had learned of the background of the Ombudsman and he felt this was something that she could do. The Transition Team liaison asked the Director, Office of Personnel, to explore whether the individual subsequently selected as the Ombudsman could be assigned to a position in the Department under the Intergovernmental Personnel Act (IPA). The Director, Office of Personnel, confirmed that such an assignment was allowed under the IPA and said that he received "an okay" from the Transition Team liaison to proceed with an appointment. According to the Secretary, she could not recall giving specific direction to establish an ombudsman position or to put the individual selected as the Ombudsman into the position.

The individual selected as the Ombudsman was appointed as a temporary Federal employee to the position of Departmental

Conflict Resolution Ombudsman (Departmental Ombudsman) under an IPA Assignment Agreement, which was for the period from October 4, 1993, through September 30, 1994. She was appointed at a salary of \$86,589. Her salary with the Newark Board of Education was \$62,424, which included longevity payments. In accordance with the provisions in the IPA Assignment Agreement, she also received per diem payments of \$35 per day while in Washington, D.C.

Regarding the establishment and filling of the Departmental Ombudsman position, we concluded that the establishment of the Departmental Ombudsman position at the GM-15 level was consistent with grade levels of ombudsman positions in other Federal entities and that the classification action was performed in accordance with applicable personnel guidelines. Also, we found that the establishment of a Departmental Ombudsman position in the Department was not unique within the Federal government. We concluded that the excepted appointment of the individual selected for the Departmental Ombudsman position as a temporary Federal employee under an IPA Assignment Agreement was in accordance with applicable personnel regulations. Further, we concluded that there were deficiencies in the processing of the initial IPA Assignment Agreement extension. Specifically, we found evidence that the Office of Personnel did not have an IPA Assignment Agreement signed by all necessary parties at the time it processed the Standard Form 50, Notification of Personnel Action (SF-50), that extended the Ombudsman's excepted appointment from October 1, 1994, through June 30, 1995.

Regarding payment of per diem to the Ombudsman, we concluded that although payment of per diem to the Ombudsman beyond one year was contrary to Office of Personnel Management (OPM), Comptroller General, and Departmental guidelines, the payment of per diem beyond one year under the provisions in her IPA Assignment Agreements was not legally prohibited. Further, in our view, the Ombudsman's sale of her home in New Jersey did not affect her entitlement to receive per diem in accordance with the provisions of the IPA Assignment Agreements under which she was assigned. These Agreements did not make her receipt of per diem contingent upon her residence and we did not find that these provisions were contrary to law. Thus, we believe that the Ombudsman was entitled to the per diem specified in her IPA Assignment Agreements.

The Ombudsman's initial IPA Assignment Agreement, which was for the period from October 4, 1993, through September 30, 1994, contained a provision to pay her \$35 per day while she was in Washington, D.C. Subsequent IPA Assignment Agreements, which extended the period of her assignment through September 30, 1997, also contained the provision regarding per diem payments. We found that the Ombudsman was not provided specific information regarding her responsibilities under the IPA Assignment Agreements and that initially neither the staff of the office to which the Ombudsman was assigned nor the Ombudsman knew how to claim per diem for the Ombudsman under the IPA. The Ombudsman subsequently applied for and received payments of per diem for

the period October 1993 to August 1995.

In late 1995, questions were raised regarding whether she was entitled to per diem payments following the sale of her home in New Jersey in December 1993. Discussions among members of the Office of the Chief Financial Officer and the Office of Human Resources and Administration resulted in a consensus that she was not entitled to receive per diem payments under her IPA Assignment Agreements for the period following the sale of her home. A demand letter was drafted by the Office of the Chief Financial Officer and concurrence obtained from the Assistant General Counsel for General Law. The Ombudsman immediately repaid the amount of per diem payments identified in the demand letter.

We found that the Chief Financial Officer, who is the official authorized to determine the existence and amount of employee debt, did not make a formal decision with respect to the existence of a debt owed by the Ombudsman. The Chief Financial Officer told us that recoupment actions are routinely handled by members of his office and do not require his specific approval. The Chief Financial Officer said that three offices were involved in making the determination that the Ombudsman needed to repay per diem that she received following the sale of her home in New Jersey. He said that he was aware that a determination had been made and that a demand letter had been sent to the Ombudsman to recoup the per diem payments, but that he did not take any specific action, such as signing a formal document, to establish the existence of a debt. He said that since his office took action to recoup the per diem payments, he was responsible for the action.

We found that the Chief Financial Officer's authority had not been delegated to the officials who caused the recoupment of the per diem payments. When we interviewed the Director, Office of Headquarters Accounting Operations, regarding the authority to determine the existence and amount of employee debt, he said that he had been making these determinations, but had been recently advised that he did not have written delegated authority to perform this function on behalf of the Chief Financial Officer. He said that, with respect to the Ombudsman, he had not made the determination that a debt existed. We also interviewed the other officials involved in the process of recouping the per diem payments from the Ombudsman. Although their actions resulted in the recoupment of the per diem payments, none of these officials said that they made the determination that a debt existed.

We found that when the Office of General Counsel concurred in the issuance of the demand letter for recoupment of per diem payments that had been made to the Ombudsman, the Office of General Counsel was concurring only in the adequacy of the form of the demand letter and not in the determination that the Ombudsman was not entitled to per diem following the sale of her home. During our discussions with officials in the Office of the Assistant General Counsel for General Law, we raised questions regarding the legal basis for the determination that a debt existed and the issuance of a demand letter to recoup the per diem payments from



the Ombudsman. We understand that the Office of General Counsel has initiated a legal review of these matters.

We also found that procedures were not in place to ensure that a determination was made whether per diem received by the Ombudsman was subject to Federal tax withholding. Therefore, per diem payments received by the Ombudsman under her IPA Assignment Agreements may not have been subjected by the Department to proper tax withholding.

## V. RESULTS OF INSPECTION

### ESTABLISHMENT OF POSITION AND APPOINTMENT OF OMBUDSMAN

1. Were there personnel irregularities relating to the Department's establishment of a GM-15 position of Departmental Ombudsman and the selection and appointment under an Intergovernmental Personnel Act (IPA) Assignment Agreement of the individual selected to fill the position?

We divided this issue into three sub-issues. We reviewed (A) whether there were personnel irregularities regarding the establishment of the Departmental Ombudsman position; (B) whether there were personnel irregularities regarding the initial appointment of the Ombudsman under her IPA Assignment Agreement; and (C) whether there were personnel irregularities regarding extensions of the Ombudsman's initial IPA appointment.

Regarding the establishment and filling of the Departmental Ombudsman position, we concluded that the establishment of the Departmental Ombudsman position at the GM-15 level was consistent with grade levels of ombudsman positions in other Federal entities and that the classification action was performed in accordance with applicable personnel guidelines. Also, we found that the establishment of a Departmental Ombudsman position in the Department was not unique within the Federal government. We concluded that the excepted appointment of the individual selected for the Departmental Ombudsman position as a temporary Federal employee under an IPA Assignment Agreement was in accordance with applicable personnel regulations. Further, we concluded that there were deficiencies in the processing of the initial IPA Assignment Agreement extension. Specifically, we found evidence that the Office of Personnel did not have an IPA Assignment Agreement signed by all necessary parties at the time it processed the Standard Form 50, Notification of Personnel Action (SF-50), that extended the Ombudsman's excepted appointment from October 1, 1994, through June 30, 1995.

#### A. Establishment of the Departmental Ombudsman Position

We concluded that the establishment of the Departmental Ombudsman position at the GM-15 level was consistent with grade levels of ombudsman positions in other Federal entities and the classification action was performed in accordance with applicable personnel guidelines. Also, we found that the establishment of a

Departmental Ombudsman position in the Department was not unique within the Federal government.

In 1990, the Administrative Conference of the United States recommended the establishment of ombudsman positions in Federal agencies that deal with the public. The recommendation provided in part that "Federal agencies that administer programs with major responsibilities involving significant interactions with members of the general public are likely to benefit from establishing an ombudsman service." In a report issued in May 1991, the Administrative Conference of the United States recognized that "Ombudsmen come in a variety of forms. For example, internal employee grievance officers and information-and-referral officers may use the name."

Data collected as part of a study of ombudsman positions within the Federal government conducted by a visiting fellow in the Office of the Ombudsman, Federal Deposit Insurance Corporation, showed that as of January 3, 1996, 14 Federal entities had established ombudsman positions that dealt primarily with internal disputes. The grades for the positions ranged from GS-14 to Senior Executive Service.

With respect to the establishment of the DOE Departmental Ombudsman position, the Secretary said that she had been concerned with the racial strife and low morale in the Department and felt that something needed to be done. She said that an individual who had been serving as liaison with the Transition Team and who had been responsible for such things as personnel matters determined the need for an ombudsman. She said that she understood the concept of an ombudsman. She also said that she could not recall giving specific direction to establish an ombudsman position and that it was her practice not to "meddle" in the establishment of positions. She said that the Transition Team liaison mentioned to her that the individual subsequently selected for the Departmental Ombudsman position would be a "good fit" for the position.

According to the individual who had served as liaison to the Transition Team, he assisted the then Secretary-designate (the Secretary), as early as December 1992, with organization and staffing planning for the Department. He said that one of the Secretary's early goals was to address employee morale and create an atmosphere of openness. He also said that an ombudsman-type position was considered to carry out this goal and that he might well have raised the concept of an ombudsman position. He said that he had learned of the background of the individual subsequently selected as the Ombudsman and felt that this was something she could do.

According to the Director, Office of Personnel, it was his understanding that it was the Secretary's assessment that the Department needed help in employee morale and dispute resolution. He said that he was told by the Transition Team liaison that the individual selected for the Departmental Ombudsman position could fill the need.

Actions were subsequently initiated to establish the Departmental Ombudsman position. Although we could not determine who prepared the initial draft position description, a draft position description was reviewed and edited by the then Acting Director of the Office of Civil Rights, Office of Economic Impact and Diversity (ED), the office to which the Departmental Ombudsman position was to be assigned. The position description was then evaluated against the Administrative Analysis - Grade Evaluation Guide (Guide), TS-98, dated August 1990, by a Personnel Management Specialist and a Classification Specialist in the Office of Personnel. Both these individuals signed the Position Evaluation Statement, which summarized the points assigned to the various evaluation factors for the position. The points assigned to the Position Evaluation Statement for the Departmental Ombudsman position description resulted in the position being classified at the grade 15 level.

Following the determination that the position description supported a position at the grade 15 level, the Acting Director, ED, certified that the duties and responsibilities of the position were accurately stated in the position description and the position was necessary to carry out government functions for which he was responsible. In addition, the Office of Personnel Classification Specialist certified that the position had been classified consistent with the most applicable standards published by the Office of Personnel Management.

#### B. Initial Appointment of the Ombudsman

We concluded that the excepted appointment of the individual selected for the Departmental Ombudsman position as a temporary Federal employee under an IPA Assignment Agreement, for the period from October 4, 1993, through September 30, 1994, was in accordance with applicable personnel regulations. In the following sections, we will discuss how the candidate was identified for the Ombudsman position; the appointment of the candidate under the authority of the IPA; the process by which the Department determined the candidate was qualified for the position; and the basis for the Department's appointment of the Ombudsman at a salary higher than her non-Federal salary.

##### Identification of the Candidate for Ombudsman Position

The Secretary said that she had known the Ombudsman for about 35 years. According to the Ombudsman, she had offered her services to the Secretary at the Secretary's swearing-in ceremony. With respect to contacts between the Ombudsman and the Secretary prior to the Ombudsman's appointment, the Secretary said that the Ombudsman may have called her once or twice before the Ombudsman accepted the position. The Secretary said the conversations concerned the Ombudsman's ambivalence about leaving New Jersey to come to Washington, D.C. The Secretary said she might have discussed with the Ombudsman, prior to the Ombudsman's appointment, the fact that the Ombudsman could return to New Jersey after her assignment. The Secretary also said she had told the Ombudsman that she would probably have to leave in four years if she (the Secretary) left. The Secretary said that she

had no discussions with the Ombudsman or anyone regarding salary, grade level, or type of appointment for the Ombudsman. She also said that she did not ask to be kept informed of the status of the Ombudsman's personnel action, nor was she kept informed.

According to the individual who had served as liaison to the Transition Team and who had worked with the Secretary on organizing and staffing the Department, the Secretary advised him that the individual subsequently selected as the Ombudsman was willing to come to Washington and the Secretary asked him to see what he could do.

By letter dated February 9, 1993, the Ombudsman submitted her resume to the Transition Team liaison. The Transition Team liaison said that the Ombudsman was seen as a "good fit" for the ombudsman-type position and that he asked the Director, Office of Personnel, to explore whether the Ombudsman could be assigned to a position in the Department under the IPA.

The Director, Office of Personnel, said that once he saw that the Ombudsman worked for the Newark, New Jersey, school system, he believed that an IPA assignment was an option. Notes of staff members in the Office of Personnel show that they had determined the Ombudsman was eligible for assignment under the IPA. The Director, Office of Personnel, said that he confirmed that such an assignment was allowed under the IPA and said that he received "an okay" from the Transition Team liaison to proceed with an appointment.

The Secretary said that she could not recall giving specific direction to establish an ombudsman position or to put the individual selected as Ombudsman in the position.

#### Use of IPA Authority to Make Appointment

The Ombudsman was appointed under the authority of the provision of the IPA codified as 5 U.S.C. 3374. That section provides that:

"An employee of a State or local government who is assigned to an executive agency under this subchapter may -- (1) be appointed in the executive agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment or (2) be deemed on detail to the executive agency."

Under the provisions of the IPA cited above, an individual on an IPA assignment may be given a temporary appointment as a Federal employee or they may be assigned by detail to a Federal agency. The Ombudsman, who is an employee of the Newark Board of Education, was appointed as a temporary Federal employee under her IPA Assignment Agreement. According to the Personnel Management Specialist, who identified herself as the Department's expert on the IPA, this was the first IPA assignment that she had seen where the employee was appointed to a position rather than detailed to the Department. She said that normal practice under

IPA Assignment Agreements was to detail the individual to the Department. She said that under the appointment, the Department had greater flexibility in terms of salary that could be offered to the Ombudsman. Specifically, only through an appointment could the Department use the Superior Qualifications Appointment authority to obtain the salary level desired by the Ombudsman.

We reviewed applicable statute, regulations, and provisions of the Federal Personnel Manual (FPM) that were in effect at the time of the Ombudsman's appointment. As an appointee to a Federal position, the Ombudsman was eligible for pay at an advanced step (up to Step 10) for the GM-15 position based on regulations regarding superior qualifications appointments. Individuals who are detailed to a position, the duties of which have not been classified, continue to receive a rate of pay based on their non-Federal job. If the individuals are assigned by detail to a position, the duties of which have been classified at a particular grade level, they are entitled to have their pay supplemented by the Federal agency if their state or local salary is less than the minimum rate of pay (Step 1) for the Federal position. In any case, the Federal agency may agree to pay all, some, or none of the costs, including supplemental pay, associated with an assignment.

#### Determination of Candidate's Qualifications

The Director, Office of Personnel, in approving the Request To Use Appointment Above-The-Minimum Rate For Superior Qualification for the Ombudsman's appointment at a salary at the step 10 of the GM-15 grade level, also made the determination that the Ombudsman met the qualification requirements for appointment at the GM-15 level. He signed the request form based on the recommendation of a Personnel Staffing Specialist who was assigned to review the documentation for the appointment of the Ombudsman above-the-minimum rate.

In comments dated July 8, 1996, on our initial draft report, the Assistant Secretary for Human Resources and Administration said that the Director of Personnel (currently the Deputy Assistant Secretary for Human Resources) was at that time and is still the appropriate approving official for advanced-in-hire (above-the-minimum) rates, which, as in this case, are more than 20 percent higher than a candidates existing pay. Our review of DOE Order 3550.1A, Pay Administration and Hours of Duty, Change 2, dated August 21, 1992, showed that the Director of Personnel has the authority and responsibility for approving the appointment of an employee to a position in grade GS-11 or above at a rate above the minimum rate of the grade, i.e., an advanced-in-hire rate. Our review of additional documentation provided by the Office of Human Resources showed that the Director, Office of Personnel, was the official with the authority to approve salary rates that exceeded applicants existing pay by more than 20 percent.

The Office of Personnel staff that we interviewed, who had responsibility for processing the Ombudsman's IPA appointment or for effecting the personnel action appointing her to the

Ombudsman position, said that they did not review the Ombudsman's Form SF-171, Application for Federal Employment, to determine her qualifications for the position at the GM-15 level. Documents provided by the Office of Personnel show that based on a review of the initial SF-171 submitted by the Ombudsman, staff members within the Office of Personnel had raised questions regarding the Ombudsman's qualifications for the GM-15 level position. Subsequently, the Ombudsman submitted a revised SF-171. The Personnel Management Specialist to whom the Ombudsman submitted her SF-171 said that she had not made a determination of the Ombudsman's qualifications at the GM-15 level based on a review of her SF-171. According to the staff member whose office normally would have processed an IPA assignment to a position in the Office of Economic Impact and Diversity (ED), a review of an individual's qualifications is routinely conducted by the office prior to an assignment. She said that her office did not have responsibility for the assignment of the Ombudsman and her staff had not conducted such a review of the individual's qualifications in this case.

However, the Personnel Staffing Specialist, who reviewed the documentation for the appointment of the Ombudsman above-the-minimum rate, said that her review included a review of the Ombudsman's SF-171. She said that based on her review, she determined that the Ombudsman met the qualification requirements for the GM-15 position and that appointing the Ombudsman to a position above-the-minimum rate was justified. She said that, as a result, she signed the Request To Use Appointment Above-The-Minimum Rate For Superior Qualification form recommending approval and forwarded the form to the Director, Office of Personnel.

The Director, Office of Personnel, said that he believed the Ombudsman's appointment at the GM-15 level was justified. We reviewed the undated Request To Use Appointment Above-The-Minimum Rate For Superior Qualification form signed by the Director, Office of Personnel. According to the request form, his signature approved the proposal to select the candidate for the position of Departmental Conflict Resolution Ombudsman, GM-301-15, at a salary of \$86,589 per annum (GM-15, Step 10).

#### Determination of Candidate's Salary Level

The payment by the Department of the salary requested by the Ombudsman, which was higher than the salary she received with the Newark Board of Education, was allowable under applicable personnel regulations. According to documents provided by the Newark Board of Education, the Ombudsman's salary, including longevity payments, was \$62,424. The Ombudsman requested a salary of \$87,000 on the SF-171s that she submitted. She subsequently was appointed at the maximum salary level for a GS-15 (GM-15), which was \$86,589. The salary level of \$86,589 was approved by the Director, Office of Personnel, based on her qualifications, the specialized job requirements, and special need of the Department for her services.

By memorandum dated July 8, 1996, the Assistant Secretary for Human Resources and Administration provided comments on our

initial draft report. He said that:

"Elements of the discussion on page 18 of the initial draft report of the Inspector General invite the perception that, upon joining the Department of Energy, [the Ombudsman] benefited financially, over and above her earnings when employed by the Newark Board of Education. It is important to note that [the Ombudsman's] work year in New Jersey was 900 hours; her work year at the Department of Energy is 2000 hours. Thus, while her gross annual salary increased by 28 % when she joined the Department of Energy, the total number of hours she worked per year increased by 55 %. On this basis of comparison, [the Ombudsman] worked for less pay per hour at the Department of Energy than she did with the Newark Board of Education. In addition, by coming to the Department of Energy, [the Ombudsman] lost several pension benefits and was required to accept a reduced level of sick leave accrual."

We contacted the Newark Board of Education with respect to the work requirements of Board of Education employees. We were advised by the Assistant Personnel Director of the Newark Board of Education that 10-month employees, such as the Ombudsman, were expected to perform classroom work 180 days per year; the workday was considered to be five and one-half hours per day; and with days off, the total workyear consisted of 211 days. He also advised us that the salaries of 10-month employees were considered to constitute five-sixths of the salary of employees that work 12 months per year. The Assistant Personnel Director said that if someone wanted to calculate an hourly salary rate, they could divide the employees annual salary rate by the total workyear hours, i.e., 5.5 hours times 211 days.

#### Applicable Federal Statute, Rules, and Regulations

Federal statute states that:

"New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management, which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose." (5 U.S.C. 5333).

The FPM stated, with respect to IPA assignees, that:

"Normally, a State or local government employee is appointed at the minimum rate of the grade. If an agency wants to pay an advanced step rate for a position at GS 11 through GS 15 based upon superior qualifications of the applicant, it must either: (1) obtain prior written approval from the appropriate office of OPM . . . or (2) make its own determination under a delegation agreement authorized by OPM for that

purpose." (FPM Chapter 334, Temporary Assignments Under the Intergovernmental Personnel Act, subchapter 4, subparagraph 4-3a(3), dated December 1, 1983).

OPM regulations published in the Federal Register on October 22, 1991, which became effective on November 21, 1991, authorized agencies to make superior qualifications appointments and removed the requirement for OPM approval for salary increases above 20 percent of their non-Federal salary. As part of the regulations, OPM required that: "[E]ach agency using the superior qualifications authority must establish appropriate internal guidelines and evaluation procedures to ensure compliance with law, these regulations, and agency policies." (5 C.F.R. 531.203(b)(5), Superior qualifications appointments).

#### Internal Departmental Guidelines and Evaluation Procedures

We obtained internal Departmental guidelines for superior qualifications appointments from files maintained by the Personnel Management Specialist responsible for preparing the Ombudsman's IPA Assignment Agreement. These internal guidelines required that justifications for superior qualifications appointments address certain factors, including:

"1. A brief description of the purpose and requirements of the position which the candidate has been offered (summary of the position description and any other pertinent information).

"2. A description of the candidate's qualifications compared to the requirements of the position.

"- How do the candidate's qualifications compare to the fully successful standard for the position?

"- If there is special need for candidate's unique talents no formal nor informal recruitment has been done, describe the nature of the special need, as follows:

- "o articulated agency mission and expressed Secretarial priority as it relates to this position;
- "o reason for not advertizing conducting [sic] informal recruitment;
- "o recent experience or other judgment factors which support organization's conclusion that recruitment would not be likely to produce equally well-qualified candidates with less expensive salary requirements.

"3. Candidate's current or prospective pay situation and documentation:



"- Current salary (attach earnings statement).

1- Pay which will be forfeited upon federal employment (attach and annotate supporting documentation).

"o benefits such as health/life/retirement plans substantially better or less expensive than comparable Federal benefits.

"o bonuses received on a regular basis (reflected on earnings statement or other documentation). . . ."

In addition, the Department uses a form, Request To Use Appointment Above-The-Minimum Rate For Superior Qualification, for the processing of requests for superior qualifications appointments. This form describes the following documents as possible attachments: "Memorandum of Request with appropriate concurrence; Selectee's SF-171, classified position description; Written justification which identifies all pertinent information; Documentation of existing pay which is in agreement with SF-171 and written justification; Offer letter, declination letter or certification by staffing specialist that offer was made at the step 1 and was declined because of pay consideration."

#### Documentation In Support of the Ombudsman's Superior Qualifications Appointment

We reviewed the undated Request To Use Appointment Above-The-Minimum Rate For Superior Qualification form for the appointment of the Ombudsman, which had been signed and approved by the Director, Office of Personnel. This request form had items checked indicating that of the possible attachments to the request, the Director, Office of Personnel, had been provided the possible attachments described above except for a "Memorandum of Request with appropriate concurrence" and an "offer letter, declination letter or certification by staffing specialist that offer was made at the step 1 and was declined because of pay consideration." The written justification described above was a document titled JUSTIFICATION FOR ADVANCED-IN-HIRE.

According to the JUSTIFICATION FOR ADVANCED-IN-HIRE document, the Ombudsman ". . . declined an offer of employment extended by DOE at the GM-15, step 1 salary." However, no one that we interviewed said that an offer of salary at the Step 1 level had been made to the Ombudsman and declined. The Director, Office of Personnel, said that prior to the appointment of the Ombudsman, he had discussions with her, including discussions regarding salary. He said that he was given the impression by the Ombudsman during these discussions that she would not accept a salary lower than the \$87,000 that she had indicated on her SF-171. According to the Major Federal Civilian White Collar Pay Schedules Effective January 1993, \$87,000 was approximately the salary level for a grade 15, step 10 Federal employee.

The JUSTIFICATION FOR ADVANCED-IN-HIRE also included a discussion of the special needs of ED; the Ombudsman's experience; and the

fact that her employer would not continue her life insurance or deferred annuity plan during her IPA assignment. According to the document, she would not be eligible for Federal government life insurance or annuity coverage and would have to obtain these benefits through private programs.

Regarding the special needs of ED, according to the JUSTIFICATION FOR ADVANCED-IN-HIRE, the Ombudsman:

". . . was offered the position of Departmental Conflict Resolution Ombudsman in the Office of Economic Impact and Diversity. This is a key position to the successful accomplishment of the organization's mission; developing and administering Departmental policies, practices and procedures under Title VI and VII of the Civil Rights Act of 1964. These efforts improve administrative mechanisms, processes and procedures for preventing and resolving conflicts and, at the same time, retain and preserve the statutory and legal due process rights of the parties involved.

"The duties of the position include advising management on the application of alternative dispute resolution; reviewing and analyzing other successful dispute resolution programs and systems; developing proposals to fit the needs of the Department; designing proposals to provide complainant and responsible management officials with several opportunities to prevent and avoid disputes; resolving issues and conflicts informally and at the earliest state; coordinating the implementation of alternative dispute resolution (ADP) [sic] pilot program; and designing and implementing a pilot program for Headquarters and field offices."

Regarding the Ombudsman's superior qualifications, according to the JUSTIFICATION FOR ADVANCED-IN-HIRE, her:

". . . superior qualifications for the position are evidenced by the breadth and depth of 30 years experience as a social worker with the Newark Board of Education. In that capacity, she demonstrated exemplary skills in problem resolution. She is also the social work representative with a team of psychologists which trains all teachers in problem solving, conflicts, dispute identification, classification, and resolution and prevention. She initiates proposals, trains staff, implements pilot programs, and develop [sic] policy. Her team specializes in resolving problems that result from crisis situations. In addition, she works with family problems such as suicide, homicide, pregnancy, child care, neglect, abuse, gang involvement and substance abuse. She is a member of the Child Study Team which evaluates and provides service to students with special needs and disabilities."

The Ombudsman said that her salary request of \$87,000 was based

on her assessment of an annual salary equivalent to the salary that she was paid by the Newark Board of Education for the ten-month, 5-hour per day, school year (\$62,424). Notes provided by the Personnel Management Specialist who worked on the appointment of the Ombudsman showed that she performed computations that equated the Ombudsman's salary from the Newark Board of Education to \$74,908, when computed on a full time, 12-month basis. No one in the Office of Personnel provided us computations that showed a dollar comparison between the salary the Ombudsman was paid by the Department and her current or prospective pay situation based on her salary and associated benefits with the Newark Board of Education. According to the Director, Office of Personnel, he was certain that the Ombudsman would not have accepted a salary less than the amount that she had first specified on her SF-171, i.e., \$87,000.

#### Consideration of Non-Federal Salary in Making Superior Qualifications Appointment Determinations

Regarding superior qualifications appointments, OPM regulations, which became effective on November 21, 1991, gave agencies greater authority and discretion to make such appointments. These regulations are found at 5 C.F.R. 531.203 (b). The supplemental information published with the regulation in the Federal Register on October 22, 1991, specifically provided that:

"We find therefore, that requiring OPM approval for rates more than 20 percent higher than a candidate's existing pay is not necessary to ensure prudent use of this authority. We have also noted that the need to comply with the 20 percent limit may lead agencies to give undue weight to existing pay in justifying and documenting advanced rates. In fact, the candidate's qualifications in relation to other candidates and specialized job requirements, or to special need of the agency, carry equal weight under the law. [Emphasis added.]"

In our view, the granting by the Department of the higher salary level to the Ombudsman under the authorities cited above was allowable under applicable personnel regulations.

#### C. Extensions of the Ombudsman's IPA Assignment Agreement

##### Initial Extension

We concluded that there were deficiencies in the processing of the initial IPA Assignment Agreement extension. Specifically, we found evidence that the Office of Personnel did not have an IPA Assignment Agreement signed by all necessary parties at the time it processed the Standard Form 50, Notification of Personnel Action (SF-50), that extended the Ombudsman's excepted appointment from October 1, 1994, through June 30, 1995.

OPM regulations require a signed IPA Assignment Agreement before an appointment can be effected (5 C.F.R. 334.106(a)). According

to the regulations, before an assignment is made the Federal agency, the local government, and the assigned employee "shall enter into a written agreement" which records the obligations and responsibilities of the parties as specified in 5 U.S.C. 3373 - 3375 and in FPM Chapter 334.

On September 12, 1994, the ED Director sent a memorandum to the Office of Personnel's Staff Programs Service Branch, requesting that the Ombudsman's appointment be extended. An SF-50 was approved by the Office of Personnel on September 22, 1994, extending the Ombudsman's appointment from October 1, 1994, for a period not to exceed June 30, 1995. The SF-50, which effected the Ombudsman's continued appointment under the IPA from October 1, 1994, for a period not to exceed June 30, 1995, cited 5 U.S.C. 3374 (the Intergovernmental Personnel Act) as the authority for the continued appointment. The Director, Office of Personnel, signed the IPA Assignment Agreement extension document on September 23, 1994, which extended her assignment for the period October 1, 1994, through September 30, 1995, and by letter dated the same day, forwarded the document to the Newark Board of Education for its approval.

We reviewed a September 22, 1994, Routing and Transmittal Slip, which was from a Personnel Specialist in the Office of Personnel to, among others, the Director, Office of Personnel. We found the Slip, which related to the extension of the appointment of the Ombudsman, in a working file maintained by the Office of Personnel. An undated handwritten note on the Slip, which was added by the Personnel Specialist, stated that the Human Resource Service Manager, Newark Board of Education: "Called 9/29/94. She's signing the approval to extend [the Ombudsman's] appt. There is no problem. She will Fax a copy Fri. or Mon. morning."

However, we reviewed a May 26, 1995, note from the Personnel Management Specialist who worked on the appointment of the Ombudsman to the Director, Office of Personnel, that said the signed Agreement was not sent to DOE. According to the note, the Newark Board of Education had verbally approved the extension of the Ombudsman's IPA assignment, but had never forwarded the Department a copy of the signed agreement.

On February 9, 1996, the Assistant Personnel Director, Newark Board of Education, provided us a copy of the IPA Assignment Agreement extension document for the period October 1, 1994, through September 30, 1995. We noted that although he had signed the document, his signature was not dated.

Our review of a copy of the IPA Assignment Agreement extension document found in Office of Personnel working files, which was signed by the Director, Office of Personnel, on September 23, 1994, and forwarded to the Newark Board of Education for its approval, showed that the document did not contain the signature of the Ombudsman. The copy of the IPA Assignment Agreement extension document provided to us by the Assistant Personnel Director, Newark Board of Education, did not contain the Ombudsman's signature, but did contain the undated signature of the Assistant Director of Personnel, Newark Board of Education,

and the signature dated September 23, 1994, of the Director, Office of Personnel. However, a copy of the IPA Assignment Agreement extension document provided to us by the Deputy Director of the Department's Headquarters Personnel Services Division, which had been sent to the Office of Personnel by the Newark Public Schools, Human Resource Services, by facsimile on June 5, 1995, contained the signature of the Ombudsman and the signature of the Director, Office of Personnel, both dated September 23, 1994, and the undated signature of the Assistant Director of Personnel, Newark Board of Education.

#### Subsequent Extension of IPA Assignment

We concluded that the second extension of the Ombudsman's IPA Assignment Agreement was properly processed.

According to OPM regulations, assignments under IPA agreements can be for up to four years (5 C.F.R. 334.104). We reviewed the IPA Assignment Agreement document to extend the Ombudsman's appointment from October 1, 1995, through September 30, 1997. The document contained the signature of the Ombudsman, dated June 8, 1995, the signature of the Deputy Assistant Secretary for Human Resources, dated June 15, 1995, and the signature of the Assistant Personnel Director, Newark Board of Education, dated September 27, 1995. We also reviewed the SF-50 for the extension of the Ombudsman's appointment. The SF-50 was effective on October 1, 1995, after all the required signatures were affixed to the IPA Assignment Agreement.

#### PAYMENT OF PER DIEM UNDER THE IPA ASSIGNMENT AGREEMENT

2. Was payment to the Ombudsman of per diem for a period of almost two years in accordance with applicable policies and procedures?

Regarding payment of per diem to the Ombudsman, we concluded that although payment of per diem to the Ombudsman beyond one year was contrary to OPM, Comptroller General, and Departmental guidelines, the payment of per diem beyond one year under the provisions in her IPA Assignment Agreements was not legally prohibited. Further, in our view, the Ombudsman's sale of her home in New Jersey did not affect her entitlement to receive per diem in accordance with the provisions of the IPA Assignment Agreements under which she was assigned. These Agreements did not make her receipt of per diem contingent upon her residence and we did not find evidence that these provisions were contrary to law. Thus, we believe that the Ombudsman was entitled to the per diem specified in her IPA Assignment Agreements.

The Ombudsman's initial IPA Assignment Agreement, which was for the period from October 4, 1993, through September 30, 1994, contained a provision to pay her \$35 per day while she was in Washington, D.C. Subsequent IPA Assignment Agreements, which extended the period of her assignment through September 30, 1997, also contained the provision regarding per diem payments. We found that the Ombudsman was not provided specific information regarding her responsibilities under the IPA Assignment

Agreements and that initially neither the staff of the office to which the Ombudsman was assigned nor the Ombudsman knew how to claim per diem for the Ombudsman under the IPA. The Ombudsman subsequently applied for and received payments of per diem for the period October 1993 to August 1995.

In late 1995, questions were raised regarding whether she was entitled to per diem payments following the sale of her home in New Jersey in December 1993. Discussions among members of the Office of the Chief Financial Officer and the Office of Human Resources and Administration resulted in a consensus that she was not entitled to receive per diem payments under her IPA Assignment Agreements for the period following the sale of her home. A demand letter was drafted by the Office of the Chief Financial Officer and concurrence obtained from the Assistant General Counsel for General Law. The Ombudsman immediately repaid the amount of per diem payments identified in the demand letter.

We found that the Chief Financial Officer, who is the official authorized to determine the existence and amount of employee debt, did not make a formal decision with respect to the existence of a debt owed by the Ombudsman. The Chief Financial Officer told us that recoupment actions are routinely handled by members of his office and do not require his specific approval. The Chief Financial Officer said that three offices were involved in making the determination that the Ombudsman needed to repay per diem that she received following the sale of her home in New Jersey. He said that he was aware that a determination had been made and that a demand letter had been sent to the Ombudsman to recoup the per diem payments, but that he did not take any specific action, such as signing a formal document, to establish the existence of a debt. He said that since his office took action to recoup the per diem payments, he was responsible for the action.

We found that the Chief Financial Officer's authority had not been delegated to the officials who caused the recoupment of the per diem payments. When we interviewed the Director, Office of Headquarters Accounting Operations, regarding the authority to determine the existence and amount of employee debt, he said that he had been making these determinations, but had been recently advised that he did not have written delegated authority to perform this function on behalf of the Chief Financial Officer. He said that, with respect to the Ombudsman, he had not made the determination that a debt existed. We also interviewed the other officials involved in the process of recouping the per diem payments from the Ombudsman. Although their actions resulted in the recoupment of the per diem payments, none of these officials said that they made the determination that a debt existed.

We found that when the Office of General Counsel concurred in the issuance of the demand letter for recoupment of per diem payments that had been made to the Ombudsman, the Office of General Counsel was concurring only in the adequacy of the form of the demand letter and not in the determination that the Ombudsman was not entitled to per diem following the sale of her home. During

our discussions with officials in the Office of the Assistant General Counsel for General Law, we raised questions regarding the legal basis for the determination that a debt existed and the issuance of a demand letter to recoup the per diem payments from the Ombudsman. We understand that the Office of General Counsel has initiated a legal review of these matters.

We also found that procedures were not in place to ensure that a determination was made whether per diem received by the Ombudsman was subject to Federal tax withholding. Therefore, per diem payments received by the Ombudsman under her IPA Assignment Agreements may not have been subjected by the Department to proper tax withholding.

#### Provisions For the Payment of Per Diem Under IPA Assignment Agreements

The provisions of the IPA and FPM guidelines permitted the payment of per diem to an individual appointed under the IPA while at the location to which they are assigned.

The payment of per diem to an IPA assignee is specifically authorized by the Intergovernmental Personnel Act. The Act permits the payment of:

"(A) travel, including a per diem allowance, to and from the assignment location;

"(B) a per diem allowance at the assignment location during the period of the assignment; and

"(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the executive agency considers the travel in the interest of the United States . . . ." (5 U.S.C. 3375).

The Act also permits the payment of expenses for the relocation of an assignee, his or her immediate family, and the transportation of household goods and personal effects. However, guidance contained in both the FPM and decisions of the Comptroller General permit paying per diem or relocation expenses, but not both.

The FPM, in effect at the time of the Ombudsman's appointment, provided that:

"Agencies are authorized to pay either relocation expenses to and from the assignment location or a per diem allowance at the assignment location during the period of the assignment. The agency may select either of these approaches to relocation and living expenses but cannot pay both types of costs. The cost to the government should be a major factor taken into account when determining which approach will be used. A per diem allowance at the assignment location is intended for short term assignments and not for longer

assignments." (FPM Chapter 334, subchapter 1, subparagraph 1-7b, dated December 1, 1983).

#### Provisions For Payment of Per Diem Under the Ombudsman's Initial IPA Assignment Agreement

The provision contained in the Ombudsman's initial IPA Assignment Agreement providing for her to receive per diem while she was in Washington, D.C., was consistent with Departmental practice.

The initial IPA Assignment Agreement, which was for the period from October 4, 1993, through September 30, 1994, was signed by the Ombudsman and the Director, Office of Personnel, and agreed to by the Newark Board of Education. This IPA Assignment Agreement included a provision to pay the Ombudsman per diem at the rate of \$35 per day. The Director, Office of Personnel, said that the payment to the Ombudsman of per diem was appropriate given her residence in New Jersey at the time of her appointment. A travel policy specialist in the Office of Financial Policy, Office of the Chief Financial Officer, said that IPA assignees to Washington, D.C., with homes elsewhere, receive per diem, but that individuals assigned to Washington, D.C., from within their commuting areas do not receive per diem. We reviewed copies of IPA Assignment Agreements that were provided to us by the Office of Human Resources for two IPA assignees to Washington, D.C. These showed that the IPA assignees, who lived in the local commuting area, were not paid per diem. However, we did not find a legal requirement for the Ombudsman to maintain a residence outside of the Washington, D.C., commuting area to receive per diem under the provisions of her IPA Assignment Agreements.

#### Payment of Per Diem Under Initial IPA Assignment Agreement Extension

We concluded that although payment of per diem to the Ombudsman beyond one year was contrary to OPM, Comptroller General, and Departmental guidelines, the payment of per diem beyond one year under the provisions in her IPA Assignment Agreements was not legally prohibited.

According to the FPM:

"A per diem allowance at the assignment location is intended for short term assignments and not for longer assignments. Per diem allowances should not be paid for more than one year." (FPM Chapter 334, subchapter 1, subparagraph 1-7b, dated December 1, 1983).

A Comptroller General decision cited the provisions of FPM Chapter 334, subchapter 1, paragraph 1-7b and stated ". . . we expect that agencies will follow the principles set out in . . . December 1983 Office of Personnel Management guidance for subsequent IPA assignments." (Comptroller General, in Matter of William T. Burke, B-207447, 1984 U.S. Comp. Gen. LEXIS 1354).

Prior to appointment of the Ombudsman, the Acting Director, Personnel Policy Division, Office of Personnel, provided the



Director, Office of Personnel, with information attached to an undated note regarding the IPA assignment of the Ombudsman. Included in the information was a description of travel and transportation expenses that the Department could pay to an IPA assignee. According to the information provided:

"DOE may provide the following: . . . Payment for either relocation expenses to and from the assignment location or a per diem allowance at the assignment location during the period of assignment. Either may be paid but not both; per diem should not be paid for more than one year. [Emphasis added.]"

In addition, a note dated April 22 (sent in 1994), to the ED Director from the Director, Office of Personnel, provided to the ED Director a copy of applicable Federal guidelines regarding payment of per diem to IPA assignees, such as the Ombudsman. The guidelines provided included a copy of FPM Chapter 334, Subchapter 1, Subsection 1-7b, which specified that "Per diem allowances should not be paid for more than one year." In his note, the Director, Office of Personnel, stated: ". . . looks like we are well within the intent of the policy -- for the first year of the assignment."

Contrary to the guidelines cited above, the Department continued to provide for the payment of per diem to the Ombudsman beyond her initial one-year IPA Assignment Agreement. Our review of the Ombudsman's IPA Assignment Agreement extensions for the period from October 1, 1994, through September 30, 1995, and the period from October 1, 1995, through September 30, 1997, showed they contained the provision that: "Per diem will be paid at the rate of \$35 to be reduced by the \$3 meal portion when on official travel."

Our review of the Ombudsman's travel vouchers showed that vouchers were submitted for, and that she received per diem payments for, the period from October 4, 1993, through August 31, 1995. Although Departmental guidelines would limit the payment of per diem to one year, and the Department did not adhere to these guidelines by continuing to sign IPA Assignment Agreements that contained the provision to pay per diem to the Ombudsman, we found no legal prohibition against providing in an IPA Assignment Agreement for the payment of per diem to the Ombudsman for the entire length of her IPA assignment.

#### Processing of Vouchers to Obtain Per Diem Payments

We found that the Ombudsman was not provided specific information regarding her responsibilities under the IPA Assignment Agreements and that initially neither the staff of the office to which the Ombudsman was assigned nor the Ombudsman knew how to claim per diem for the Ombudsman under the IPA.

A travel policy specialist in the Office of the Chief Financial Officer said that it would be the responsibility of the office to which an employee is assigned to discuss per diem entitlements under the IPA Assignment Agreement with the employee. Also, the

former Acting Director of the Personnel Policy Division said that normally personnel from the organization where an IPA assignee would be assigned would discuss the process with the individual. She also said that in the case of an office that rarely uses IPA assignments, such as ED, the office would not have any knowledge about how to handle an IPA assignment. She said that in such cases the Office of Human Resources would hold their hand and walk them through the process. However, no one we interviewed in the office to which the Ombudsman was assigned said they had discussed the details of the IPA Assignment Agreements with the Ombudsman.

#### Inadequate Guidance To Ombudsman Regarding IPA Assignment Agreement

Although the Ombudsman signed an IPA Assignment Agreement containing specific conditions of her employment, she was not provided a detailed explanation of the applicability of rules, regulations, and policies regarding the Agreement.

Federal regulation and guidelines required the agency to provide information to the Ombudsman regarding her obligations and responsibilities under the IPA Assignment Agreement. OPM regulations required that:

"Before an assignment is made the Federal agency and the . . . local . . . government . . . and the assigned employee shall enter into a written agreement which records the obligations and responsibilities of the parties as specified in 5 U.S. Code 3373-3375 and in Federal Personnel Manual Chapter 334. [Emphasis added.]" (5 C.F.R. 334.106(a)).

In addition, the FPM provided that:

"Before the agreement is signed, the Federal agency must inform the employee of the provisions of all appropriate statutes and regulations or must provide copies of the information to the employee. The employee must acknowledge receipt of this information in the assignment agreement. [Emphasis added.]" (FPM Chapter 334, subchapter 1, subparagraph 1-8g, dated December 1, 1983).

It does not appear that the Ombudsman was provided specific information regarding the applicable rules and policies to which she would be subject under the IPA Assignment Agreement. The initial IPA Assignment Agreement signed by the Ombudsman included a section concerning the applicability of rules, regulations, and policies. This section referred to, among other things, information concerning termination of the assignment, recovery of travel expenses if the assignment was not completed, and the applicability of reduction in force procedures of her permanent employer. The Ombudsman certified under this section that she would observe the rules and policies governing the internal operation and management of the Department.

However, the Ombudsman said that no one ever discussed the details of the IPA Assignment Agreement with her. She said, for example, that no one told her that she would be expected to

notify the Department if she changed her residence. The Personnel Management Specialist, who worked on the appointment of the Ombudsman, could not recall whether she gave the Ombudsman copies of the regulations or Federal Personnel Manual sections regarding IPA assignments. No one that we interviewed within the Department who was involved in the appointment of the Ombudsman said that they had provided any such information to the Ombudsman. This includes staff from the Office of the Chief Financial Officer, the Office of Personnel, and the Office of Economic Impact and Diversity (ED), the office to which the Ombudsman was assigned.

#### Procedures For Claiming Reimbursement

The Ombudsman said, with respect to claims for per diem, that she was surprised that members of the ED staff, who were Federal employees, would not know the rules. The ED staff member who prepared the documentation for collection of per diem by the Ombudsman, said that, although paperwork had been prepared, no travel vouchers had been submitted prior to the travel voucher that was submitted in June 1994. She provided documents showing that ED staff members had first prepared a Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal, instead of a travel voucher to claim per diem for the Ombudsman. She said that someone told her that use of this form to claim per diem for the Ombudsman had been based on advice received from the Office of the Chief Financial Officer. The ED staff member said, however, that when she was given the task to prepare the documentation to claim per diem for the Ombudsman, she contacted two individuals in the Office of the Chief Financial Officer regarding questions she had concerning the use of Standard Form 1034 to claim per diem. She said that these individuals advised her that per diem for the Ombudsman should be claimed on travel vouchers, which should be prepared every thirty days.

In January 1996, we were told by the travel policy specialist in the Office of the Chief Financial Officer that no written guidance regarding the documentation required to claim per diem under an IPA Assignment Agreement existed, but that a draft policy was being reviewed. A copy of the draft policy was provided to us. This policy was subsequently issued by memorandum dated March 5, 1996, Subject: "Travel of Intergovernmental Personnel Act Assignees." In the memorandum, the Controller said, regarding per diem payments, that: "For accounting purposes, these costs are to be charged to object class 21 and reimbursed through submission of periodic travel vouchers (at least every 30 days)." This object class specifies that reimbursement for per diem is paid from travel funds.

#### Incorrect "Points of Travel" Information

We found that travel vouchers submitted by ED for reimbursement of per diem claims by the Ombudsman under the IPA Assignment Agreement incorrectly listed Orange, New Jersey, as one of the "Points of Travel." However, we found no evidence that the references to Orange, New Jersey, on the travel vouchers were an attempt to obtain a benefit to which the Ombudsman was not

entitled.

The Ombudsman said that she sold her home in Orange, New Jersey, in December 1993, and had been renting an apartment in the Washington, D.C., area since October 2, 1993. She said that she considered herself to be living in Maryland since coming to work for the Department, but she said that she expected to return to New Jersey at the end of her appointment with the Department. We reviewed the travel vouchers submitted by ED during the period June 1994 to August 1995, which were for reimbursement of per diem for the Ombudsman. All the travel vouchers, except a travel voucher that involved her travel to South Africa, showed Orange, New Jersey, in the "From" column as a point of travel.

The ED staff member who prepared the travel vouchers for reimbursement of the Ombudsman's per diem said that initially she put Orange, New Jersey, as the point of travel in the "From" column because she was not aware the Ombudsman had sold her home in New Jersey. She also said that it was included because she believed New Jersey was the Ombudsman's residence to which she would be returning after her temporary appointment with the Department.

Both the ED staff member who prepared the travel vouchers and the Ombudsman said that when the ED staff member presented the Ombudsman with the first travel voucher, which was submitted in June 1994, she (the Ombudsman) questioned the reference to Orange, New Jersey. The ED staff member said that she "cut short" the Ombudsman's question regarding the reference to Orange, New Jersey, and told her to sign the travel voucher, since that was her understanding of how the travel voucher should be prepared.

#### Questions Regarding Receipt of Per Diem By the Ombudsman After Her Change of Residence

The Ombudsman said that she discussed the sale of her home in New Jersey with people in ED at the time of the sale. This was confirmed by both the ED Director and her Special Assistant, who both said that the Ombudsman advised them she had sold her home. They said that these discussions took place about the time of the sale of the Ombudsman's home in December 1993.

The ED staff member who prepared the Ombudsman's vouchers stated that she was not aware that the Ombudsman had sold her home until perhaps October 1994, when the Special Assistant to the ED Director asked her whether she was aware that the Ombudsman had sold her home. The ED staff member said that she raised the issue with the ED Director of continuing to pay the Ombudsman per diem given the sale of her home. However, we did not find other evidence that the staff member had raised the issue at that time. Neither the ED Director nor the Special Assistant recalled the staff member questioning the payment of per diem to the Ombudsman in the context of the sale of her home. The ED Director, her Special Assistant, and the staff member who prepared the vouchers all said that that they believed the Ombudsman was entitled to

per diem based on the conditions set forth in the IPA Assignment Agreements.

The ED Director, her Special Assistant, the ED staff member who prepared the vouchers, the Personnel Management Specialist who worked on the IPA appointment, and a travel policy specialist from the Office of the Chief Financial Officer, all recall having conversations regarding the continued payment of per diem to the Ombudsman. However, these conversations related to the desire of officials within ED to cease paying per diem to the Ombudsman based on a lack of funding within the ED budget to cover the per diem required under the IPA Assignment Agreement.

The ED staff member who prepared the travel vouchers said that she later called someone in either the Office of Human Resources or the Office of the Chief Financial Officer. She said she asked specifically about the payment of per diem to the Ombudsman, who she believed may have moved to the Washington, D.C., area. We were provided notes, dated August 24, 1995, by the Personnel Management Specialist in the Office of Human Resources who worked on the appointment of the Ombudsman. These notes were of a conversation that she had with the travel policy specialist from the Office of the Chief Financial Officer regarding payment of per diem to the Ombudsman. According to the notes, the travel policy specialist said that per diem is paid to people that maintain "separate tables" (two residences, e.g., one in Washington, D.C.). He stated that a "budget crunch" would have no impact on continuing per diem payments to the Ombudsman. However, the notes indicated that he stated that if she moved to Washington, D.C., allowances should be discontinued.

The travel policy specialist from the Office of the Chief Financial Officer said that he had discussed, possibly with someone from the Office of Human Resources who had been contacted by someone in ED, the possibility of terminating per diem payments to the Ombudsman because of budget considerations. According to the travel policy specialist, he told the individual that per diem could not be changed unless circumstances were changed, for example, if the Ombudsman moved her household goods to Washington, D.C., she would no longer be entitled to per diem.

On March 5, 1996, the Controller issued a memorandum, Subject: "Travel of Intergovernmental Personnel Act Assignees." According to the memorandum, it is the Department's policy to pay per diem expenses to IPA assignees in Washington, D.C., ". . . who incur expenses for conventional lodging . . . and who continue to maintain permanent residences at places outside the Washington, D.C., commuting area." We found no evidence that, with respect to IPA assignees, a statement of such a policy existed prior to the issuance of the March 5, 1996, memorandum. Also, we note that the memorandum is silent whether IPA assignees at locations other than Washington, D.C., must maintain a permanent residence outside the commuting area of their assignment to receive per diem payments.

Improper Signature By Approving Official On Travel Voucher

During our review of the Ombudsman's travel vouchers, we

determined that the Special Assistant to the ED Director had improperly signed the name of the ED Director to one of the travel vouchers. The Special Assistant said that she had independent signature authority for travel vouchers and could have signed "for the Director" using her (the Special Assistant's) name. She said that on one of the travel vouchers she signed the Director's name.

By memorandum dated June 27, 1996, the Director, Office of Economic Impact and Diversity, provided comments on our initial draft report. She said that the Special Assistant has the authority to sign her name whenever appropriate.

We discussed this comment with the Special Assistant. The Special Assistant said that she probably signed the Director's name instead of her own name on the Ombudsman's travel voucher because the Director had signed all the previous travel vouchers for the Ombudsman. She said that she believed the Director's signature on the Ombudsman's travel voucher would have been more appropriate. She also said that she believed at that time she had not done anything inappropriate because she had the authority to approve travel vouchers.

It is not appropriate, in our view, for the Special Assistant to sign the ED Director's name on travel vouchers. We reviewed the Travel Authorization and Program Manager Signature Card signed by the ED Director on August 29, 1995. This card has the name of the Special Assistant, whose title was then Deputy Director for Minority Economic Impact, typed at the top of the card, and the signature of the Special Assistant. The statement above the ED Director's signature at the bottom of the card reads, "I certify to the signature and authority of the above individual for the documents noted." Among the documents listed, for which the Special Assistant's signature was authorized, were travel vouchers.

Also, we asked the Chief, Travel Audit Section, Office of the Chief Financial Officer, about signature authority for individuals to sign travel vouchers. He said that a person authorized to sign travel vouchers based on the submission of a completed Travel Authorization and Program Manager Signature Card could sign their own name on travel vouchers or sign their own name "for" the official who had delegated authority to them. He said that under no circumstances is an employee permitted to sign someone else's name on a travel voucher. He said that if anyone on his staff became aware that an employee had signed someone else's name, the voucher would not be processed.

#### Recoupment of Per Diem Payments From the Ombudsman

We found that the Chief Financial Officer, who is the official authorized to determine the existence and amount of employee debt, did not make a formal decision with respect to the existence of a debt owed by the Ombudsman. The Chief Financial Officer told us that recoupment actions are routinely handled by members of his office and do not require his specific approval. The Chief Financial Officer said that three offices were involved

in making the determination that the Ombudsman needed to repay per diem that she received following the sale of her home in New Jersey. He said that he was aware that a determination had been made and that a demand letter had been sent to the Ombudsman to recoup the per diem payments, but that he did not take any specific action, such as signing a formal document, to establish the existence of a debt. He said that since his office took action to recoup the per diem payments, he was responsible for the action.

We found that the Chief Financial Officer's authority had not been delegated to the officials who caused the recoupment of the per diem payments. When we interviewed the Director, Office of Headquarters Accounting Operations, regarding the authority to determine the existence and amount of employee debt, he said that he had been making these determinations, but had been recently advised that he did not have written delegated authority to perform this function on behalf of the Chief Financial Officer. He said that, with respect to the Ombudsman, he had not made the determination that a debt existed. We also interviewed the other officials involved in the process of recouping the per diem payments from the Ombudsman. Although their actions resulted in the recoupment of the per diem payments, none of these officials said that they made the determination that a debt existed.

We found that when the Office of General Counsel concurred in the issuance of the demand letter for recoupment of per diem payments that had been made to the Ombudsman, the Office of General Counsel was concurring only in the adequacy of the form of the demand letter and not in the determination that the Ombudsman was not entitled to per diem following the sale of her home. During our discussions with officials in the Office of the Assistant General Counsel for General Law, we raised questions regarding the legal basis for the determination that a debt existed and the issuance of a demand letter to recoup the per diem payments from the Ombudsman. We understand that the Office of General Counsel has initiated a legal review of these matters.

The Secretary said that after the publication of an article in the Los Angeles Times regarding the payment of per diem to the Ombudsman, she directed someone to refer the matter to the Office of General Counsel. A Special Assistant to the Secretary said that because of a Freedom of Information Act request to the Department from the Los Angeles Times, he had requested the Assistant General Counsel for General Law to review the Ombudsman's travel vouchers. The Special Assistant said that his request for a review was not based on any particular concerns he had about the travel vouchers, but that he had noticed during his review of the travel vouchers that per diem had been paid to the Ombudsman.

The Assistant General Counsel for General Law said that he and his staff reviewed the Ombudsman's travel vouchers pursuant to the request from the Special Assistant to the Secretary in late 1995. He said that they initially had concerns about the payment of per diem to the Ombudsman beyond a one-year period, but that they determined such payments were legally permissible. Neither

the Special Assistant nor the Assistant General Counsel for General Law or his staff addressed at that time the issue regarding the Ombudsman's sale of her home in Orange, New Jersey, or its possible impact on her receipt of per diem.

The Special Assistant to the Chief Financial Officer said that at some point he had learned, possibly from the travel policy specialist in the Office of the Chief Financial Officer, that the Ombudsman might not be entitled to per diem because she had relocated to Washington, D.C. According to the travel policy specialist in the Office of the Chief Financial Officer, he had heard, one or two years earlier, that the Ombudsman had moved to Washington, D.C.

The Special Assistant to the Chief Financial Officer said that he met with the Ombudsman and discussed with her the sale of her home and her receipt of per diem. The Ombudsman said that at her initial meeting with the Special Assistant to the Chief Financial Officer, which occurred sometime in November or December 1995, he indicated to her that she should not have received per diem after she sold her home in New Jersey. The Special Assistant to the Chief Financial Officer and the Ombudsman said that the Ombudsman expressed an immediate interest in repaying any amounts improperly paid to her.

#### Determination Not Made of Existence of a Debt

We found that the Chief Financial Officer, who is the official authorized to determine the existence and amount of employee debt, did not make a formal decision with respect to the existence of a debt owed by the Ombudsman. Also, we found that the Chief Financial Officer's authority had not been delegated to the officials who caused the recoupment of the per diem payments. Although the actions of these officials resulted in the recoupment of the per diem payments, none of these officials said that they made the determination that a debt existed.

DOE Order 2200.2B, Collection From Current and Former Employees for Indebtedness to the United States, dated June 9, 1992, states in paragraph 7b that: "The Chief Financial Officer and Heads of Field Elements or Designees shall:

"(1) Determine the existence and amount of employee debt.

"(2) Promote voluntary repayment of employee debts, whenever possible, using demand letters."

The Chief Financial Officer told us that recoupment actions are routinely handled by members of his office and do not require his specific approval. The Chief Financial Officer said that three offices were involved in making the determination that the Ombudsman needed to repay per diem that she received following the sale of her home in New Jersey. He said that he was aware that a determination had been made and that a demand letter had been sent to the Ombudsman to recoup the per diem payments, but that he did not take any specific action, such as signing a formal document, to establish the existence of a debt. He said



that since his office took action to recoup the per diem payments, he was responsible for the action.

In addition, we found that the Chief Financial Officer's authority to determine the existence and amount of debt had not been delegated to the officials who caused recoupment of the per diem payments. We interviewed the individuals in the Office of the Chief Financial Officer, the Office of Human Resources, and the Office of General Counsel who were involved in the process which led to the issuance of a demand letter to the Ombudsman. Although their actions resulted in the recoupment of the per diem payments, none of these officials said that they made the determination that a debt existed.

According to the Special Assistant to the Chief Financial Officer, the travel policy specialist in the Office of the Chief Financial Officer, the Director, Office of Financial Policy, and the Director, Office of Personnel, they met to discuss the issue of payments of per diem to the Ombudsman in view of information indicating the Ombudsman had sold her home in New Jersey. The meeting was also attended by the Personnel Management Specialist who worked on the appointment of the Ombudsman. The Special Assistant to the Chief Financial Officer, the Director, Office of Financial Policy, and the Director, Office of Personnel, all said that a consensus was reached that the Ombudsman should not have collected per diem after she sold her home in New Jersey. When we interviewed these three individuals, none of the individuals said that they were responsible for having made the decision that the Ombudsman should repay the per diem she received after the sale of her home.

The Special Assistant to the Chief Financial Officer said that, following the meeting, he advised the Director, Office of Headquarters Accounting Operations, the Chief, Accounting Operations Branch, and possibly the Deputy Director, Office of Headquarters Accounting Operations, that a conclusion had been reached that the Ombudsman was not entitled to per diem following the sale of her home in New Jersey. Subsequently, personnel in the Office of Headquarters Accounting Operations calculated the amount of per diem payments made to the Ombudsman after the sale of her home and drafted a demand letter to collect the money from the Ombudsman.

No one we interviewed in the Office of Headquarters Accounting Operations who had been involved in either the calculation of the amount or the preparation of the demand letter said they were responsible for the decision that the Ombudsman was improperly paid per diem and owed the money to the Department. We interviewed the Director, Office of Headquarters Accounting Operations, regarding the provisions in DOE Order 2200.2B concerning the authority to determine the existence and amount of employee debt. He said that he had been making these determinations, but had been recently advised that he did not have written delegated authority to perform this function on behalf of the Chief Financial Officer. He said that, with respect to the Ombudsman, he had not made the determination that a debt existed.

## Impact of Sale of Home on Per Diem Payments

We did not find a legal requirement for the Ombudsman to maintain a residence outside of the Washington, D.C., commuting area to receive per diem under the provisions of her IPA Assignment Agreement.

The IPA Assignment Agreement under which the Ombudsman was appointed provided for the payment of per diem, but contained no reference to the payment being contingent on maintaining a residence outside the Washington, D.C., commuting area. From our review of the Intergovernmental Personnel Act, the Federal Personnel Manual, which was applicable at the time of the appointment of the Ombudsman, OPM regulations that implemented the IPA, and the Federal Travel Regulations, we found no requirement that an IPA assignee needed to maintain a residence outside the commuting area to which the individual was assigned in order to receive per diem. Therefore, we could not identify a legal prohibition against paying per diem to the Ombudsman under her IPA Assignment Agreements following the sale of her home.

## Concurrence By General Counsel In Demand Letter

We found that when the Office of General Counsel concurred in the issuance of the demand letter for recoupment of per diem payments that had been made to the Ombudsman, the Office of General Counsel was concurring only in the adequacy of the form of the demand letter and not in the determination that the Ombudsman was not entitled to per diem following the sale of her home. During our discussions with officials in the Office of the Assistant General Counsel for General Law, we raised questions regarding the legal basis for the determination that a debt existed and the issuance of a demand letter to recoup the per diem payments from the Ombudsman. We understand that the Office of General Counsel has initiated a legal review of these matters.

The Secretary said that she did not provide direction, nor did she get involved in the decision that the Ombudsman needed to repay per diem. She said that she had been advised, probably by either the General Counsel or Deputy General Counsel, that there was a draft document that concerned an Office of General Counsel opinion that under law and regulation the Ombudsman owed the government for per diem she received while in Washington, D.C. The Secretary said her only concern at that time was the apparent inability of the Office of General Counsel to determine the amount owed, but she understood someone "in Finance" was helping to compute the amount.

According to a staff member in the Accounting Division, Office of Headquarters Accounting Operations, a draft of the demand letter, which was prepared by the Accounting Division, was provided by the Special Assistant to the Chief Financial Officer to the Office of the Assistant General Counsel for General Law for review. The Office of the Assistant General Counsel for General Law reviewed the draft demand letter and recommended changes to the demand letter. In late December 1995, the Deputy Director,

Office of Headquarters Accounting Operations, forwarded the changes recommended by the Office of General Counsel to the Chief, Accounting Operations Branch, and asked that the demand letter be revised. A revised demand letter for review by the Office of General Counsel was prepared by the Accounting Operations Branch and provided on January 2, 1996, to the Special Assistant to the Chief Financial Officer.

We obtained a copy of the January 2, 1996, revised demand letter that contained initials of the Assistant General Counsel for General Law and two members of his staff. We interviewed these individuals regarding whether they concurred in the draft letter and what their concurrence meant. One staff member said that she did not review the basis for the Department's decision that the Ombudsman's per diem payments should be recouped. She said that she reviewed the letter to determine if it contained appropriate language that was required by regulation to be in a demand letter. The other staff member said that she concurred in the language in the letter, but not the substance. She said that her concurrence in the demand letter was based on her understanding that the information in the first two paragraphs of the letter (which stated that a debt was owed based on the Ombudsman's failure to maintain a residence in New Jersey) was factual.

The Assistant General Counsel for General Law characterized his concurrence as more with the format of the letter than with the substance of the letter. He said that the assumption was that the Department was correct in its decision that the per diem payments to the Ombudsman should be recouped. He also said that in hindsight, before concurring in the demand letter, the Office of General Counsel should have examined the legal basis for the Department's decision to recoup the per diem.

During our discussions with officials in the Office of the Assistant General Counsel for General Law, we raised questions regarding the legal basis for the determination that a debt existed and the issuance of a demand letter to recoup the per diem payments from the Ombudsman. We subsequently learned that, following these discussions, the Office of General Counsel initiated a legal review of the basis for the Department's actions to recoup the payments.

#### Collection of Debt

On January 5, 1996, the Ombudsman repaid the amount of per diem payments identified in a January 4, 1996, demand letter, which was hand-delivered to her by the Special Assistant to the Chief Financial Officer.

According to the letter to the Ombudsman, dated January 4, 1996, signed by a staff member in the Accounting Division, the Ombudsman had received an overpayment of \$21,208.70 in per diem allowances during the calendar years 1994 and 1995. The letter requested that she repay the amount to the Department. In addition, the letter stated that:

"Specifically, per diem payments were authorized by the

agreement to provide for living expenses in a temporary residence in the Washington, D.C., area while you continued to maintain a permanent residence in New Jersey."

The Special Assistant to the Chief Financial Officer said that he provided the Ombudsman a copy of the January 4, 1996, demand letter that had been sent to him by facsimile by the Accounting Division. The demand letter stated that the Ombudsman owed \$21,208.70 for overpayment of per diem. He said that the Ombudsman objected to the implications in the demand letter that she had knowledge of the overpayments to her and that she was to blame for the overpayments. The Ombudsman said that she repaid the amount in the January 4, 1996, demand letter based on her reliance on the information she received from the Special Assistant to the Chief Financial Officer that the money was owed pursuant to law. She said, however, that she had objected to the language in the demand letter that implied that she had knowledge that she should not have received the per diem after the sale of her home.

We obtained a copy of a DOE cash receipt dated January 5, 1996, which showed that the Ombudsman repaid the Department in the amount of \$21,208.70.

The January 4, 1996, demand letter was superseded by a second demand letter dated January 5, 1996, which was signed by the same staff member in the Accounting Division who had signed the January 4, 1996, letter. A comparison of this letter with the January 4, 1996, letter provided to the Ombudsman by the Special Assistant to the Chief Financial Officer showed that the January 5 letter contained only a change in the due date of the payment from February 3, 1996, to February 4, 1996.

The Secretary said the Ombudsman had called her and expressed her (the Ombudsman's) concerns about the demand letter which indicated the Ombudsman was at fault for receiving per diem payments. The Secretary said that she did not want to get involved in the matter and had one of her Special Assistants work with the Ombudsman on a reply to the demand letter.

By letter dated January 5, 1996, the Ombudsman wrote to the Chief Financial Officer regarding her concerns with the implication in the January 4, 1996, demand letter that she had knowledge that her acceptance of the per diem payments had been inappropriate. She said that she had never been informed that her eligibility for receiving additional living expenses (per diem) was tied to her retaining her permanent residence in New Jersey.

In a letter to the Ombudsman, dated January 11, 1996, responding to her January 5, 1996, letter to the Chief Financial Officer, the Chief, Accounting Operations Branch, stated that the purpose of the demand letter was to recover erroneous payments without any "stated or implied culpability" on her part. He provided his assurance that the demand letter had not been intended to state or imply wrongdoing or knowledge of wrongdoing.

Withholding For Per Diem Payments

We found that procedures were not in place to ensure that a determination was made whether per diem received by the Ombudsman was subject to Federal tax withholding. Therefore, per diem payments received by the Ombudsman under her IPA Assignment Agreements may not have been subjected by the Department to proper tax withholding.

On September 24, 1993, the Acting Chief Financial Officer issued a memorandum, Subject: "Taxation of Travel Expense Reimbursements," to Heads of Departmental Elements. The memorandum stated that employment away from home in excess of one year would not be treated as temporary. As a result, any amounts paid to reimburse an employee for travel expenses with respect to a "temporary" assignment in excess of one year should be included in an employeems gross income and subject to withholding.

We discussed the September 24, 1993, memorandum with the travel policy specialist in the Office of the Chief Financial Officer. He said that, for an individual under an IPA Assignment Agreement, if the original assignment was intended to be less than one year, there would be no requirement for the Department to withhold and report per diem payments received under the Agreement. He said, however, that if a decision is made to extend the original assignment, the Department is required to withhold and report on per diem payments for payments after being notified of the extension. If the assignment was intended to be longer than one year, the per diem payments should be subjected to withholding and reporting. If, during the period of an original IPA Assignment Agreement that was intended to be one year, a decision is made to extend the Agreement beyond one year, it is the program officems responsibility to notify the DOE travel office and the DOE payroll office to initiate withholding. He said that information regarding withholding of travel expense reimbursements is not in a DOE order, it is only in memorandums such as the September 24, 1993, memorandum, and he said that perhaps the information should be included in an order.

As discussed previously, the initial IPA Assignment Agreement for the Ombudsman was for the period from October 4, 1993, through September 30, 1994. On September 22, 1994, an SF-50, Notification of Personnel Action, was approved by the Office of Personnel extending the Ombudsman's appointment not to exceed June 30, 1995. Subsequently, on June 12, 1995, a corrected SF-50 was approved by the Office of Personnel showing that the Ombudsmanms appointment was extended not to exceed September 30, 1995. A review of travel vouchers submitted by the Ombudsman shows that she received per diem payments for more than a one-year period. Specifically, she received per diem for the period from her initial appointment on October 4, 1993, through August 31, 1995.

According to the Director, Accounting Division, Office of Headquarters Accounting Operations, his office was responsible for "picking up" tax liability for expenses that are paid for extended travel that goes beyond one year. He said that he was not aware whether taxes had been withheld for reimbursements of per diem to the Ombudsman that went beyond the first year of her assignment. At our request, the Chief, Payroll Branch, reviewed

records to see whether taxes were withheld for the payment of per diem to the Ombudsman under her IPA Assignment Agreement for the period from October 4, 1993, through July 31, 1995. The Chief, Payroll Branch, said that there were no records for the Ombudsman of tax withholding related to "IPA payments."

By memorandum dated March 5, 1996, Subject: Travel of Intergovernmental Personnel Act Assignees, the Controller stated that with respect to withholding of taxes for reimbursements for extended travel that: "The program office is responsible for notifying the individual of this potential tax liability and for reporting it to the servicing accounting office to ensure that withholding is initiated."

## VI. RECOMMENDATIONS

Based on our review, we recommend that:

The Assistant Secretary for Human Resources and Administration:

1. Ensure that internal policies and procedures regarding the determination of qualifications and salary levels of individuals being considered for IPA assignments are consistently applied to all applicants.

2. Ensure that IPA Assignment Agreements are processed in accordance with established policies and procedures, e.g., all required signatures obtained, prior to the individual beginning the assignment.

3. In coordination with the Office of the Chief Financial Officer, ensure that the review and approval of initial IPA Assignment Agreements that contain provisions for the payment of per diem, and extensions of those Agreements, include a determination of the appropriateness of providing per diem or continuing per diem.

4. Inform program officials and IPA assignees of options, responsibilities, and procedural requirements with respect to travel allowances appropriate for IPA assignments based on guidance developed by the Office of the Chief Financial Officer.

The General Counsel:

5. Determine whether the following actions by the Department were consistent with law and regulation:

- a. Payment of per diem to the Ombudsman pursuant to her initial IPA Assignment Agreement;

- b. Payment of per diem to the Ombudsman pursuant to extensions of her IPA Assignment Agreements for a period in excess of two years;

- c. Payment of per diem to the Ombudsman subsequent to

the sale of her residence in New Jersey; and

d. The Department's debt collection action to recoup payments made to the Ombudsman after the sale of her residence in New Jersey.

6. Establish internal procedures to require General Counsel staff to annotate a concurrence on a decision or action document to note any limitations regarding the scope of the concurrence.

The Chief Financial Officer:

7. Ensure that decisions regarding the recoupment of funds from Departmental employees are made by the authorized official or an individual delegated such authority, and that the bases for such decisions are adequately documented.

8. Based on the legal opinion by the General Counsel regarding the entitlement of the Ombudsman to receive per diem under the provisions of her IPA Assignment Agreements, recommended above, determine what additional actions are appropriate.

9. Determine if the policy in the Controller's March 5, 1996, memorandum, Subject: "Travel of Intergovernmental Personnel Act Assignees," regarding payment of per diem to IPA assignees maintaining a separate residence outside the area in which they are assigned, should apply to individuals having IPA assignments in areas other than the Washington, D.C., metropolitan area. If so, revise the memorandum to reflect this policy.

10. Conduct a review of payroll records for individuals on extended temporary duty assignments to ensure that the Department is adhering to the requirement to subject reimbursements for temporary travel beyond one year to withholding for tax purposes.

## VII. MANAGEMENT COMMENTS

By memorandum dated July 8, 1996, the Assistant Secretary for Human Resources and Administration provided the Department's comments on our initial draft report. He said that the Department had concurred with all of the recommendations made in the initial draft report, and provided a summary of planned actions, as well as a matrix of responsibilities for those actions.

With respect to Recommendations 1 and 2, he said that by July 31, 1996, the Office of the Deputy Assistant Secretary for Human Resources will issue a written policy reminder to Servicing Personnel Offices, and procedures will be discussed during an upcoming monthly conference call with personnel officials Department-wide.

With respect to Recommendation 3, he said that by July 31, 1996, the Office of the Deputy Assistant Secretary for Human Resources will issue a policy reminder to Servicing Personnel Offices to forward IPA Assignment Agreements to the Office of the Chief Financial Officer for appropriate review, including provisions for per diem authorizations and payment of travel and transportation expenses, prior to approval of the agreements.

With respect to Recommendation 4, he said that by October 1, 1996, written guidelines on payment of relocation expenses and per diem will be developed by the Chief Financial Officer. The Deputy Assistant Secretary for Human Resources will provide them to both the IPA assignee and the head of the office to which the individual is assigned. He suggested that we revise the recommendation in our initial draft report to clarify the respective responsibilities of the Office of Human Resources and Administration and the Office of the Chief Financial Officer. We have revised our recommendation to reflect his suggestion.

With respect to Recommendation 5, he said that by August 22, 1996, General Counsel will provide its legal opinion to the Chief Financial Officer to determine whether certain actions by the Department related to the payment of per diem to the Ombudsman and the collections of payments made were consistent with law and regulation.

With respect to Recommendation 6, he said that by August 22, 1996, General Counsel will issue a reminder to its staff that a concurrence on a decision or action document should be annotated to identify any limitations regarding the scope of the concurrence.

With respect to Recommendation 7, he said that by July 31, 1996, appropriate delegations will be reviewed to ensure that officials charged with the responsibility to identify and collect debts to the Department are properly delegated authority to do so.

With respect to Recommendation 8, he said that General Counsel has not yet issued an opinion. The Office of the Chief Financial Officer will work with General Counsel to pursue the appropriate settlement of the per diem issue.

With respect to Recommendation 9, he said that by July 31, 1996, a clarification of the March 5, 1996, memorandum will be issued to ensure that IPA assignments to places other than the Washington, D.C., area reflect the fact that assignees will not be authorized per diem when they commute from their homes to their places of duty during their IPA assignments if they no longer maintain a residence at their permanent duty station.

With respect to Recommendation 10, he said that by July 31, 1996, a request will be sent to Heads of Departmental Elements to examine temporary duty assignments of their personnel to determine if withholding of taxes on travel payments is appropriate. These officials will be required to report to the Office of the Chief Financial Officer on actions taken to ensure compliance with the Internal Revenue Code.



